



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 15 of 2016

1. Mr. Sohail Farooq Shaikh,
 2. Mr. Farrukh Haroon Rashid
 3. Mr. Mahir Mohsin Sheikh
 4. Ms. Mehreen Haroon Rashid
 5. Ms. Neelum Sohail
 6. Ms. Surriya Shaikh
 7. Mr. Shahid Aziz
- (All Directors of (Colony) Sarhad Textile Mills Limited)

Appellants

Versus

The Commissioner (SMD), SECP.

Respondent

Dates of hearing:

14/07/16 and 20/10/16

Present:

For Appellants:

1. Mr. Sohail Farooq Shaikh-CEO
2. Mr. Riaz Aslam
3. Mr. Shahid Aziz, NIT.
4. Mr. M.Javed Panni (MJ Panni & Associates)

For Respondent:

1. Ms. Ayesha Riaz- Additional Director (CSD)
2. Mr. Haroon Abdullah Abbas- Deputy Director (CSD)
3. Mr. Zeeshan Rehman Khattak-Deputy Director (SMD)

ORDER

1. This order shall dispose of the appeal No.15 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated



Securities and Exchange Commission of Pakistan

05/04/16 (the Impugned Order) passed by the Respondent under section 160 read with section 100 of the Securities Act, 2015 (the Act).

2. Brief facts of the case are that on 01/07/03(Colony) Sarhad Textile Mills Limited (the Company) was placed on the defaulter counter of Pakistan Stock Exchange (the PSX) due to its failure to join the Central Depository System (the CDS). Consequently, the trading of Company shares was suspended on 01/08/12. The Respondent, issued a direction on 01/09/15 (the Direction) under Section 100 of the Act to the Chief Executive Officer (the CEO) and other directors of the Company to take immediate steps to undo the defaults of the Listing Regulations of PSX within 14 days of the date of the Direction. The CEO replied vide letter dated 17/09/15, that “the Company is in financial distress and since nineties it has no income. The Company has never refused to join CDS however, undergoing judicial process of merger with its an associated company namely Suhail Jute Mills Ltd (the Associated Company) has preclude the Company to join the CDS. The Associated Company is on the CDS therefore, it was not considered justifiable or necessary to induct the shares of the Company in the CDS immediately preceding the impending dissolution of the Company as a consequence of the merger.”
3. The Show Cause Notice (the SCN) dated 16/10/15 under section 160 read with section 100 of the Act, was served on the Appellants to show cause, as to why penal action may not be taken against them under Section 159 of the Act. Hearing in the matter was held on 17/12/15, however it was clarified to the authorized representatives that non-compliance on account of bad financial position and intended merger is not cogent, therefore, the Respondent imposed a penalty of Rs. 500,000 on each of the following persons for their failure to comply with the Direction:

S.No.	Name	Amount
1.	Mr Sohail Farooq Shaikh, CEO/Director	500,000/-
2.	Mr. Farrukh Haroon Rashid, Director	500,000/-
3.	Mr. Mahir Mohsin Sheikh, Director	500,000/-
4.	Ms. Mehreen Haroon Rashid, Director	500,000/-
5.	Ms. Neelum Sohail, Director	500,000/-
6.	Mr. Shahid Aziz, Director	500,000/-



Securities and Exchange Commission of Pakistan

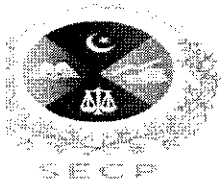
7.	Ms. Surriya Shaikh, Director	500,000/-
Total		35,00,000/-

4. The Appellants have preferred this appeal against the Impugned Order on the following grounds;

- i. The Company has been non-operational for a considerable period and has been in financial distress since the nineties and has no income.
- ii. In 2009 the Company has settled its financial liabilities by selling part of Plant & Machinery and by receiving advances from the principal shareholders. Furthermore, the costs of the minimal staff required to safeguard its assets were also being met by advances from its principal shareholders, which amount is in excess of Rs. 208 million. The act of principal shareholders whereby they have advanced huge funds was directly for the benefit of the shareholders as, otherwise, the Company had no alternative but to be liquidated.
- iii. In paragraph 6 of the Impugned Order the Respondent has directed that the Company should not wait till the merger and initiate the CDS inclusion process right away in the better interest of the shareholders, however, the Respondent has not specified a time limit/ deadline for compliance.
- iv. The Company, in compliance with this Direction of Respondent has initiated discussions with the CDC for inclusion of Company in the CDS. The CDC communicated vide an email dated 16/03/16 that the Company is not CDS eligible security. Therefore, since the Company was not declared by the CDC to be an eligible security, then the provision of listing regulations 5.1.1(g) did not rightfully apply to the Company and no default had been committed.
- v. The merger has been approved and sanctioned by the Lahore High Court (the Court) on 14 April 2016.

5. The Respondent has denied and rebutted the grounds of appeal in the following manner;

- i. All circumstances were taken into account.
- ii. The Company never took steps to activate the trading of shares on the stock exchange so that the stuck up investments of shareholders can be disposed of at fair market value.



Securities and Exchange Commission of Pakistan

- iii. The Respondent, with a view to restore the Company on the normal counter of the PSX and in the interest of Company shareholders, issued a direction on 01/09/15 to the Appellants under Section 100 of the Act, to take immediate steps to undo the defaults of the listing regulations within 14 days of the date of the Direction. Moreover, hearing of the matter was held on 17/12/15 and the Impugned Order was issued on 05/04/16, which is evident that sufficient time was provided to the Company to take action for compliance.
 - iv. The Appellants sought opinion from CDC vides email 16/03/16 without disclosing the name of the Company.
 - v. The directors of the Company were penalized due to their past actions/non-compliances and not due to the future actions.
6. The Memorandum of appeal contains the names of six directors i.e. Mr Sohail Farooq Shaikh, CEO, Mr. Farrukh Haroon Rashid, Mr. Mahir Mohsin Sheikh, Ms. Mehreen Haroon Rashid, Ms. Neelum Sohail, Ms. Surriya Shaikh. An authority letter was also annexed with the memorandum of appeal whereby MJ Panni & Associates were authorized to represent Mr. Shahid Aziz, a nominee director NIT, before the Appellate Bench (the Bench) in this appeal. First hearing of the appeal was held on 14/07/16 however it was adjourned for the production of Lahore High Court (the Court) order dated 14/04/16 whereby merger of the Company with an Associated Company was approved. The Appellants have provided the attested copy of the order dated 14/04/16 passed in C.O.No.02/2013, vide covering letter dated 22/07/16.
7. The Bench has heard the parties i.e. Appellants and Respondent and perused the record of appeal. The Company has a long history of default as it was placed on the defaulter counter of the PSX on 01/07/03 due to its failure to join the CDS and thereafter, trading of Company shares was also suspended on 01/08/12. The Appellants persistent view with respect to direction under section 100 of the Act is that “there has never been any refusal on the part of the Company to join the CDS, however court supervised merger with associated company (already in CDS) precluded the Company from joining the CDS”.

[Emphasis Added]

Appellate Bench No. 1

Appeal No. 15 of 2016

Page 4 of 6



Securities and Exchange Commission of Pakistan

8. The aforementioned argument of the Appellant with respect to non-compliance of the Direction on account of merger cannot be termed as cogent reason to avoid the consequences of said violation. The Direction was passed to undo the defaults of listing regulations of PSX committed by the CEO and directors of the Company prior to initiation of merger process. The petition for merger between the Company and the Associated Company was filed in 2013 before the Court and it was approved on 14/04/16. Prior to approval, the Company and the Associated Company were two separate corporate entities, therefore, both were required to comply with the applicable requirements independently. The plea of Appellants that the Respondent was not empowered to issue the Direction during the pendency of merger, is without any legal force, hence, cannot be considered as a valid ground to set-aside the Impugned Order.
9. The conduct of the Appellants is prejudice to the rights of minority/individual shareholders because without removal of listing regulations default, the minority/individual shareholders may not be able to get the fair market price of their investment. The Appellants main plea for non-compliance of the Direction is that the Company is in process to merge with an Associated Company which is already in CDS. However, it would be interesting to note that the Associated Company is also a non-compliant because it is on the defaulter counter of PSX due to non-payment of fee and its trading has been suspended w.e.f. 12/01/16 and as of 22/11/16 no effort has been made to remove the default of Associated Company. The circumstances are clear that even after the merger of the Company with its Associated Company, the minority/individual shareholders' investment would remain stuck. The Bench has a firm belief that a non-compliant company cannot act in favour of shareholders of the Company especially 44.82% individual shareholders whose investment in the Company is blocked since long without any return and they have not been provided any opportunity to dispose of their shares at fair market value.
10. The Appellants have not denied the default of listing regulations of PSX and non-compliance of the Direction under section 100 of the Act, however they have taken plea of bad financial health of the Company and merger with Associated Company. The directors of a company remain responsible to comply with the requirements of law during the existence of a company and there is no exception to this rule. The plea of financial distress

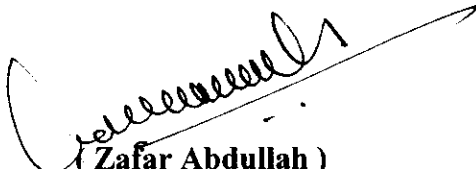


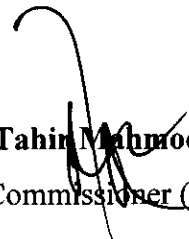
Securities and Exchange Commission of Pakistan

to justify the default of listing regulations cannot be acceded, because it was the prime duty of the directors to ensure compliance of applicable laws.

11. The Appellants also relied upon a copy of CDC email dated 16/03/16 whereby they have tried to prove that they have initiated the process to undo the listing regulations default, however it was halted due to opinion rendered by the CDC. The assumption of the Appellants cannot be accepted because it is clear from the plain reading of the email text that the opinion rendered was not based on record, rather it was the understanding of the CDC officials which was based on mere discussion with the Company representatives.

12. In view of the above discussion, undoubtedly we can trace the track of Company default prior to the initiation/filing of merger petition. The Respondent has rightly issued the Direction to undo the defaults and the Appellants were required to follow the Direction however, they failed. In the circumstances, we find no reason to interfere with the Impugned Order, therefore, we hereby dismiss the appeal with no order to cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 22 NOV 2016