



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 32 of 2016

1. Sh. Nishat Ahmad, Chief Executive
  2. Sh. Zafar Iqbal
  3. Mr. Sarfraz Hasan
  4. Mr. Kashif Tafazzul Warsi
  5. M. Asif Balouch
  6. Mr. Mubasshar Hasan Hamadani
  7. M. Islam
- (All Directors of Fatima Enterprises Limited)

Appellants

Versus

Amina Aziz, Director (CSD, SECP)

Respondent

**Date of hearing:**

21/09/16

**Present:**

For Appellants:

1. Mr. Faisal Latif, FCA
2. Mr. M. Shabazz Khan

For Respondent:

1. Ms. Amina Aziz, Director (CSD)
2. Mr. Aqeel Ahmad Zeeshan, Joint Director (CSD)

### **ORDER**

1. This order shall dispose of appeal No.32 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated

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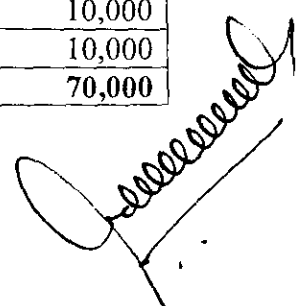


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07/04/16 (the Impugned Order) passed by the Respondent under section 245(3) read with section 476 of Companies Ordinance 1984 (the Ordinance).

2. Brief facts of the case are that Fatima Enterprises Limited (the Company) failed to file the interim financial statements (the Quarterly Accounts) for the periods ended 31/12/14 (235 days' delay), 31/03/15 (197 days' delay) and 30/09/15 in a timely manner, as per requirements of section 245 of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 15/01/16 was issued to the Appellants. In response to the SCN, the Appellants vide letter dated 28/01/16 submitted that the delay in filing of Quarterly Accounts was caused due to delayed AGM for the year 2014 and 2015. It was also stated that previous company secretary and the auditors both created delays in finalization of annual and quarterly accounts. Hearing of the case was held on 16/03/16 and Appellants were represented by Mr. Faisal Latif (the Representative) who stated that the quarterly accounts for 30/09/15 shall be finalized and submitted after finalization of annual accounts. The Company, through letter dated 02/04/16 provided copy of annual accounts for the year ended 30/06/15 along with various emails addressed to the auditor whereof the Company had requested the auditor to complete audit of accounts, however, auditor reply was not provided to substantiate the reasons for delay in finalization of audit of accounts for the year ended 30/06/15. Therefore, the Respondent, in exercise of power conferred under section 245(3) imposed as aggregate penalty of Rs.70,000 on the Appellants in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Sh. Nishat Ahmad	10,000
2.	Sh. Zafar Iqbal	10,000
3.	Mr. Kashif Tafazzul Warsi	10,000
4.	Mr. Muhammad Asif Balouch	10,000
5.	Mr. Mubasshar Hasan Hamadani	10,000
6.	Mr. Muhammad Islam	10,000
7.	Mr. Sarfraz Hasan	10,000
<b>Total</b>		<b>70,000</b>





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3. The Appellants preferred this appeal against the Impugned Order before the Appellate Bench (the Bench) on the ground that the Impugned Order is bad in law and is not maintainable in its present form because SCN was not issued accordingly to law. It was further contended that the delay in filing of quarterly accounts was beyond the control of Appellants and was caused due to the auditors and the delay in filing of Quarterly Accounts was not willful.
4. The Respondent rebutted the grounds of appeal through written comments and stated that the Impugned Order has been passed in accordance with law, therefore, it is valid. It was further stated that the SCN was issued for the failure of the Appellants to file quarterly accounts within stipulated time. The directors of the Company were required to have proper knowledge of legal provisions of the Ordinance because their consent to act as director of a listed company demonstrates that they are aware of their legal obligations under the Ordinance. The requirement to file quarterly accounts is clear and explicit and if the directors of a company fail to comply with such requirements, it means that they have defaulted knowingly and willfully. Further, the Appellants have provided their emails addressed to the auditor with respect to quarterly accounts, however they have not provided the copies of auditor's reply. Therefore, the emails provided by the Appellants do not substantiate their claim that delay in filing of quarterly accounts was caused due to the conduct of auditor.
5. We have heard the parties i.e. Appellants and Respondent and perused the record of appeal.
6. The Appellants have filed this appeal on 18/05/16, after the lapse of thirty days limitation period provided in section 33 of the Act, however in the interest of justice, application for the condonation of delay has been accepted by the Bench so that the Appellants may be given an opportunity to present their case on merits.
7. During the hearing, the Representative has not pressed the grounds of appeal (summarized in para 3 above) and admitted the default in filing of quarterly accounts of the Company, however he requested to take lenient view due to subsequent compliance by the Company. The Bench asked the Representative to argue the appeal

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on merits because any subsequent compliance cannot be termed as a ground to exonerate the Company or the Appellants from the consequences of default. The Representative provided the unattested copies of ledger form dated 01/07/2015 to 30/06/2016 of Company plant and machinery account and ledger form dated 01/07/2016 to 22/09/2016 of Company looms account to show the improvement in working of the Company. He also provided a copy of application dated 26/08/16 with the subject induction of the Company into CDC.

8. The Bench has applied its judicial mind to analyze the facts of the case. The default under section 245 of the Ordinance has been admitted in the memorandum of appeal as well as during the hearing before the Bench. Further, there is nothing on record to rebut that the default was not willful. The documents provided by the Representative during the course of hearing are of no use and the Appellants have failed to make out any defense. It was the responsibility of the directors to ensure compliance of mandatory provisions with respect to filing of quarterly accounts, however they have failed to discharge their duties in accordance with law. The Respondent has already taken a lenient view and imposed the minimum penalty provided under section 245 of the Ordinance, whereas Respondent was empowered to impose the maximum penalty of one hundred thousand rupees.
9. In view of above, the circumstances of the case do not warrant us to interfere with the well-reasoned order dated 07/04/16 passed by the Respondent under section 245(3) of the Ordinance, therefore appeal is dismissed with no order to cost.

( Fida Hussain Samoo )  
Commissioner (Insurance)

( Zafar Abdullah )  
Commissioner (SCD)

Announced on: 28 SEP 2016