



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 20 of 2022

Ahmed Ali Bawany

Appellant

Versus

Executive Director – Adjudication Department-I

Respondent

Date of hearing:

May 30, 2025

Present:

For the Appellant:

1. Mr. Muhammad Ayub, Company Secretary
2. Tariq Yousuf, Senior Manager

For the Respondent:

3. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
4. Mr. Rizwan ul Haq, Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 20 of 2022 filed by Ahmed Ali Bawany (the “Appellant”) against the Order dated November 3, 2020 (the “Impugned Order”) passed by the Executive Director – Adjudication Department-I, Securities and Exchange Commission of Pakistan (the “Respondent”) under section 228 of Companies Act, 2017 (the “Act”).
2. The brief facts of the case are that the Appellant is the Chief Executive Officer of Faran Sugar Mills Limited (the “Company”), a holding company that disclosed investment in its wholly owned subsidiary, Faran Power Limited (FPL), in its financial statements for the year ended September 30, 2017. The Appellant failed to annex consolidated financial statements of the parent and subsidiary companies as required under Section 228 of the Act. Despite multiple



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opportunities for hearing and a detailed Show-Cause Notice issued on April 5, 2019 (the “Show Cause Notice”), the Appellant did not provide sufficient justification for non-compliance, nor did they seek exemption from the Securities and Exchange Commission of Pakistan (SECP). Consequently, the Impugned Order was passed imposing a penalty of Rs. 100,000 on the Appellant for violating the provisions of Section 228 of the Act.

3. The Appellant challenged the legality and reasoning of the Impugned Order primarily on various legal and factual grounds. Firstly, the Appellant contended that the Impugned Order failed to consider the crucial fact that FPL, the wholly owned subsidiary, was formed with a nominal equity and did not commence any business operations or financial activity since its incorporation, therefore, the requirement of consolidation under Section 228 of the Act was not practically triggered, and no material financial information was omitted from the Company's disclosures. Secondly, the Appellant maintained that the Impugned Order disregarded the fact that FPL had already opted for the status of an 'Inactive Company' under Section 424 of the Act, which effectively suspends operational and financial activity, further reinforcing the position that consolidation would not yield any additional value to stakeholders.
4. Additionally, the Appellant argued that the penalty imposed through the Impugned Order was unjustified in light of the Company's management having taken a principal decision to discard the FPL project due to its lack of economic viability and that the Respondent failed to appreciate this context in determining whether any enforceable obligation existed to consolidate FPL's financials. Furthermore, the Appellant submitted that the consolidation of FPL's accounts would have merely resulted in the duplication of financial disclosures already reflected in the standalone accounts of the Company, thereby serving no material purpose and offering no additional insight to shareholders or regulators.
5. The Impugned Order, the Appellant also argued, erred in imposing a monetary penalty despite full and adequate disclosure of the FPL investment in the notes to the financial statements and the Director's Report of the Company. The Appellant submitted that this voluntary and good-faith disclosure demonstrated transparency and negated any allegation of concealment or misconduct. The Appellant further contended that the alleged violation of Section 228 of the Act is not one of strict liability. The principle of *mens rea* must apply, and that the Respondent



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failed to establish any wilful intent or deliberate omission on part of the Appellant and without such evidence, penal action could not be sustained.

6. Lastly, the Appellant argued that the Impugned Order wrongly assumed deliberate non-compliance without establishing any element of malintention or mala fide conduct. In the absence of any wilful default, the penalty imposed is disproportionate, unmerited, and liable to be set aside.
7. The Respondent categorically denied all grounds raised by the Appellant. The Respondent submitted that the Impugned Order was passed strictly in accordance with the law, after full consideration of the facts and circumstances of the case, and following due process. It was contended that the Appellant had admittedly failed to meet the requirements of Section 228 of the Act, and that the non-compliance was not in dispute. Therefore, the penalty imposed on the Appellant was both lawful and justified.
8. The Respondent further maintained that the argument regarding FPL's status as an 'Inactive Company' was factually and legally misconceived. It was highlighted that, as acknowledged by the Appellant during the proceedings, while an application under Section 424 of the Act had been submitted for FPL to be declared inactive, the said status had not been confirmed as of the date of the Impugned Order. Therefore, the obligation under Section 228 of the Act to prepare consolidated financial statements remained fully applicable.
9. It was vehemently denied by the Respondent that the Appellant's contention that the project had been abandoned. Reference was made to Paragraph 3 of the Impugned Order, wherein the Company itself submitted that FPL could be revived in the future depending on favorable developments in government policy. This clearly contradicted the assertion that the project was permanently discarded, and demonstrated the potential for ongoing relevance of FPL's financial position to the holding Company's disclosures.
10. It was further submitted by the Respondent that the Appellants had failed to apply for any exemption from the requirements of consolidation under Section 228 of the Act and that the obligation to consolidate financial statements is a statutory requirement, and failure to fulfil it, without any exemption or valid justification, constitutes a clear violation, regardless of whether



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the subsidiary had operational activity or not. The Respondent also rejected the claim that disclosure in the notes to financial statements and directors' report sufficed in lieu of full consolidation and argued that statutory obligations cannot be replaced with partial or alternative disclosures unless expressly permitted by law, which was not the case here.

11. Regarding the contention that Section 228 is not an offence of strict liability, the Respondent submitted that the penalty was imposed on the basis of admitted non-compliance and there was no need to establish *mens rea* where the facts confirmed breach of a statutory obligation, and where the Appellant failed to show reasonable cause or take corrective action in due time. Finally, the Respondent emphasized that the Appellants themselves acknowledged the contravention of Section 228 during the course of proceedings and therefore, the penalty imposed was proportionate and based on a clear legal mandate. No procedural irregularity or substantive miscarriage of justice was established by the Appellants.
12. After hearing both parties, examining the record, and considering the relevant law, the Appellate Bench (the "Bench") is of the view that the Respondent acted within its jurisdiction and authority vested under the Act. The obligation to prepare consolidated financial statements under Section 228 of the Act is a mandatory statutory requirement, and non-compliance cannot be overlooked regardless of the nominal equity or inactivity of the subsidiary company. The Respondent's actions, including the issuance of the Show Cause Notice and passing of the Impugned Order, were procedurally sound and consistent with its supervisory mandate.
13. The Bench finds that the Appellant's contention regarding FPL's inactive status is factually premature since the status had not been formally confirmed at the time of the Impugned Order. Moreover, the management's purported decision to discard the project is insufficient to excuse statutory compliance obligations, especially where the Company itself had expressed intentions to revive the subsidiary should conditions improve. The requirement to consolidate is intended to ensure transparency and provide meaningful information to stakeholders, which cannot be waived on grounds of duplication or perceived irrelevance.
14. Notwithstanding the established contravention, the Bench is mindful of the fact that the Appellants promptly cooperated once the deficiencies were pointed out and have since taken steps to align their financial reporting practices. Further, the penalty imposed should be just,



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fair, and proportionate to the violation. Taking into account the Company's limited activity, , and the absence of any deliberate or wilful default, the penalty is hereby reduced from Rs. 100,000/- to Rs. 50,000/-. The Appellant is further directed to ensure strict compliance with the provisions of Section 228 of the Act, going forward, and to maintain all required disclosures and consolidated financial statements as per the law.

15. Consequently, the appeal is dismissed with no order as to costs.

(Muzzafar Ahmed Mirza)

Commissioner

(Abdul Rehman Warraich)

Commissioner

Announced on:

20 OCT 2025