



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 22 of 2016

1. Mr. Khawar Almas Khawaja, CEO

2. Mr. M. Shahzad Sharif

3. Mrs. Nighat Khawar

4. Mr. M. Alamgir

5. Mr. M. Idrees Khan

6. Mr. Abid Hussain

7. Mr. Mian Haseeb Iftikhar

(All Directors of Hamid Textile Mills Limited)

Appellants

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

20/10/16

Present:

For Appellants:

1. Mr. Muhammad Aslam Awan, F.C.A

2. Mr. Tauqeer Hussain

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)

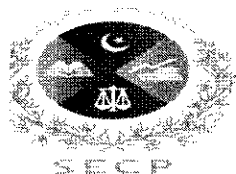
ORDER

1. This order shall dispose of the appeal No.22 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated

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05/04/2016 (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 Hamid Textile Mills Limited (the Company) was placed on defaulter counter of Pakistan Stock Exchange (the PSX) on 06/08/97 due to its failure to pay two years annual listing fee and its failure to join Central Depository System (the CDS). Thereafter, trading in Company shares was suspended on 01/08/12. The Respondent issued a direction to the Appellants 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. However, they failed to comply with the Direction. In view of above, 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. The first hearing in the matter was fixed on 17/12/15 and second hearing was fixed on 20/01/16, however the CEO of the Company vide letter dated 19/01/16 sought adjournment and submitted that the Company has never received the Direction issued on 01/09/15 under section 100 of Securities Act 2015, therefore, he requested to provide a copy of the Direction. The desired copy of Direction was sent to the Appellants and thereafter case was fixed for 26/01/16, 09/02/16 and 03/03/16 however, no one appeared on behalf of the Company or 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 Respondents	Amount Rupees
1.	Mr. Khawar Almas Khawaja, CEO	500,000
2.	Mr. M. Shahzad Sharif	500,000
3.	Mrs. Nighat Khawar	500,000
4.	Mr. M. Alamgir	500,000
5.	Mr. M. Idrees Khan	500,000
6.	Mr. Abid Hussain	500,000
7.	Mr. Mian Haseeb Iftikhar	500,000
Total		3,500,000

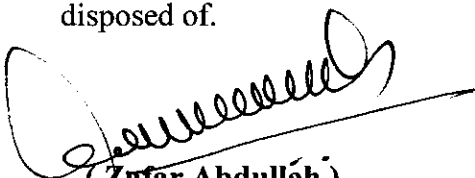
3. The Appellants have preferred this appeal *inter alia* on the ground that matter was decided ex-parte by the Respondent, which is against the law and natural justice. The




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Respondent, has rebutted that ample hearing opportunities were provided to Appellants, however they deliberately failed to 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 before the Respondent to plead the case. Therefore, case was decided ex-parte. The record of the case illustrates unprofessional conduct of the Appellants, as they were fully aware of hearings but they never appeared to join the proceedings before the Respondent. The adjournment request of the Company chief executive officer for hearing dated 20/01/16 is on record. The previous conduct of the Appellants 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 also 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, on merit. 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**