



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 22 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. Sibgat Ullah
- (All Directors of Nazir Cotton Mills Limited)

...Appellants

Versus

The Executive Director (CSD), SECP

...Respondent

Date of hearing:

August 20, 2020

Present:

For Appellants:

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. 22 of 2018 filed by the directors (the Appellants) of Nazir Cotton Mills Limited (the Company) against the Order dated May 25, 2018 (the Impugned Order) passed by the Executive Director, CLD-CSD (the Respondent) under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).

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2. The brief facts of the case are that review of the annual audited accounts for the year ended June 30, 2015 (the Accounts) of the Company revealed that in violation of the International Financial Reporting Standard-5 (IFRS-5) the Company recorded surplus of Rs. 165.32 million on assets held for sale (plant and machinery, land and building). Note 6.1 to the Accounts also revealed that in 2009 the Honorable Lahore High Court (the Court) ordered auction of moveable and immovable properties of the Company, however, the Company started classifying its assets as held for sale from the year ended June 30, 2012. The Company did not classify the subject assets as held for sale in the accounts for the years ended June 30, 2009, 2010 and 2011 and charged depreciation on the fixed assets, which resulted in material misstatements. Therefore, a show cause notice dated September 7, 2017 (the SCN) was issued to the Appellants. Hearings in the matter were held on November 30, 2017 and February 22, 2018 whereas, reply of the SCN was received vide letter dated January 26, 2018. The Respondent, being dissatisfied with the response of the Appellants, imposed a penalty of Rs. 50,000/- on each Appellant (Aggregate amount of penalty Rs. 350,000/-).
3. The Appellants had filed this Appeal *inter alia* on the grounds that alleged misstatements were mere omission or irregularity and there was no element of mala fide, therefore, penal provision of Section 492 of the Ordinance is not applicable. The Appellants further contended that prior to initiation of proceedings under Section 492 of the Ordinance, the Respondent should have directed the Company to rectify the accounts. The Appellants have taken stance that although the Court has ordered to auction assets of the Company, however, sponsors and directors were interested to reinstate business activities of the Company, therefore, assets were not held for sale during 2009, 2010 and 2011. The Appellants stated that keeping in view sponsors/directors intention to revive the Company's operations, revaluation of assets was carried out to take financial benefit. The Appellants stated that the IFRS-5 was applicable to those companies whose business was closed and their ultimate fate is to be wound up, whereas, the Company was determined to continue its operations. On the other hand, the Respondent had stated that in view of the requirements of the IFRS-5, the Company cannot charge depreciation or record surplus through revaluation of assets held for sale. The Respondent contended that due to depreciation and surplus, the Company had misstated the Accounts and the directors are responsible for such violations.



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4. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof. Before proceeding towards the analysis and decision of this Appeal, we find it appropriate to mention here that this Appeal has been filed by 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 to the Appeal). The Bench 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 appear to be correct, therefore, we treat the power of attorney to be valid for Mr. Sibgat Ullah and for the purpose of this Appeal.
5. The Bench is of the view that after the Court's order in 2009, the Appellants were required to keep assets "held for sale", however, they have not only failed to ensure mandatory compliance of the Court's order but also depreciated those assets during 2009, 2010 and 2011. The Bench has perused the IFRS-5, which expressly prohibit revaluation of the assets "held for sale", however, the Company has revalued such assets and recorded Rs. 165.32 million revaluation surplus. The Bench has no doubt that the aforementioned violations including depreciation and recording of surplus were in the knowledge of Appellants, however, being directors of the Company and ultimate representatives of the shareholders, they failed to perform their fiduciary duties in the required manner.
6. The Bench are of the view that due to consent to act as directors of the Company, the Appellants were required to perform fiduciary duties with due care, greater knowledge and expertise about the matters being handled, however, they failed to do so. The Bench is of the view that the Appellants have breached the fiduciary duty by not complying with the requirements of relevant laws and they have intentionally avoided compliance of the Ordinance. The Bench has no doubt that in view of applicable laws and accounting standards, preparation of the Accounts was the legal duty and liability of the Appellants, however, they have failed to perform their legal duty, therefore, we are inclined to accept that they have violated laws willfully. Therefore, we are of the view that when a requirement of a statute has been violated, then there is no need to establish *mala fide* or *mens rea* on the part of violators.
7. We are of the view that law is a set of rights and obligations and to ensure administration of justice, law should be followed in its totality. The Appellants have violated the express



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provisions of law, therefore, to ensure desirable application of law, same cannot be tolerated. As a matter of fact, the misstatements referred in the Impugned Order are material, hence we are not inclined to ignore them. The jurisprudence has envisaged a principle for administration of justice which requires that;-

“If law requires that an act must be done in a particular way, it should be done in that manner as prescribed by law.”

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