

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH IV

In the matter of

Appeal No. 44 of 2012

(i) Haji Mohammad Ismail Mills Ltd

(ii) Mr. Najeeb Mushtaq Vohra, CEO

(iii) Muhammad Sarfaraz, Director

(iv) Mr. Ikran Ahmed, Director

(v) Mr. Muhammad Sadiq, Director,

(vi) Mr. Muhammad Irfan, Director

(vii) Mr. Wazir Khan, Director

(viii) Mr. Essa Khan, Director

(Appellant No.(ii) CEO and Appellants (iii) to (viii) all directors of Haji

Mohammad Ismail Mills Ltd)

..... Appellants

Versus

Head of Department (Enforcement)

Securities & Exchange Commission of Pakistan,

Company Law Division, Islamabad

..... Respondent

Date of Hearing 14/10/15

Present:

For the Appellant:

(i) Mr. M. Sarfraz, Company Secretary, Haji Mohammad Ismail Mills Ltd

(ii) Mr. Kashif Zia, Manager Audit, Mushtaq & Co., Chartered Accountants

(iii) Mr. Sohail Ashfaq, CFO , Haji Mohammad Ismail Mills Ltd

For the Respondent:

(i) Mr. Ali Azeem Ikram, Executive Director (CSD)

(ii) Mr. Shahzad Afzal Khan, Joint Director (CSD)

(iii) Mr. Rizwan Haroon, Deputy Director (CSD)

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ORDER

1. This order is in appeal No. 44 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order (Impugned Order) dated 04/09/12 passed by the Respondent.
2. M/s Haji Mohammad Ismail Mills Ltd (Company) is a public limited company listed on the Karachi Stock Exchange (Guarantee) Limited. Brief facts of the case are that the Respondent while examining the annual audited accounts for the year ended 30/06/11 (Accounts) observed that the Company obtained approval of the Board of Directors (BoD) and shareholders of the Company for sale of assets. The shareholders approved the resolution for sale of assets on 30/04/11 in an Extra Ordinary General Meeting (EOGM). The Company had also initiated the process of sale of assets by the time the accounts were being finalized and part of the land and building was also disposed of prior to finalization of Accounts. However, necessary compliance of International Financial Reporting Standards (IFR) - 5 "Non-Current Assets held for Sale and Discontinued Operations" was not made in respect of the remaining assets. Moreover, the Company communicated vide letter 21/04/11 that certain assets have book value greater than the corresponding forced sales value in light of the revaluation report dated 02/02/11 issued by Asif Associates (Pvt.) Ltd but no impairment was incorporated in the Accounts. Details are as follows:

| Asset | Book Value (Rs.) | Forced Sales Value (Rs.) |
|--|------------------|--------------------------|
| Building | 60,870,013 | 33,600,000 |
| Building (proposed to be disposed of) | 57,395,332 | 31,600,000 |
| Machinery | 124,500,652 | 38,400,000 |
| Machinery (proposed to be disposed of) | 112,412,331 | 33,600,000 |



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The cash flow statement was also not prepared in accordance with International Accounting Standards (IAS) - 7 as it does not elaborate the investing activities. The aforesaid fact exhibited that the Company had failed to give true and fair view in the Accounts for the year ended 30/06/11.

3. Show Cause Notice dated 04/05/12 under section 492 read with section 476 of the Companies Ordinance, 1984 (Ordinance) was issued to the Company and its seven directors including the Chief Executive Officer (CEO) of the Company. On 22/02/12, the Company was provided a hearing opportunity and Mr. Mansoor Usman Awan, Advocate appeared as the authorized representative on behalf of Company and its directors. He expressed the intention of the management of the Company to ratify the default and requested to consider the matter taking a lenient view as the Company and the management had a good track record to comply with the requirements of law. The Respondent in exercise of the powers under the provisions of Section 492 of the Ordinance, imposed a penalty of Rs.75,000 on the Company, its CEO and each director of the Company with the total amount of said penalty aggregating to Rs.600,000. Furthermore, they were directed to comply with all the accounting standards and IFRS as applicable while preparing the financial statements for the year ended on 30/06/11.

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

- a) The Impugned Order is in excess of jurisdiction vested in the Ordinance and, therefore, a nullity in the eyes of the law. The Appellants have disclosed in its financial statements that there are certain restrictions in the sale of assets as the assets are mortgaged with the banks and there are pending issues with the Banking Court and High Court of Sindh. The sale of a small portion of land and building actually materialized on 26/07/11 after the close of the financial year. The revaluation dated 01/02/11 was carried out to disclose the same to its



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members in EOGM held on 30/04/11 and to determine the present fair and forced sale value of the fixed assets as the Appellants were planning to sell the assets on the basis of "as is where basis". The fair value of revalued assets differ materially from its carrying amount, therefore, a further revaluation was required. The Company has not failed, rather it has complied with para 34 of IAS 16 by not taking the effect of revaluation which was carried out in Feb 2011. The Appellants were following the accounting policies consistently as disclosed in note no. 4.5 of the accounting policy of the company. The Appellants have disclosed fair value of assets in compliance of IAS-16 and has presented its financial statement in compliance to IAS-1. The Respondent has erred to appreciate Mushtaq and Co. Chartered Accountant's (Auditor) opinion on going concern assumption and has erred to understand the cash flow statement and its disclosure which was shown in note number 5 of the financial statement. The Respondent has not appreciated the efforts of the Appellants for revival of its project and the up gradation of the power plant which enhanced its power generation capacity from 1.9 MW to 3.7 MW and its contribution towards reducing the energy crises in the country especially in the Kotri Town of Sindh.

- b) There has not been any violation relating to the provision of section 492 of the Ordinance as there is no misstatement in the balance sheet and profit and loss account. The Respondent has not cited a single violation which has been made knowingly or willfully by the Appellants due to which the members of the Company have been affected directly or indirectly. The Respondent has failed to consider the evidence, facts and documents on record and the Impugned Order be set aside under the circumstances of the case.

5. The Respondent has rebutted the arguments as follows:

- (a) The Company obtained approval of BoD and shareholders of the Company for sale of assets in EOGM. The Company also initiated the process of sale of assets by the time accounts were being finalized and part of the land and building was also disposed of prior to finalization of Accounts. However, necessary

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compliance of IFRS-5 was not made in respect of the remaining assets. The cash flow statement was not prepared in accordance with IAS-7 as it does not elaborate the investing activities. The claim of financial statements being fair and true has been objected on many grounds by the Respondent which include but are not limited to qualification by Auditor regarding going concern assumption. The Auditors' Report clearly states that the going concern assumption has been qualified due to existence of material uncertainty which cast significant doubt on the company's ability to continue as a going concern. Further, the detail of cases against the fixed assets of the company has not been disclosed in the financial statements. Moreover, the approval of shareholders also meant that the Company had firm intentions of selling off the assets and necessary compliance of IFRS 5 was required. The assets should have been classified as "assets held for sale at net realizable value". Moreover, the Company had already initiated the process of sale and part of land and building was already sold. The Company has also called bid for disposal of machinery in December 2011 through print media. A part of that machinery was sold within six months of the close of the year. Therefore, the plea of the Company is not tenable that the assets were not ready for sale and necessary compliance of IFRS-5 was not required. The Company was in violation of IAS 16 when it obtained approval for sale of fixed assets from shareholders on the basis of re-valued figures of fixed assets, however, the figures in the financial statements was not changed to reflect this revaluation. The Auditor has qualified its opinion and expressed serious concerns regarding the going concern assumption adopted by the Company for its financial statements. Along with the disclosure in notes it was a necessary requirement to prepare cash flow statement in the prescribed manner, which requires detailed portion of cash flow from investing activities like cash flow from operating and cash flow from financing activities. The core business of the Company has been suspended from quite a long time i.e. 2007 and the power generation business is not material enough to help revive the Company which raise questions on "going concern assumption" and if there are any viable plans based on facts for the



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revival of the business, those have not been communicated to the Respondent, stock market or public at large.

- (b) It is evident that provisions of Section 492 of the Ordinance have been violated knowingly and willfully by the management of the Company at the time of disseminating the information in the annual accounts of the Company for the year ended 30/06/11. The default under Section 492 read with Section 476 has been made as explained in detail above.
6. We have heard the arguments and perused the record provided to us by the parties i.e. the Appellant and the Respondent.
7. In the instant case, the Appellants have argued that approval of sale of assets was given in the EOGM on 30/04/11; however the sale of a small portion of land and building actually materialized on 26/07/11 after the close of the financial year. The Company has not failed, rather it has complied with para 34 of IAS 16 by not taking the effect of revaluation which was carried out in Feb 2011. The Respondent has rebutted the arguments by stating that the Company has violated IAS 16 and the Auditors' report reveals that the going concern assumption had been qualified. Moreover, certain assets had book value greater than the corresponding forced sales value in light of the revaluation report dated 02/02/11 but no impairment was recorded in the Accounts.
8. We concur with the Respondent in light of the valuation report that impairment should have been recorded in the Accounts as per Para 31 of IAS-16 which states "After recognition as an asset, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses."
9. We are of the view that the Appellants have failed to incorporate the impact of impairment in the books of Accounts for the period ended 30/06/11 in light of the



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revaluation report inspite of the fact that approval of sale from the shareholders through EOGM held on 30/04/11 on the basis of revaluation report had been obtained by the Company.

10. The Auditor's report to the Members states "these conditions along with adverse key financial ratios, discontinuance of operation and retirement of key employees indicate the existence of a material uncertainty which may cast significant doubt about the company's ability to continue as a going concern. However, these accounts do not include any adjustment regarding realization of its assets and liquidation of liabilities that may be required should the company be unable to continue as a going concern..."
11. In view of the fact that the Company may not be able to continue as a going concern it was even more important for the Appellants to ensure that the assets are stated at realizable value which in this case was the forced sale value.
12. The Appellants have stated in the Current and Future Outlook of Annual Report for the year ended 30/06/11 that since there are pending issues in the High Court, the sale of machinery is stuck up. We have reviewed the Order sheet of suit no. 632 of 2011 filed in the High Court of Sindh in which the Appellant is a Defendant. The said suit pertains to the textile machinery only, wherein, it was ordered that no third party interest be created in respect of the subject machinery.
13. In accordance with IAS 16 as long as the company remains committed to its plan to sell the asset, even if there are circumstances or events are beyond the control of the company, that does not preclude an asset from being classified as held for sale. Furthermore, in the instant case, part of the land was disposed of but necessary compliance was not made of IFRS-5.
14. Further the Appellants have not stated why the cash flow statement was not made in accordance with the requirements of IAS-7. As per para 16 of IAS-7, separate disclosure of cash flows arising from investing activities is important because the cash flow represents the extent to which expenditures have been made for resources



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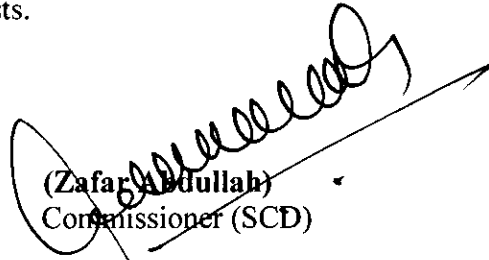
intended to generate income and cash flows. However, contrary to the requirement of IAS-7, cash flow statement in the instant case does not disclose the investing activities.

15. In view of the foregoing, we are of the view that the Appellants have not given a true and fair view of the state of the Company's affairs as at 30/06/11 and have violated section 492 of the Ordinance.

16. One of the grounds raised by the Appellants is that misstatement is not willful. The word "willful default" has been defined in Oxford Dictionary of Law Fifth Edition as "The failure of the person to do what he should do, either intentionally or through recklessness." The argument of the Appellants that the default was not "willful" holds little merit as even there may not be knowledge or intent, the Appellants did not exercise the due skill and care required of them as directors of the Company at the time of submission of the accounts. The default, therefore, would be considered as willful.

17. In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no orders as to costs.


(Fida Hussain Samoo)
Commissioner (Insurance)


(Zafarullah)
Commissioner (SCD)

Announced on: 20 NOV 2015