



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

### Appeal No. 43 of 2015

- i. Syed Mushahid Shah
- ii. Mrs. Nageen Mushahid
- iii. Syed Muhammad Adnan Raza Naqvi

Appellants

Versus

- i. Commissioner (Company Law Division), SECP
- ii. Head of Department (Enforcement), SECP

Respondents

**Dates of hearing:**

10/12/15, 01/02/16

**Present:**

**For Appellants:**

Mr. Muhammad Ali, Advocate High Court

**For Respondents:**

- i. Mr. Abid Hussain, Executive Director CSD
- ii. Mrs. Amina Aziz, Director CSD

### **ORDER**

1. This order shall dispose of Appeal No.43 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 08/07/2015 (the Impugned Order) in the matter of OK Feed Mills (Pvt) Limited (the Company) passed by the Respondent No.1.

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2. Brief facts of the Appeal are that examination of the Company Annual Audited Accounts for the years ended 30/06/11 and 2012 filed under section 242 of the Companies Ordinance 1984 (the Ordinance) revealed that the Accounts for the year ended 30/06/12 were revised without proper disclosures as required by International Accounting Standard 8 - Accounting Policies, Changes in Accounting Estimates and Errors. The comparative values for assets, turnover, gross and net profit of the Accounts indicates an apparent misstatement. Therefore, a Show Cause Notice (the SCN) was served upon the Company on 23/12/14 to show cause as to why penalty be not imposed under section 492 of the Ordinance for the prima facie violations.
3. The Company in reply to the SCN denied the allegations and submitted copies of the accounts for the year 2010, 2011 and 2012 along with auditor's reports. The Company further stated that the M/s Rafaqat Mansha Mohsin Dossani Masoom & Co. Chartered Accountants are the statutory auditors and the accounts appended along with their audit report are true accounts. The Respondents observed that the accounts for the year ended 30/06/11 submitted in reply of the SCN were different from the accounts of same period, initially submitted on 20/07/12. It was also observed that the accounts submitted on 20/07/12 were audited by M/s Phinehas & Co. Chartered Accountants whereas the Accounts submitted in reply of SCN were audited by M/s Rafaqat Mansha Mohsin Dossani Masoom & Co. Chartered.
4. The Company was provided a hearing opportunity on 09/06/15, wherein Mr. Ghulam Hasnain (the Authorized Representative) attended the hearing and submitted that accounts for the year 2011 were audited by M/s Phinehas & Co. Chartered Accountants and were prepared to secure loan form the financial institutions and were erroneously submitted. The Respondent No.1 being dissatisfied with the response, imposed a fine of Rs.500,000 on each of the Appellants (aggregate fine of rupees one million and five hundred thousand only) for contravening the provision of section 492 of the Ordinance.

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Name	Amount in Rupees
Syed Mushahid Shah, Chief Executive	500,000
Syed Muhammad Adnan Raza Naqvi, Director	500,000
Mrs. Nageen Mushahid, Director	500,000
Total	1,500,000

5. The Appellants have preferred the instant appeal against the Impugned Order on following grounds:

- a. The Impugned Order is bad in law, against the facts and the Respondent No.1 had erred in law while assuming the jurisdiction under section 492 read with 476 of the Ordinance.
- b. The Respondent No. 1 had grossly erred while treating non-statutory accounts of the Company, which were submitted inadvertently by the finance manager of the Company, without the authority and knowledge of the Appellants.
- c. The Respondent No. 1 had grossly erred in law and fact while observing that the Company has submitted false accounts and maintained two parallel books of accounts. The Respondent No. 1 further failed to consider the Form 29, Form-A and the audited accounts submitted by the statutory auditor of the Company.
- d. The Respondent No. 1 had erred in law while taking cognizance of alleged offence in the absence of any complaint in writing from the member of the Company or any other person mandatory u/s 474 of the Company Ordinance 1984 and had violated the principle of independence of judiciary while acting as judge as well as prosecutor.
- e. The Respondent No. 1 had grossly erred in law and facts while penalizing the Appellants and ignoring section 491 of the Ordinance which protects the acts done in good faith.
- f. The Respondent No. 1 had grossly erred in law while penalizing the Appellants without proper personal service of SCN and hearing opportunity.

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- g. The Respondent No. 1 had arbitrarily penalized the Appellants on the basis of assumptions and unauthorized accounts having no adverse impact on the Company and shareholder.
- h. The Respondent No. 1 had imposed fine u/s 492 without establishing mens rea coupled with actus reas and willful default on the part of the Appellants as well as without discharging the burden of proof and standard of proof proving alleged offence with corroborated and credible evidences. It is well settled principle of law that the penal provision of a statute is to be strictly construed and in case of any ambiguity, doubt or several or different interpretations are possible, the benefit must go to the accused person.
- i. The learned Respondent No. 1 arbitrarily and mechanically imposed fine on the Appellants and has ignored that the Appellant no. 3 is a creditor's nominee director and immune from application of various provisions of the Ordinance.
- j. The Impugned Order is outcome of misreading and non-reading of the evidence. Further the Respondent No.1 has not considered the facts and the arguments submitted by the Appellants vide letter dated 29/12/14, which is violation of section 24A of General Clauses Act 1897 and Article 4 of the Constitution 1973 and binding precedents.
6. The Respondents have denied and rebutted the grounds of appeal in the following manner:
- a. The Impugned Order was passed in accordance with law under section 492 read with section 476 of the Ordinance.
- b. The Form- A and accounts submitted on 20/07/12 were signed by the chief executive and director of the Company. The official stamp of the Company was also affixed on the said accounts. Therefore this submission cannot be ignored on the pretext that such accounts were submitted by a finance manager without authority.

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- c. The Company has made false statement regarding profit and loss accounts for the year ended 30/06/11 and maintained and submitted two different books of accounts for the same period.
- d. The Impugned Order was passed under section 492 read with section 476 of the Ordinance.
- e. The Appellants have wrongly interpreted the section 491 as matter of fact it is not applicable on Appellants rather it applies and protects the government or the Commission or any officer of government or the Commission or the Registrar or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules or orders made thereunder or in respect of the publication by or under the authority of the government, Commission or such officer of any report, paper or proceedings.
- f. The SCN was issued to the chief executive and directors on registered address of the Company, therefore there was no need to issue separate SCN.
- g. The Impugned Order for passed I consequence of violations committed by the Company with respect to preparation and submission of different sets of accounts.
- h. The Impugned Order was passed in accordance with the section 492 of the Ordinance, which states that whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.
- i. The nominee director cannot avoid the consequences of section 492 of the Ordinance, as it is applicable to the nominee directors.
- j. The Impugned Order was passed after analyzing the facts of the case, relevant provisions of the Ordinance, submissions made and arguments put forth by the Appellants.

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7. We have heard the parties i.e. Appellants and Respondents and perused the record of the appeal.
8. Admittedly the Company has maintained two books of accounts and first version of accounts was submitted on 20/07/12 whereas the second version of the accounts was submitted in reply to the SCN dated 23/12/14. Perusal revealed that second version of the accounts is different from the first version of the accounts. The first version of the accounts was audited by M/s Phinehas & Co. Chartered Accountants which reported total turnover of Rs.454.58 million and net profit after tax of Rs.9.9 million for the year, but the second version of the accounts reported total turnover for the year of Rs.2.141 billion and net profit after tax Rs.17.44 million and said version of accounts was audited by M/s Rafaqat Mansha Mohsin Dossani Masoom & Co. Chartered Accountants. Similarly, all other items appearing on the balance sheet and profit and loss were different in both versions of accounts for the year ended 30/06/11.
9. The Appellants have not disputed the existence of different accounts for the year ended 30/06/11, however they have tried to justify the existence of two versions of the accounts with a reason which itself prima facie implicates the Company into other violations of relevant laws. The Appellants Counsel submitted that the accounts for the year ended 30/06/11, submitted on 20/07/12 were audited by M/s Phinehas & Co. Chartered Accountants and were prepared to secure loan form the financial institutions. It is important to mention here that same plea was taken by the Appellants authorized representative during the hearing before the Respondent No.1 (Para 5 of the Impugned Order). In the above circumstances the existence of two different versions of accounts clearly establishes the violation on part of the Appellants.
10. Furthermore, the plea taken by the Appellants that the finance manager of the Company has submitted the first version of the accounts without authorization and knowledge of the Appellants cannot be acceded, being contrary to the record, as the Form-A and

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accounts submitted on 20/07/12 contains the signature of chief executive and director of the Company. Therefore, the knowledge and involvement of the Appellants in preparation of two versions of accounts is established beyond any doubt.

11. The Appellate Bench has observed that although the Respondent No.1 has recommended that both versions of accounts for the year ended 30/06/11 should be sent to Federal Board of Revenue for perusal, however the Impugned Order is silent about the conduct of the Chartered Accountants who audited and verified said versions of accounts. Therefore, through this order we direct the Respondents to proceed in accordance with law against the Chartered Accountants who gave opinion on fake and bogus accounts of the Company. Audit of bogus and fake accounts is a grave offence, therefore we recommend the Respondents to examine both versions of accounts along with history/track of such accounts to determine the guilty party. We further direct the Respondents to take appropriate action under law and forward their final findings in this regard to the Institute of Chartered Accountant of Pakistan for initiation of misconduct proceedings against the party at fault.
12. In view of the above we find no reason to interfere with the Impugned Order dated 08/07/15 passed by the Respondent No.1, therefore appeal is dismissed and Respondents are directed to comply with the directions contained in para above immediately.
13. Parties to bear their own cost.

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

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

Announced on: **03 MAR 2016**