

# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. 1**

In the matter of

### **Appeal No. 23 of 2016**

- (i) Dadabhoy Cement Industries Limited
  - (ii) Muhammad Amin Dadabhoy, Chief Executive
  - (iii) Mrs. Yasmeen Dadabhoy, Director
  - (iv) Fazal Karim Dadabhoy, Director
  - (v) Muhammad Hussain Dadabhoy, Director
  - (vi) Mrs. Noor Dadabhoy, Director
  - (vii) Danish Dadabhoy, Director
  - (viii) Mrs. Humaira Dadabhoy, Director
- ...Appellants

Versus

The Commissioner (Securities Market Division),  
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 10/02/17

### **Present:**

#### **For the Appellants:**

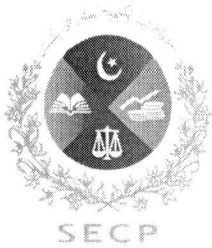
- 1) Mr. Arsalan Shoeby, Counsel

#### **For the Respondent:**

- 1) Ms. Ayesha Riaz, Additional Director (CSD)
- 2) Mr. Haroon Abdullah, Additional Joint Director (CSD)

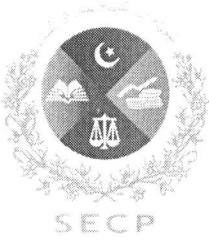
### **ORDER**

1. This Order is passed in the matter of appeal No. 23 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 05/04/16 (the Impugned Order) passed by the Respondent.



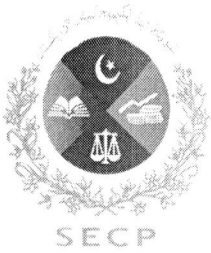
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2. Brief facts of the case are that the Commission with a view to restore Dadabhoy Industries Limited (Appellant No.1) to the normal counter of the Pakistan Stock Exchange (PSX - Formerly Karachi Stock Exchange) in the interest of company shareholders, on 01/09/15, issued a direction to Chief Executive and Directors (Appellants 2-8) to take immediate steps to undo the defaults of the listing regulations (PSX Regulations) within 14 days of the date of the direction. The Appellants failed to comply with the direction or submit reply to the Respondent regarding the direction.
3. Show Cause Notice dated 16/10/15 (SCN) was issued to the Appellants in terms of section 160 read with section 100 of the Securities Act, 2015 calling upon them to show-cause in writing, within 14 days of the date of Notice as to why penal action may not be taken against them, as provided under section 159 of the Securities Act, for the aforesaid contravention and why they not be directed to comply with the same. The Company Secretary submitted its response vide letter dated 26/10/15. Hearing in the matter was fixed for 17/12/15 and on the date of hearing, no one appeared and instead the Appellant No.1 submitted a letter dated 14/12/15 stating that the Appellant No. 1's response is the same as given in its earlier letter dated 26/10/15. A second hearing opportunity was provided to the Appellants on 20/01/16, however, no one appeared and the Appellant No.1 submitted another letter dated 18/01/16 stating that their stance remains the same and their letter be treated as a response to the hearing.
4. The Respondent dissatisfied with the response of the Appellants held that Section 100 of the Securities Act has been violated. A penalty of Rs.500,000/ was imposed on each of the Appellants by the Respondent except Appellant No.1, in exercise of powers under section 159(5)(c) of the Securities Act for their failure to comply with the direction of the Commission.



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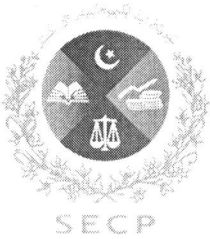
5. The Appellants preferred the instant appeal on the following grounds:
- a) The Appellant No.1 had been listed on PSX for the last 25 years and has been paying listing fee regularly to PSX. However, for the last 8 years, the Appellant No.1 was not in commercial production, therefore, the directors arranged funds from their personal resources to meet the overhead expenses of the Appellant No.1. The Appellants, therefore, requested the PSX for its cooperation to allow the Appellants to pay the listing fee of Rs 400,000/- in two installments i.e. one down payment of Rs 200,000 and another installment of Rs 200,000. There is no prohibition in any law or rules that the payment of the listing fee cannot be paid in installments, therefore, the refusal of PSX to accept the listing fee in two equal monthly installments for which cheques were delivered by the Appellant No.1 shows that there was no intention of the Appellants to commit any default or contravene any directives of the Respondent. Moreover, it was a conspiracy on part of PSX and the Respondent to put the Appellant No.1 on default and upon succeeding in their malafide intention, SCN was issued and Impugned Order was passed by imposing penalty nine times more than the actual amount payable by the Appellant No.1. The Respondent took harsh steps against the Appellants without any legal or rational justification as the Appellants had not refused to make payment of the listing fee.
  - b) The Respondent has passed the Impugned Order on the basis of presumptions and without making efforts to properly understand the defense pleas raised by the Appellants. The penalty has also been imposed in an arbitrary and unlawful manner, therefore, the Impugned Order is not maintainable under the law and is liable to be set aside.
6. The Respondent rebutted the arguments of the Appellants on the following grounds:
- a) The Appellant No.1 has been on defaulter counter of PSX since 19/12/14 and trading in its shares has also been suspended since 13/04/15 due to its failure to pay the PSX dues. Therefore, the Appellant No.1 is a defaulter of 5.11.1 (e) of



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the PSX Regulations. Section 100 of the Securities Act gives powers to the Commission to issue directive to the companies which are defaulters of the PSX Regulations. The Appellant No.1 stated that total outstanding fee is Rs. 400,000 and is in negotiation with PSX to pay the full outstanding fee in two installments i.e. Rs 200,000 at the time and the remaining Rs 200,000 in March 2016, however, in addition to the above, as per the PSX letter C-558-5011 dated 22/06/16 addressed to the Appellant No.1, total outstanding annual listing fee is Rs. 471,176; outstanding surcharge is Rs.109,372 and outstanding penalty is Rs.20,000, therefore, total dues of PSX is Rs.600,548. The Appellant No.1 has been on the defaulter counter of PSX since 19/12/14 and it has been suspended since 13/04/15. Despite lapse of considerable time, the Appellant No.1 has not paid the outstanding dues. The non-related investments in the shares of the Appellant No.1 as per shareholding pattern annexed to its accounts are 97.73%. The SCN was issued due to the Appellant No1's suspension at PSX as no steps were taken by the Appellant No.1 to resume trading or to give any exit strategy to the non-related shareholders. Furthermore, to date the Appellant No.1 has not paid the first installment of the fee which it has committed.

- b) The said penalty is imposed on the Appellants 2-8, and not on Appellant No. 1, who were asked to pay the said amount from their personal resources. Moreover, the Appellants were provided hearing opportunities which they did not avail. Proceedings concluded through the Impugned Order are in respect of continued non-compliance with PSX Regulations and, thereafter, non-compliance with direction of the Commission. The proceedings were initiated with the intent to regularize the default and encourage healthy listing. Since suspension in trading on 13/04/15, the Appellants have had more than considerable time to complete voluntary delisting or buy-back in the interest of shareholders, however, no progress is evident in this respect. The Impugned Order, therefore, has been passed in accordance with the law and penalty rightly imposed on the Appellants.



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7. We have heard the parties i.e. the Appellants and the Respondent. The Appellants have argued that the Appellant No.1 had not refused to make payment of the listing fee and the Appellants were only negotiating with PSX for payments to be made in installments. Furthermore, the Appellants argued that cheques for the listing fee in two installments had been sent to PSX which were not accepted. The Respondent rebutted the arguments of the Appellants on the grounds that after considerable lapse of time, payment has not been made. We are of the view that the Appellant No.1 as a listed company has an obligation to pay the full listing fee at once and if the Appellants do not have the resources, they should not continue as a listed company. Furthermore, allegations of a conspiracy against Appellant No.1 are also without any substance and regardless of what was being negotiated with PSX, considerable time has lapsed i.e. over two years since the Appellant No.1 was put on the defaulter list. To date, the Appellant No. 1 has not cleared the outstanding dues to PSX as a result of which trading has not resumed which is hurting the interest of shareholders who neither have an opportunity of exit nor are they receiving any return on their investment.
8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.

**(Fida Hussain)**  
Commissioner (Insurance)

**(Zafar Abdullah)**  
Commissioner (SCD)

Announced on: **20 MAR 2017**

