



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 21 of 2018

1. Mian Shahzad Aslam
 2. Mian Farrukh Naseem
 3. Mian Aamir Naseem
 4. Mr. Maqbool Hussain Bhutta
 5. Mr. Muhammad Asghar
 6. Mr. Muhammad Abbas
 7. Mr. SibgatUllah
- (All Directors of Nazir Cotton Mills Limited)

...Appellants

Versus

The Executive Director (CSD), SECP

...Respondent

Date of hearing:

August 20, 2020

Present:

For Appellant:

1. Mr. Mohammed Hayat Jasra, FCMA.
2. Mr. Maqbool Hussain Bhutta, Director.

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director (Adjudication-I), SECP.

ORDER

1. This Order shall dispose of Appeal No. 21 of 2018 filed by the directors (the Appellants) of Nazir Cotton Mills Limited (the Company) against the Order dated May 23, 2018 (the Impugned Order) passed by the Executive Director, CLD-CSD (the Respondent) under Section 204-A read with Section 498 and 476 of the Companies Ordinance, 1984 (the Ordinance).



Securities and Exchange Commission of Pakistan

2. The Brief facts of the case are that an inspection under Section 231 of the Ordinance was carried out against the Company vide Order dated January 6, 2017. The inspection team observed that the Company Secretary is not in the whole-time employment of the Company. Therefore, a show-cause notice dated November 7, 2017 was issued to the Appellants and hearings in the matter were held on November 30, 2017 and February 22, 2017. The Appellants' representatives contended that the Company is not in operation since 2009, therefore, due to financial constraints it cannot have a whole-time company secretary. The Respondent, being dissatisfied with the response of the Appellants, imposed a fine of Rs. 5,000/- on each of the Appellants (Aggregate Rs. 35,000/-).
3. The Appellant had filed this Appeal *inter alia* on the ground that Mr. Ahsan Raza is the full-time Company Secretary in terms of section 204 A of the Ordinance, whereas, the Respondent stated that services of the Company Secretary were hired on an ad-hoc basis and free of cost therefore, violation of Section 204-A is evident and established.
4. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives stated that the Company is not in operation since 2009 and due to financial constraints, services of the Company Secretary had been accepted on a part-time basis. The Appellants' representatives while answering the question of the Bench, stated that Company Secretary is also providing his services to other independent companies. The Appellants' representatives argued that the Company is defunct and requirements of Section 204-A are not applicable on defunct companies. The Respondent's representative argued that the Appellants' have violated the requirements contained under Section 204-A of the Ordinance and failed to ensure appointment of a whole-time company secretary. The Respondent's representatives further argued that defunct companies are not exempted from the compliance of the requirements contained in Section 204-A or under other provisions of the Ordinance. The Respondent's representative stated that as per Section 402 of the Ordinance, it is mandatory for every company to comply with the requirements of the Ordinance, unless dissolved as per law.
5. Before proceeding towards the analysis and decision of this Appeal, we find it appropriate to mention here that this Appeal has been filed by the above mentioned seven directors of the Company, however, in the power of attorney Mr. Sibgat Ullah has put his signature before the name of another director namely; Muhammad Irfan (who is not a party in Appeal). The Bench



Securities and Exchange Commission of Pakistan

has compared the signatures of Mr. Sibgat Ullah available on the Appeal and Power of Attorney. The Bench is of the view that both signatures appears to be correct, therefore, we treat the Power of Attorney to be valid for Mr. Sibgat Ullah and for the purpose of this Appeal.

6. The Bench has carefully gone through the contents of the Impugned Order, grounds of Appeal, parties' arguments and other relevant record, which revealed the Company has no whole-time company secretary. The Appellants' representatives argument that hiring of a part-time company secretary by the Company has adequately complied the requirement of Section 204-A is not tenable. The Bench has no doubt that as per law, the Company must have a devoted whole-time secretary, however, the law has been violated and the Appellants being directors of the Company are responsible for such violation.
7. The Bench believes that every company has a responsibility to comply with the requirements of applicable laws, unless it is dissolved. Therefore, we are of the view, that whether the Company was defunct or in operation, compliance of Section 204-A was mandatory and there is no exception to this requirement. Furthermore, after admission of the Appellants' representatives before the Bench, that the ex-Company Secretary has been engaged as ad-hoc Company Secretary, establishes that the law has been violated.
8. In view of the forgoing, the Bench find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on: **09 OCT 2020**