



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 23 of 2017

The Chief Executive & Directors,  
Mubarak Textile Mills Ltd.

...Appellants

Versus

Mr. Abid Hussain,  
Executive Director,  
Corporate Supervision Department,  
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 14/09/17

### Present:

For the Appellants:

1) Mr. Faisal Latif, FCA

For the Respondent:

1) Mr. Abid Hussain, Executive Director (CSD)

2) Mr. Syed Ali Adnan, Joint Director (CSD)

### ORDER

1. This Order is passed in the matter of Appeal No.23 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the Order (Impugned Order) dated 08/02/17 passed by the Respondent.



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2. The brief facts of the case are that inspection of books of account of Mubarak Textile Mills (Company) Ltd., conducted under section 231 of the Ordinance and review of the Company's record of Annual General Meetings (AGMs) including the attendance sheet of AGMs disclosed that the quorum of AGMs held for the years 2014 and 2015 was deficient as only nine members of the Company participated in the AGMs as given in table below:

S.No.	AGM held on October 31, 2014	AGM held on October 31, 2015
	Present	Present
1.	Mr. Zulfiqar Ali	Mr. Zulfiqar Ali
2.	Mr. Abdul Shakoor	Mr. Abdul Shakoor
3.	Ch. Naseer Ahmed	Ch. Naseer Ahmed
4.	Syed Hameed Ud Din	Syed Hameed Ud Din
5.	Mr. Nadeem Abbas	Mr. Nadeem Abbas
6.	Mr. Imtiaz Hussain	Mr. Imtiaz Hussain
7.	Mr. Nafees Iqbal	Mr. Nafees Iqbal
8.	Mr. Rehan Ahmed	Mr. Rehan Ahmed
9.	Mr. Muhammad Ali	Mr. Muhammad Ali

3. Show Cause Notice dated 14/11/16 (SCN) was issued to the Chief Executive and Directors of the Company (Appellants) for *prima facie* contravention of the provisions of section 160 of the Companies Ordinance, 1984 (Ordinance). Hearing in the matter was fixed for 19/12/16. The reply was received through M/s. Faisal Latif & Company, Chartered Accountants vide letter dated 28/11/16 who was appointed as Counsel by the Appellant. The hearing in the matter was held on 12/01/17 which was attended by the Counsel in which he submitted his verbal submissions and also presented a copy of the attendance register/minute book of the AGMs, wherein, it appeared that in the AGM for the year 2014, names and signatures of two members i.e. Mr. Ejaz Masood and Mr. Jawed Iqbal were appearing separately on the page and the two persons also attended the meeting thus bringing the number of attendees to 11 instead of 9 members.



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4. The Respondent dissatisfied with the response of the Appellants observed that there was lack of quorum in the AGM for the year ended 30/06/15 held on 31/10/15 and there were 9 members attending the AGM, whereas, the law clearly requires the quorum to be a minimum of 10 members. For the foregoing reasons, the Respondent held that the provisions of section 160(2) of the Ordinance have been violated and the Appellants were liable for the fine as prescribed by section 160(8) of the Ordinance. A fine of Rs. 280,000 was imposed on the following Appellants for contravening the provisions of section 160(2) of the Ordinance. The Appellants were directed to deposit fine in the following manner:

	Name of Appellants	Amount in Rupees
1.	Mr. Zulfiqar Ali	40,000
2.	Ch.Naseer Ahmed	40,000
3.	Mr. Abdul Shakoor	40,000
4.	Syed Hameed-ud-Din	40,000
5.	Mr. Imtiaz Hussain Qureshi	40,000
6.	Mr. Nadeem Abbas	40,000
7.	Mr. Nafees Iqbal	40,000
	Total	280,000

5. The Appellants preferred the instant appeal on the grounds that the Impugned Order passed by the Respondent is bad in law and contrary to the facts and circumstances. The Appellants' Counsel argued that the Impugned Order is not maintainable in its present form and the circumstances do not warrant such penalty as the requirement of quorum for the AGM in 2014 was complete which was acknowledged by the Respondent. The record of quorum of the AGM in 2015 did not match with the record of the inspection team which according to the inspection team was 9 and which according to the Company was 13. The mere absence of one person from AGM does not seem to provide any benefit to the Company. Furthermore, lenient action should have been taken as the Commission should encourage companies to comply and must not impose harsh penalties where issues are minor.



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6. The Respondent rebutted the arguments of the Appellants on the grounds that upon inspection under section 231 of the Ordinance, it was revealed that number of attendees in the AGM for 2014 were as per the requirements of law, however, the list of attendees attending the AGM for the year 2015 was tampered and forged on the basis of which minimum penalty for that year was imposed. Furthermore, the Respondent argued that in such matters, stake of shareholders is involved and directors have fiduciary responsibility towards the Company. Section 160(2) of the Ordinance incorporates the quorum for a listed company which is not less than ten members. The Respondent did take a lenient view by imposing minimum amount of penalty, however, the Company could not produce counter evidence to their contentions made.
7. We have heard the parties. The Appellants' Counsel at the hearing has admitted the default and requested for a lenient view on the matter. The Respondent has stated that penalty was rightly imposed for violation of section 160(2) of the Ordinance and a lenient view has already been taken. As the Appellants' Counsel in the instant appeal has accepted the default, we reduce the penalty imposed further from Rs. 40,000 to Rs. 20,000 per Appellant with the aggregate penalty reduced from Rs. 280,000 to Rs. 140,000. Furthermore, the Appellants are warned to ensure strict compliance of the laws in future.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Tahir Mahmood)

Commissioner (CCD-CLD)

Announced on: **26 SEP 2017**