



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

### Appeal No. 19 of 2016

1. Dewan Zubair Ahmed Farooqui
  2. Dewan Abu Obaida Farooqui
  3. Dewan Abu Saeed Farooqui
  4. Dewan M. Rizwan Farooqui
  5. Dewan M. Imran Farooqui
  6. Dewan M. Rehan Farooqui
  7. Dewan M. Uzair Farooqui
- (Chief Executive/ Directors of Ishtiaq Textile Mills Limited)

Appellants

versus

The Commissioner, Securities Market Division, SECP.

Respondent

### Dates of hearing:

July 20, 2023 and  
February 15, 2024

### Present:

#### For the Appellants:

1. Syed Muhammad Abbas Hyder, Advocate High Court
2. Syed Muhammad Raza
3. Mr. Muhammad Hanif German

#### For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 19 of 2016 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Appeal) against the order dated April 5, 2016

Appellate Bench

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passed by the Commissioner, Securities Market Division (the Respondent) under Section 160 read with Section 100 of the Securities Act, 2015 (the Act).

2. Earlier, this Appeal was dismissed vide order dated March 26, 2019 by the Appellate Bench (the Bench). The Appellants challenged the Bench's order dated March 26, 2019 before the Islamabad High Court, Islamabad (the Court) through F.A.O. No. 140 of 2019. The Court vide order dated December 13, 2022 *set aside* the order dated March 26, 2019 and remanded the matter to the Bench. In view thereof, the Appeal was fixed for hearing on July 20, 2023, however, it was adjourned due to the non-availability of the Appellants' Counsel. Thereafter, the Appeal was re-fixed for February 15, 2024, which was attended by the parties.
3. The brief facts of the case are that Ishtiaq Textile Mills Limited (the Company) was placed on the 'defaulter counter' of the Karachi Stock Exchange (KSE) on January 3, 2007 and trading in its shares was suspended since March 22, 2012 due to its failure to join the Central Depository System. The Securities and Exchange Commission of Pakistan (the Commission), issued a direction on September 1, 2015 to the Appellants under Section 100 of the Act (the Direction) to take immediate steps to undo the defaults of chapter five of the Listing of Companies and Securities Regulations contained in the Rule Book of Karachi Stock Exchange (Listing Regulations) within 14 days of the date of the Direction. The Company failed to comply with the Direction. Therefore, the Respondent issued the Show-Cause Notice dated October 30, 2015 in terms of Section 160 read with Section 100 of the Act (the SCN). The Appellants submitted the written reply vide letter dated November 13, 2015. The first hearing in the matter was held on December 17, 2015, wherein Mr. Ali Hussain (the Authorized Representative) appeared and sought adjournment. The second hearing was fixed for January 20, 2016 on which the Authorized Representative appeared along with Dewan Zubair Ahmed Farroqui to plead the case. The Respondent concluded the SCN proceedings and imposed an aggregate fine of Rs. 35,00,000/- on seven directors of the Company. The Appellants were held liable to pay Rs. 500,000/- each.
4. The Appellants have preferred this Appeal *inter alia* on the grounds that the issuance of the Direction was unwarranted because the erstwhile Karachi Stock Exchange (KSE) vide letter dated September 2, 2015 had already extended the suspension period for sixty days to rectify the Listing Regulations default. The Appellants stated that the KSE further extended the suspension



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period for sixty days to rectify the Listing Regulations default vide a letter dated October 30, 2015, however, the Respondent issued the SCN on October 30, 2015 without any just cause and reason. The Appellants submitted it was the exclusive domain of KSE to deal with the matter, as the KSE had the authority to issue delisting directions in case of continuous default. The Appellants stated that the Company was in the process of voluntary delisting of the Company from KSE and Lahore Stock Exchange, therefore, the Company had not applied to Join CDC and this contention was placed before the Respondent. The Appellants contended that in the circumstances, the KSE further extended the suspension period for sixty days to rectify the Listing Regulations default vide a letter dated April 28, 2016.

5. The Appellants submitted that the Respondent issued the SCN and passed the Impugned Order without jurisdiction. The Appellants stated that the Respondent seriously erred in law by penalizing the Appellants in their personal capacity as neither the Direction nor the SCN was issued in the name of the Appellants. The Appellants contended that the provisions of the Act cannot be applied retrospectively because the alleged default occurred before the promulgation of the Act, therefore, the Impugned Order has been passed in violation of Article 12 of the Constitution. The Appellants further submitted that special law always overrides a general law, therefore, the Act being a general law cannot override the provisions and procedures defined under the Listing Regulations, which is a special law dealing with the listing requirements. The Appellants stated that the consequence for not joining the CDC has been provided under the Listing Regulations, therefore, the imposition of penalty under the Act is arbitrary and against the law. In view of the aforementioned grounds, the Appellants prayed to *set aside* the Impugned Order.
  
6. The Respondent rebutted the grounds of Appeal and contended that it had properly exercised its jurisdiction to issue the Impugned Order. The Respondent claimed that because the Company did not join CDC, it was added to the list of defaulters; nonetheless, the Company did not take any measure to remove the default. According to the Respondent, the KSE's letters do not bar any action under the Act, resultantly, the Direction was issued, and upon non-compliance, the SCN was served and the Impugned Order was passed. The Respondent claimed that the Company's directors were the recipients of the Direction, the SCN, and the hearing notifications.



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7. According to the Respondent, the Company was in default when the Act was enforced, which is why the Direction was issued. Because of this, the Appellants' position on the Act's retrospective effect is erroneous. The Respondent claimed that since the Impugned Order was passed as a result of a breach of the Direction issued under the Act, therefore, its sanctity cannot be called into question. The Respondent stated that although the exchange is free to take legal action against the Appellants and the Company in compliance with the applicable Listing Regulations, doing so is not necessary in order to initiate any action under the Act. The Respondent pleaded the appeal be dismissed.
8. The Bench has heard the parties and perused the record. The Bench is not inclined to accept the Appellants' assertion that the Impugned Order has been passed without jurisdiction. The Bench is of the view that being an apex regulator, the Securities and Exchange Commission of Pakistan (the Commission) is competent to issue directions under Section 100 to undo a default committed by a company under the Listing Regulations, however, initial right to take cognizance is vested with the exchange (KSE). In this case, initial cognizance of the default under the Listed Regulations was taken by the exchange (KSE), however, due to continuous default, the Commission issued the Direction to the Company to undo the default. Therefore, the Bench finds no reason to doubt the competence of the Respondent to pass the Impugned Order. Furthermore, the Bench also finds no substance in the Appellants' argument that in the event of continuous default in joining the CDC, the only action that may be instituted against the Company is delisting under the Listing Regulations.
9. The Appellants' argument that directors were not given a Direction or SCN is also rejected by the Bench. The Bench disagrees with this position since the evidence shows that the Direction and SCN were properly directed to the Company's directors and CEO. Given this, the Bench feels that the Respondent had the complete authority to impose the fine on the Appellants in their individual capacities.
10. The Bench further rejects the Appellants' argument that the Respondent lacked the authority to apply the Act's provisions and penalize the Appellants for their default prior to the Act's promulgation. The Bench believes that the reason the Impugned Order was passed was because



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the Direction under the Act was not complied with, hence retroactive impact of the Impugned Order does not arise.

11. In reply to a question of the Bench, the Appellants' representatives stated that the Pakistan Stock Exchange vide letter dated September 12, 2019 had allowed voluntary delisting of the Company with effect from October 7, 2019. And that the Company is also no longer required to join the CDC.
12. After reviewing the records, the Bench has noted that the Company was persistently pursuing delisting which was eventually accomplished in 2019. Although, the Company is no longer required to join CDC because of its delisting, however, this fact cannot undo the Listing Regulations default automatically. The purpose of the Direction was to protect minority shareholders/investors who were continuously suffering due to the trading suspension of the Company's shares, however, that objective has been achieved through the buyback option. Since the objective of the Direction/Impugned Order has been fulfilled through delisting and buyback, therefore, in our view cause of action against the Appellants has become redundant. In the circumstances, imposition of fine on the Appellants would not be justified. Given the aforementioned facts, by maintaining the merits of the Impugned Order, we hereby convert the penalty into a warning. Accordingly, the Appeal is disposed of without any order as to costs.

(Mujtaba Ahmad Lodhi)  
Commissioner

(Aamir Khan)  
Commissioner

Announced on: 04 JUL 2024