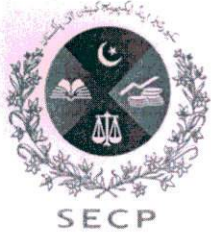


# Securities and Exchange Commission of Pakistan



## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 33 of 2015

Envicrete Limited

.... Appellant

Versus

The Commissioner Company Law Division, Securities and Exchange  
Commission of Pakistan.

.... Respondent

Date of hearing:

03/08/15

## ORDER

### Present:

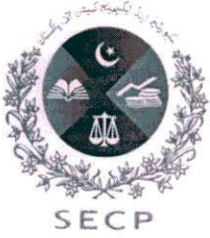
#### For Appellants:

- i. Mr. Mir Muhammad Ali Talpur, Counsel
- ii. Mr. Kashif Wasi, Manager

#### For Respondent:

- i. Imran Iqbal Panjwani, Executive Director (CSD)
- ii. Rohail Ahmed Abbasi, Deputy Director (CSD)

1. This order shall dispose of Appeal No. 33 of 2014 filed by the Envicrete Limited (the Appellant) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) against the order dated 04/06/15 (the Impugned Order) passed by the Respondent.



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2. The facts leading to the case are that the examination of financial statements of the Appellant for the year ended 30/06/13 (financial statements) revealed that the auditor of the Appellant, has given qualified report dated 08/11/13. The relevant abstract of qualified report is as follows:

“(i) As disclosed in note 7 to the financial statements, the carrying value of the Company’s investment in associate amounts to Rs.30,495,048 as at 30 June, 2013. We have not been provided with sufficient and appropriate evidence regarding management’s assessment of the impairment, if any, in the value of such investment as required under the International Accounting Standard 36 “Impairment of Assets”. Accordingly, we are unable to satisfy ourselves regarding the valuation of the above investment and its consequential impact, if any, on the financial statements.

(ii) The Company has not followed the requirements of IAS 19 “Employees Benefits” with regard to the measurement and disclosures relating to the defined benefit plan (staff gratuity scheme) for the reasons disclosed in note 17.2.1. The effects thereof on the financial statements cannot presently be determined.”

3. The aforesaid indicates that the Appellant has not reported correct figures with respect to investments and staff gratuity in its financial statements. Therefore, the Appellant failure to recognize the impairment loss in share investment of the associated company Telecard Limited (“TCL”) as required under International Accounting Standard (IAS) 36 and staff gratuity as required by IAS 19, has rendered the financial statements as misstated.

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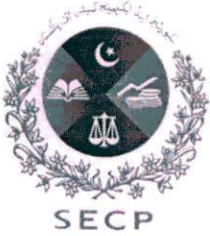
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## Securities and Exchange Commission of Pakistan

4. In the above circumstances a Show Cause Notice (the SCN) was served upon the Appellant on 31/10/14 to show cause as to why penalty be not imposed under Section 492 of the Companies Ordinance 1984 (the Ordinance) for the alleged violations. The Appellant in reply to the SCN stated that despite of substantial decline in the market price of TCL shares, the Appellant has reported this investment at cost of acquisition because it has a strategic value to the Appellant. The Appellant further stated that the decline in market price of TCL seems temporary due to unreal circumstances that prevail in the telecom sector. The Appellant has also recognized the entire obligation that could arise on it as of 30/06/13 on account of post-employment benefits and this has been recorded without any actuarial exercise especially since the Appellant had decided to opt for a defined contribution plan effective from 01/01/14. In the interest of natural justice the Appellant was granted an opportunity of personal hearing on 23/04/15. Syed Viqar Hussain (Authorized Representative) attended the hearing and reiterated the submissions made in the reply of the SCN.
5. The Respondent being dissatisfied with the response of the Appellants imposed a fine of Rs.140,000 (Rupees one hundred and forty thousand only) in aggregate on all directors of the Appellants for contravening the provisions of Section 492 of the Ordinance in the following manner:

Name of Directors	Amount Rupees
Mr. Khalid Firoz, Chief Executive	20,000
Mr. Sultan-ul-Arfeen, Director	20,000
Mr. Syed Viqar Hussain, Director	20,000
Mr. Muhammad Ali Javed, Director	20,000
Mr. Rizwan Firoz, Director	20,000
Mr. Muhammad Arif Shaikh, Director	20,000
Mr. Saud ul Arfeen, Director	20,000
Total	140,000

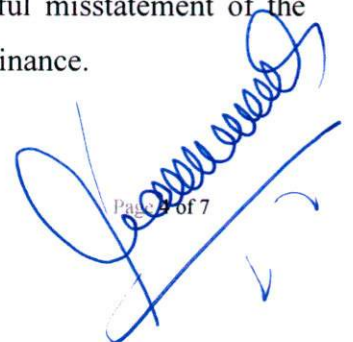


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6. The Appellants, being aggrieved by the Impugned Order filed an appeal before the Appellate Bench on the following grounds:
- a. The Impugned Order is illegal, arbitrary and based on assumptions, because no misstatement or false statement has been made by the Appellant. Therefore, Section 492 of the Ordinance is not applicable to the case because the directors of the Appellant have made full disclosure regarding the treatment of the value of shares of TCL.
  - b. The Respondent failed to appreciate that the Appellant had clearly stated in its Directors' Report that the investment in TCL is being recorded at the cost of acquisition because it has a strategic value to the Appellant. Further, the decline in market price of TCL seems temporary due to unreal circumstances that prevail in the telecom sector.
  - c. The non-assessment of impairment is not a false or incorrect in any material particular, since the Appellant considered the quoted price of the shares was undervalued due to circumstances that are commonly perceived to prevail in the telecom sector.
  - d. Appellant has recognized the entire obligation that could arise on it as of 30/06/13 on account of post-employment benefits and this has been recorded without any actuarial exercise especially since the Appellant had decided to opt for a defined contribution plan effective 01/01/14. Incidentally, this plan has already been fully executed by the Appellant. The Board of Directors of the Appellant in their report for the financial year ending on 30/06/13 has mentioned the plan to establish provident Fund Scheme - a defined contribution plan, which has also been implemented in the financial year 2013-14.
  - e. The Respondent failed to prove knowing and willful misstatement of the Appellant, required under the Section 492 of the Ordinance.

  
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- f. The quantum of penalty in section 492 of the Ordinance was enhanced from “one hundred thousand” to “Five hundred Thousand” through Finance Act 2007, which is unlawful, misconceived, misconstrued and absolutely without any authority whatsoever.

7. The Respondent rebutted the ground of appeal in the following manner:

- a. The Appellant failure to recognize the impairment loss in investment in shares of the associated company TCL as required under IAS 36 and staff gratuity as required by IAS 19, has caused the financial statements to be misstated.
- b. Disclosures in directors’ report do not absolve the Appellant of its responsibility to ensure accurate financial reporting as per requirements of applicable IAS. The Appellant was required to follow notified IAS 36 and IAS 19 under sub-section 3 of Section 234 of the Ordinance.
- c. The Appellant has also not followed para 09, 59 and 60 of IAS 36 which provides treatment and assessment of impaired asset value and the recoverable amount of the asset. Para 59 of IAS 36 necessitates that if the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset shall be reduced to its recoverable amount and that reduction is an impairment loss. Para 60 of IAS 36 provides that an impairment loss shall be recognized immediately in profit or loss, unless the asset is carried at revalued amount in accordance with the relevant applicable IAS or IFRS. An overview of the share price of TCL during the financial year 2013 reveals that its share price has fluctuated between Rs.1.49 and Rs.5.18. This clearly demonstrates that the decline in share price is not temporary. The Appellant was required to recognize the impairment loss in investment in the shares TCL. The said investment was to be disclosed at its fair market value in the financial statements for

  
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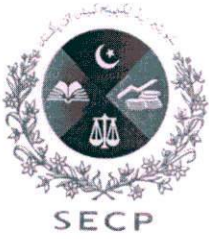
  
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the year ended 30/06/13, failing to do so have resulted in understatement of net loss for the year by Rs.18 million.

- d. The management assertions as mentioned in note 17.2.1 of the financial statements were not cogent. In accordance with IAS 19, in case of gratuity the amount recognized in the balance sheet should be the present value of the defined benefit obligation (that, is the present value of expected future payments required to settle the obligation resulting from employee service in the current and prior periods), as adjusted for unrecognized actuarial gains and losses and unrecognized past service cost, and reduced by the fair value of the plan assets at the balance sheet date. The present value of the defined benefit obligation should be determined using the 'Projected Unit Credit Method'. The Appellant as at the reporting date of the financial statement was operating a defined benefit plan. A post balance sheet date discontinuance of the defined benefit plan does not give right to the Appellant to deviate from the requirements of IAS 19. The Appellant failed to comply with the requirements of IAS 19 with regard to measurement and disclosure of its liability of staff gratuity.
  - e. The Directors of the Appellant failed to rectify misstatements with regard to impairment loss in investment in shares of TCL as required under IAS 36 and staff gratuity as required by IAS 19, even after pointing out by the Auditor. This act of the Appellant clearly depicts the knowing and willful misstatement by the Appellant.
  - f. Lawful amendment has made in Section 492 of the Ordinance, through Finance Act, 2007.
8. We have heard the parties i.e. Appellant and Respondent and perused the record with the able assistance of the parties. After careful examination of the appeal grounds and rebuttal submission, we are of the view that the Appellant has not



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assessed the impaired value of the asset as required by law and failure to disclose the fair market value in the financial statements for the year ended 30/06/13 resulted in understatement of net loss for the year by Rs.18 million. The Appellant failure to record the impairment in relation to the investment in associated company as required by IAS 36 is a serious violation, which cannot be ignored. Further the Appellant has also not followed IAS 19, and failed to comply with the requirements contained therein with regard to measurement and disclosure of its liability of staff gratuity. Failure to recognize the cost of employee benefits required under IAS 19 is also misstatement under Section 492 of the Ordinance.

9. In view of the aforesaid, the Respondent has successfully established the alleged violations against the directors of the Appellant. Therefore, we find no reason to interfere with the Impugned Order dated 04/06/15 passed by the Respondent, hence the appeal is dismissed.

10. Parties to bear their own cost.

( **Fida Hussain Samoo** )  
Commissioner (Insurance)

( **Zafar Abdullah** )  
Commissioner (SCD)

Announced on: **20 AUG 2015**