



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 21 of 2016

1. Arif Haji Habib, CEO
2. Mehroon Yasin Saya
3. Farzana Arif
4. Arshad Arif
5. Misbah Arif
6. Humaira Arshad
7. Saman Arif

(All Directors of Globe Textile Mills (OE) Limited)

Appellants

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

20/10/16

Present:

For Appellants:

1. Mr. Arshad Arif, Director
2. Mr. Muhammad Jawwad Shekha

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. 21 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 05/04/2016 (the Impugned Order) passed by the Respondent under section 160 read with section 100 of the Securities Act, 2015 (the Act).

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2. Brief facts of the case are that Globe Textile Mills (OE) Limited (the Company) was placed on the defaulter counter of Pakistan Stock Exchange (the PSX) on 03/01/07 due to its failure to pay annual listing fee for two years and its failure to join the Central Depository System (the CDS). The Company was declared CDS eligible on 12/05/99 but didn't joined the CDS. Consequently, trading of Company shares was suspended on 22/03/12. The Respondent issued a direction on 01/09/15 (the Direction) under section 100 of the Act to take immediate steps to undo the defaults of the Listing Regulations of PSX within 14 days. The Appellants vide letter dated 12/09/15 submitted that the Company is in process of voluntary delisting, hence matter be condoned. However, said letter or request was not accompanied with any evidence. Therefore, a Show Cause Notice (the SCN) dated 16/10/15 under section 160 read with section 100 of the Act was served on the Appellants as to why penal action may not be taken against them, as provided under Section 159 of the Act. The Appellants replied to the SCN vide letter dated 21/10/15 that they have already stated their position in reply dated 12/09/15. They further requested to withdraw the notice. Hearing in the case was fixed on 17/12/15, 20/01/16, 26/01/16, 09/02/16 and 03/03/16, however, despite fixation of case five times, no one appeared on behalf of the Appellants. The Respondent being dissatisfied with the conduct of the Appellants imposed a penalty of Rs.500,000 on each of the directors of the Company in the following manner:

S. No.	Name of Appellants	Amount Rupees
1.	Arif Haji Habib, CEO	500,000
2.	Mehroon Yasin Saya	500,000
3.	Farzana Arif	500,000
4.	Arshad Arif	500,000
5.	Misbah Arif	500,000
6.	Humaira Arif	500,000
7.	Saman Arif	500,000
Total		3,500,000



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3. The Appellants have preferred this appeal *inter alia* on the ground that matter was decided ex-parte by the Respondent. On the other hand, the Respondent submitted that ample hearing opportunities were provided to Appellants, however they deliberately failed to avail the same appear and plead the case.
4. The Appellate Bench (the Bench) has heard the parties i.e. Appellants and Respondent and perused the record of appeal. As per record, five hearing opportunities dated 17/12/15, 20/01/16, 26/01/16, 09/02/16 and 03/03/16 were provided to the Appellants however, no one appeared to plead the case. Therefore, case was proceeded and concluded ex-parte. No doubt conduct of the Appellants before the Respondent cannot be appreciated, however the Bench finds it appropriate to provide a final opportunity of fair trial to the Appellants. The Bench is of the view that technical knockout would not serve the purpose of substantial justice. Furthermore, the apex courts have observed in numerous verdicts that law favours adjudication on merits rather than technicalities.
5. In view of above discussion and subject to payment of cost Rs.70,000 (Rs.10,000 imposed on each of the Appellants) we hereby set-aside the Impugned Order and remand the matter to the Respondent to decide it afresh. The Appellants are directed to deposit the amount of cost in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within 10 days from the receipt of this order and furnish the challan to the Respondent, as evidence of deposit of cost. The Respondent is directed to provide a final opportunity of hearing to the Appellants who are also directed to appear on the day and time fixed by the Respondent for hearing. Therefore, in the circumstances, the appeal is disposed of.

(Zafar Abdullah)
Commissioner (SCD)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **11 NOV 2016**