



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 26 of 2017

1. Mr. M. Waqar Monnoo,
2. Mrs. Ghazala Waqar,
3. Mr. Siraj Sadiq Monnoo,
4. Syed Ayazuddin,
5. Syed Inamuddin Ahmed,
6. Mr. Muhammad Anwar Saigal,
7. Mr. Umar Ilyas Shafi,

(All Directors of Olympia Spinning & Weaving Mills Limited)

.... Appellants

Versus

Executive Director (Corporate Supervision Department) SECP

.... Respondent

Dates of hearing:

July 12, 2018 & August 20, 2020

Present:

For Appellants:

- i. Mr. M. Javed Panni
- ii. Barrister Shahzad Panni

For Respondent:

- i. Syed Ali Adnan- Additional Director (CSD-SECP)
- ii. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP
- iii. Mr. Muhammad Anwar Hashmi, Additional Joint Director (Adjudication-I), SECP
- iv. Mr. Jawad Ahmad- Assistant Director (CSD-SECP)

ORDER

1. This Order shall dispose of Appeal No. 26 of 2017 filed by seven directors of M/s. Olympia Spinning & Weaving Mills Limited (the Appellants) under section 33 of the Securities and



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Exchange Commission of Pakistan Act, 1997 against the Order dated February 15, 2017 (the Impugned Order) passed by the Executive Director, Corporate Supervision Department (the Respondent) under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).

2. The Appeal was initially heard by the Appellate Bench on July 12, 2018. The said Bench consisted of Mr. Zafar Abdullah, Commissioner and Mr. Shauzab Ali, Commissioner. The decision of the Appeal was reserved, however, due to retirement of Mr. Zafar Abdullah, Commissioner on August 16, 2018, the Bench was dissolved without pronouncement of the decision, therefore, the Appeal has been re-fixed for hearing before this Appellate Bench (the Bench).
3. The brief facts of the case are that the annual audited financial statements of Olympia Spinning & Weaving Mills Limited for the period ended June 30, 2014 (the Financial Statements) revealed that M/s. Mushtaq & Co. (the Auditors) had issued an adverse opinion in their audit report on several aspects that include;
 - M/s. Olympia Spinning & Weaving Mills Limited (the Company) current liabilities exceeds its current assets and the Company has ceased the production since May 21, 2014 and key employees were retired, therefore, Company's ability to continue as going concern, was doubtful;
 - the Company's inability to comply with loan agreements and pay debts on due dates and non-confirmation of long-term loans (Rs. 343 million), balance with banks (Rs. 168 million) and short-term borrowings (Rs. 24 million) and after using alternate auditing procedures, the Auditors had failed to satisfy themselves regarding correctness of the reported balances;
 - the Company has not carried out a revaluation of assets, therefore, impairment test was not possible and accordingly, impact on revaluation surplus and profit and loss account was not determined;
 - Company's claims against M/s. Jecot for cancellation of raw material contract amounting to Rs. 7.614 million and against M/s. Mittatex amounting to Rs. 5.241 million had not been acknowledged by the parties. Furthermore, no provision for doubtful debt had been made.



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4. The Respondent issued a show-cause notice dated November 2, 2015 (the SCN) to the Appellants. The reply of the SCN was received on November 30, 2015. Hearings in the matter were held on February 16, 2016 and January 16, 2017 wherein it was observed that the Appellants had failed to remove Auditors' adverse opinion on the Company's financial statements for the year ended June 30, 2015. The Respondent directed the Appellants to remove the Auditors' adverse opinion in the financial statements for the year ended June 30, 2016, otherwise appropriate legal action will be taken. The Appellants had failed to proceed accordingly, therefore, the Respondent imposed a fine of Rs. 100,000/- on each Appellant (aggregate amount of fine Rs. 700,000/-).
5. The Appellants have preferred the instant Appeal *inter alia* on the grounds that the Impugned Order does not explicitly give reasons as to why the Company's argument on 'going concern' has not been accepted and opinion of the Auditors had been relied upon. The Appellants have taken a plea that the Auditors were required to confirm liabilities of the Company from lenders/creditors, therefore, if lenders/creditors had not responded to the Auditors' query, then the Appellants cannot be responsible for such act. The Appellants stated that the Auditors' observations do not imply that the position recorded in the Company's books is not correct. The Appellants stated that requirement of IAS-I for determination of 'going concern' cannot be bluntly applied and have to be subject to a number of ground realities. The Appellants stated that there was no obligation on the management to adopt the Auditors' opinion, unless it does not have a realistic alternative. The Appellants have alleged that the Respondent had not considered the verbal and written submissions, which clearly reflected great improvements in the affairs of the company. The Appellants stated that in the financial statement of the company for the period ended December 31, 2016, the Auditors had not given any adverse audit opinion and has only placed emphasis on the 'going concern' issue. The Appellants stated that the Company has also revalued its land and building, therefore, all shortcomings have been rectified by the Company, which were neither intentional nor willful.
6. The Respondent has rebutted the grounds of Appeal and stated that the arguments put forth by the Company were duly taken up, however, the Company failed to rectify the misleading state of affairs which was duly highlighted in the Auditors' report. The Respondent stated that the Auditors had not only highlighted misleading facts and irregularities but also rendered an adverse opinion in the years 2014 to 2016 financial statements. The Respondent stated that the Auditors' report stated



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effect of all qualifications arising due to limitations on scope, going concern uncertainty, non-compliances with applicable law or disagreement with the management on accounting policies etc. The Respondent stated that the Appellants have not put forth any concrete reason, which reflects that the Auditors' observation about 'going concern' is not correct in any manner. The Respondent stated that preparation of the accounts on the basis of 'going concern' was inappropriate in view of the referred circumstances, however, since the Financial Statements had been prepared on the 'going concern' assumption, the Appellants, despite being aware of material uncertainties that may cast significant doubt upon the Company's ability to continue as a 'going concern', have failed to disclose the assets at net realizable value. The Respondent submitted that due to the aforesaid facts the Financial Statements were misleading, false and incorrect.

7. The Bench has heard the parties and perused the record. The Appellants' Representative apprised the Bench about restructuring of the Company and repayment of M/s. United Bank Limited and M/s. Askari Bank Limited loans through Debt-Asset Swap arrangement (DAS) in December, 2020 and December, 2022, respectively. The Appellants' Representative stated that upon advice of previous Bench, the management of the Company had agreed for de-listing and buy-back of minority shares. The Appellants' Representative requested for grant of three years for de-listing and buy-back of minority shares. The Respondent's Representatives reiterated that the Appellants were given ample opportunities to remove the Auditors' qualifications, however, despite their commitment, they failed to remove the Auditors' qualifications, therefore, the Appeal may be dismissed.
8. The Bench has noted that the Company has incurred an accumulated loss of Rs.1,339.810 for the year ended June 30, 2014 whereas, current liabilities exceeded the current assets by Rs. 886.549 million in the same period. In view of the Company's financial condition, the Bench has observed preparation of Financial Statements on the basis of 'going concern' was not appropriate, therefore, the Financial Statements cannot be termed as 'true and fair'.
9. The Bench has further observed that in view of the Financial Statements, the Company was unable to pay its debts and it had not provided any proof regarding existence of long terms loans with banks, therefore, the Auditors had failed to satisfy themselves regarding correctness of the balances reported in the Financial Statements. The Bench has also observed that the Company had not



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revalued its assets, therefore, the Auditors had failed to apply impairment test, hence, its impact was not correctly recorded in the Financial Statements. In view thereof, the Bench has no doubt that the Financial Statements were false and incorrect. The Bench has also noted that the Company had not provided any provision regarding doubtful debts of M/s. Jecot and M/s. Mittatex, therefore, the Financial Statements were materially misstated.

10. The Bench is of the view that the de-listing option and buy-back of minority shares is purely an internal matter of the Company, therefore, we cannot comment upon it and accordingly, there is no possibility to allow time to execute such options. We appreciate that the Appellants had taken effective steps to revive the Company. However, the Bench is of the view that the current status of the Company does not exonerate the Appellants from the consequences of violations committed in the past. The Bench is of the view that the Appellants being directors of the Company have failed to present 'true and fair' Financial Statements, therefore, they had been rightly penalized by the Respondent. In the circumstances hereinabove, we find no reasons 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:

24 NOV 2020