



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 25 of 2018

1. Mr. Muhammad Iqbal Usman
2. Mr. Shunaid Qureshi
3. Mr. Asim Ghani
4. Ms. Asma Aves Cochinwala
5. Ms. Darkshan Ghani
6. Mr. Duraid Qureshi
7. Sayyed Rafay Akber Rashdi

(Appellant No.1 and 3-6 are present directors whereas Appellant No.2 and 7 are ex-directors of Al-Abbas Sugar Mills Limited)

Appellants

Versus

The Executive Director, (CSD), SECP, Islamabad.

Respondent

**Date of hearing:**

4/11/19

**Present:**

For Appellants:

- i. Mr. Muhammad Jawwad Shekha
- ii. Mr. Zuhair Abbas

For Respondent:

- i. Mr. Tariq Ahmed, Additional Director (CSD),SECP
- ii. Ms. Zohra Sarwar Khan, Additional Joint Director (CSD), SECP

### ORDER

1. This Order shall dispose of Appeal No. 25 of 2018 filed by Muhammad Iqbal Usman and six others (Appellants) against the Order dated May 18, 2018 (Impugned Order) passed by the Executive Director, CSD (Respondent) under Section 492 read with Section 476 of the Companies Ordinance, 1984.

Appellate Bench

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2. Brief facts of the case are that the examination of half yearly accounts of Al-Abbas Sugar Mills Limited (Company) for the period ended March 31, 2017 (Accounts) revealed that short term investments of “fair value through profit or loss” category had been reclassified as long term investments under category “available for sale”. As per the contents of the Impugned Order, aforesaid reclassification of the investments was contrary to the requirements of International Accounting Standards (IAS) 39; Financial Instruments: Recognition and Measurement. The Respondent sought explanation on reclassification of investments vide a letter dated June 12, 2017. The Company replied vide letter dated July 12, 2017 and stated that the reclassification of investments was made in accordance with the requirements of para 50-C of the IAS-39 and disclosure requirements of IFRS-7. On the contrary, the Respondent was of the view that precondition of reclassification of the investments i.e. existences of “rare circumstances” was not met before reclassification of investments, and reclassification of investments was not only against the mechanism envisaged under the IAS-39 but it also understated the Accounts by Rs.131,969 million. Therefore, a Show Cause Notice (SCN) dated September 26, 2017 was issued to the Appellants. The reply of the SCN was received vide a letter dated October 27, 2017. Hearing in the matter was held on February 22, 2018. The Respondent, being dissatisfied with the response of the Appellants, imposed a fine of Rs. 10,000/- on each of the Appellants (Aggregate Rs. 70,000/-).
3. The Appellants had challenged the Impugned Order *Inter alia* on the grounds that the Accounts are neither false nor incorrect and no material fact had been omitted. The Appellants contended that the Respondent had misinterpreted the term “rare circumstances” used in para 50-B of IAS-39. The term “rare circumstances” is not defined by IAS-39 therefore, the Respondent’s reliance on example given by International Accounting Standards Board (IASB), cannot be treated as its definite interpretation because “2008 deterioration of world financial markets” is one of the possible situation/example of “rare circumstances”. The Appellants further elaborated that “rare circumstances” may vary for every company and depend upon its internal situation and external environment. The Appellants stated IAS has not limited the scope of “rare circumstances” therefore, the Respondent was not authorized to place any restriction in this regard. The Appellants stated that due to economic and political situation in country, the company was witnessing volatility in investments and therefore, unrealized gain/loss of investments were affecting the Company's financial results. The Appellants further stated that for reclassification of investments, requisite approvals were sought from the investment committee, audit committee and the Board of Directors of the Company (BoD). The Appellants explained that reclassification of investments and its impact on the Company’s financial statements was disclosed in Notes 8.1





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and 8.2 of the Condensed Interim Financial Statements, for the period ended December 31, 2017. The Appellants also stated that there were no misstatements in the Accounts and reclassification of investments had helped in presenting a true and fair view of the Accounts, which is the core objective of IAS and International Financial Reporting Standards (IFRS).

4. The Respondent had rebutted the grounds of Appeal through written comments and stated that the Accounts did not comply with IAS-39 and were misstated as these should be in full compliance with all the applicable accounting standards. The Respondent stated that the reclassification of investments had an impact on the Accounts, which resulted in understatement of the Accounts as normal fluctuations of the stock market can never be construed to constitute "rare circumstances". The Respondent stated that the Impugned Order is a speaking order based on facts and correct reading of the accounting standards. The Respondent further stated that the IASB example of "rare circumstances" referring to financial meltdown of the year 2008, was a situation that may warrant any reclassification of the investments. The Respondent argued that fluctuation of market prices is part and parcel of investments in stock market and thus no "rare circumstances" existed in at the time of reclassification. The Respondent contended that the Impugned Order does not restrict the definition of rare circumstances as envisaged in IAS-39 however, normal price changes, do not qualify as "rare circumstances". The Respondent stated that the interpretation of rare circumstances IAS-39 has been given by IASB which is the highest forum to comment on any term mentioned in the IAS/IFRS therefore, any other interpretation must be in line with the same. The Respondent is of the view that the true and fair financial picture of the Company affairs lies in compliance of law however, to ensure this fact, the Company had not followed the requirements of IAS-39. The Respondent lastly argued that in the instant case the Company deviated from IAS-39 in absence of the "rare circumstances" in which the aforesaid reclassification would have been justified.
5. The Appellate Bench (Bench) has heard the parties and perused the record. The Appellants' representatives, while reiterating the grounds of Appeal, stated that the investments are still intact and the Company has no intention to sell reclassified investments. The Appellants' representatives further argued that there was no *mala fide* on part of Company or its management and no personal benefit was drawn by reclassification of the investments. The Appellants' representatives argued that from 2016 to date, due to lack of political stability, the stock exchange is observing abnormal trends therefore, for true and accurate reflection of the Accounts, investments were reclassified in the best interest of the Company and its

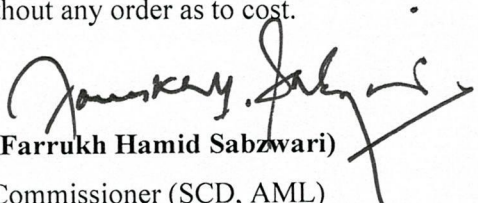


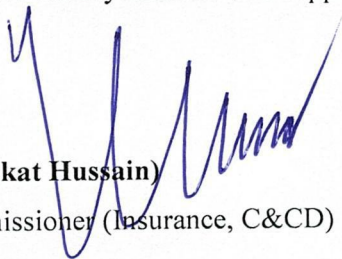


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stakeholders. The Appellants' representatives contented that abnormal trends of stock exchange was a classic example of "rare circumstances" envisaged in para 50-B of IAS-39. The Appellants' representatives also argued that reclassification of investments from short term "fair value through profit or loss" category to long term investments under category "available for sale" was executed after third party auditor opinion. Lastly, the Appellants' representatives requested to *set aside* the Impugned Order. The Respondent's representatives reiterated the rebuttal arguments of written comments and prayed to dismiss the Appeal.

6. The Bench has carefully examined the arguments of the parties and found that there is no dispute over the Company's right to reclassify its investment however, the point of contention between the parties is existence or non-existence of "rare circumstances"; an essential for reclassification of the investments. The Bench is of the view that the term "rare circumstances" denotes unusual or infrequent events therefore, usual uneven political and economic trends cannot be considered as "rare circumstances" for reclassification of investments from short term "fair value through profit or loss" category to long term investments under category "available for sale".
7. The Bench has also reviewed the Appellants' plea that before reclassification of investments, required approvals were sought from the investment committee, audit committee, BoD and impact of reclassification of investments on Company's financial statements, which was disclosed in Notes. 8.1 and 8.2 of the Condensed Interim Financial Statements, for the period ended December 31, 2017. The Bench is of the considered opinion that aforesaid acts should have been done, consequent to the existence of "rare circumstances" however, in the present case no apparent "rare circumstances" existed, therefore, reclassification was *void ab initio*. The reclassification of the investments was not only contrary to the requirements of IAS-39 but also understated the Accounts by Rs. 131,969 million, therefore, we have no doubt that the Respondent had rightly passed the Impugned Order. In the circumstances, there is no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

  
(Farrukh Hamid Sabzwari)  
Commissioner (SCD, AML)

  
(Shaukat Hussain)  
Commissioner (Insurance, C&CD)

Announced on:

10 DEC 2019