



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 24 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.24 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 Companies Ordinance, 1984 (Ordinance) and review of annual audited financial statements of the Company for the year ended 30/06/15 (Accounts) revealed the following:
- a. The Company sought shareholders' authorization for sale/disposal of surplus and obsolete/idle assets comprising of dyeing and finishing machinery and other related assets on the Annual General Meeting (AGM) held on 31/10/09 under section 196(3) of the Ordinance. The statement of material facts annexed to the notice of AGM, disclosed that the shareholder approval was obtained for sale of the following assets:

Rs.: million

Sr.	Description	Cost	Revalued Amount	Book Value	Approx. Market Value	
					From	To
1.	Dyeing/Finishing Plant	20.918	15.500	6.986	8.00	10.00
2.	Stitching Section (237 machines)	10.088	8.074	2.885	2.00	2.5
	Total	31.006	23.574	9.871	10.00	12.500

The Company, during the period from April to 30/06/11, sold its fixed assets having a cost of Rs.108.425 million and book value of Rs.23.720 million for Rs.13.836 million resulting in a loss of Rs.9.884 million. Details of assets disposed of showed that the Company had sold the entire plant and machinery having book value of Rs. 23.72 million which was beyond the authorization for sale of assets granted by the shareholders in the AGM. Moreover, the comparison of the quarterly accounts for the period ended 31/03/11 and annual accounts for the year ended 30/06/11 revealed that the Company disposed of assets after the lapse of authorization given



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by shareholders in violation of the direction of SRO 1227/2005 which, inter alia, states that in case any decision to sell assets of the Company under authority of a special resolution already passed, is not implemented within one year the resolution would stand lapsed. In this regard following detail was given:

Date of AGM Approval	Oct 31, 2009
Resolution Lapsed on	Oct 31, 2010
Period of Actual Disposal	April-June 2011
Book Value of Items Approved for Disposal	Rs. 9.87 million
Book Value of Items Actually Disposed	Rs. 23.72 million
Proceeds from Disposal	Rs. 13.84 million
Net Loss on Disposal	Rs. 9.88 million

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 196 of the Ordinance as no valid authorization was in place from shareholders for the sale of aforesaid assets forming a sizeable part of the undertakings. The reply was received through M/s. Faisal Latif & Company, Chartered Accountants vide letter dated 28/11/16 who were appointed as Counsel by the Appellants. The hearing was held on 12/01/17 which was attended by the Counsel in which he made his verbal submissions.
4. The Respondent dissatisfied with the response of the Appellants held that there is no ambiguity in the matter that the Company had violated the relevant provisions of law while selling the assets of the Company. The book value of the assets to be sold for which approval was taken in the AGM was Rs 9.87 million which was far lower than the book value of the assets actually sold i.e. Rs 23.72 million. Therefore, the threshold fixed by the shareholders for the assets to be sold have been breached by the directors of the Company. Furthermore, the Company had also not sold the assets within the



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prescribed time of such a resolution i.e. one year from the date of the passage of resolution in the AGM as the assets were to be sold before 31/10/10, whereas, the assets were sold in the period April to June 2011. Furthermore, the Respondent held that written submissions on behalf of the Appellants also do not provide any evidence that the approval for sale of assets obtained from the shareholders was for the entire plant and machinery of the Company as the reference of Urdu advertisement to show that it was clear that dyeing/Finishing Plant and Machinery will be disposed of is also incorrect. The Urdu advertisement only clearly states in statement under section 160(1)(b) of the Ordinance that assets worth at book value of Rs.9.87 million were to be sold. For the foregoing reasons, the Respondent held that the provisions of section 196(3) of the Ordinance had been violated and the Appellants were liable for the fine as prescribed by section 160(8) of the Ordinance. An aggregate fine of Rs. 350,000 was imposed on the Appellants for contravening the provisions of section 196(3) of the Ordinance. The Appellants were directed to deposit fine in the following manner:

	Name of Appellants	Amount in Rupees
1.	Mr. Zulfiqar Ali	50,000
2.	Ch.Naseer Ahmed	50,000
3.	Mr. Abdul Shakoor	50,000
4.	Syed Hameed-ud-Din	50,000
5.	Mr. Imtiaz Hussain Qureshi	50,000
6.	Mr. Nadeem Abbas	50,000
7.	Mr. Nafees Iqbal	50,000
	Total	350,000

5. The Appellants' Counsel argued that the Impugned Order passed by the Appellant is bad in law and contrary to the facts and circumstances. The mere delay of receipt of payment does not violate the law as due approval of assets from shareholders was obtained. The shareholders thoroughly discussed the sale of assets and subsequently financial position



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and avenues of receipts of the Company, therefore, the penalty imposed was harsh and lenient action should have been taken. The Commission should encourage the Companies to comply and must not impose harsh penalties where issues are minor.

6. The Respondent rebutted the arguments of the Appellants on the grounds that the delay is of more, than one year, which voided the approval sought, therefore, making the act unlawful. The provisions of section 196(3)(a) of the Ordinance clearly state that the directors of a listed Company are required to seek approval in the AGM to sell, lease or otherwise dispose of the undertakings or sizeable part thereof. Secondly, in the Commission's notification SRO 1227/2005 dated 12/12/05 that; "*In case any decision to sell assets of Company under authority of a special resolution already passed, is not implemented within one year the resolution would stand lapsed.*" The Respondent further argued that in the instant case, the resolution was passed in October 2009, whereas, the assets were sold in the period between April to June 2011. The value of assets disclosed was much lower than the amount for which they were actually disposed of. The book value of the assets for which approval was taken in the AGM to be sold was Rs.9.87 million, which was far lower than the book value of the assets actually sold i.e. Rs.23.72 million. This fact speaks for itself and it is clear that the directors breached the threshold fixed by the shareholders for the assets of the Company to be sold. The Respondent has already taken a lenient view by imposing minimum amount of penalty, however, the Company could not produce counter evidence to their contentions made and admitted the default for which the penalty was imposed.
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 196(3) 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.50,000 to Rs. 25,000 per Appellant with the aggregate penalty reduced from Rs.350,000 to



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Rs.175,000. 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**