



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 44 of 2018

Ale Imran & Co. (Chartered Accountants)

...Appellant

Versus

The Executive Director (CSD), SECP

...Respondent

Date of hearing:

August 20, 2020

Present:

For Appellant:

1. Mr. Ale Imran Siddiqi
2. Mr. Ahmad Muzammil, Advocate
3. Mr. Ali Qazilbash

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director (Adjudication-I), SECP.

## ORDER

1. This Order shall dispose of Appeal No. 44 of 2018 filed by M/s. Ale Imran & Co., Chartered Accountants (the Appellant) against the Order dated October 22, 2018 (the Impugned Order) passed by the Executive Director, CLD-CSD (the Respondent) under Section 255 read with Section 260 and 476 of the Companies Ordinance, 1984 (the Ordinance).
2. The Brief facts of the case are that an inspection (the Inspection), under Section 231 of the Ordinance, was initiated against Nazir Cotton Mills Limited (the Company) vide Order dated January 6, 2017. The Inspection, *inter alia*, revealed the following material misstatements in the Company's accounts, which were not reported by the Appellant;
  - i. The Company obtained loan from Samba Bank Limited (SBL) [then Doha Bank], however, in violation of loan agreement with the SBL and without obtaining NOC



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from SBL, a major part of said loan was sub-lent by the Company to its associated company M/s. Silver Fiber Spinning Mills Limited (SFSML). In result thereof, the Company recorded only 22.5% of loan liability in its accounts and recorded a corresponding receivable of 77.5% in respect of loan sub-lent to SFSML.

- ii. Existing fixed assets were not included in Company's record and books of accounts, whereas, certain non-existent items of plant and machinery were included in Company's accounts.
  - iii. Furthermore, the Company had not maintained fixed assets register.
3. In view of the above violations, a Show-Cause Notice dated November 6, 2017 was issued to the Appellant. The Appellant submitted written replies and attended hearings before the Respondent. The Respondent, being dissatisfied with the response of the Appellant, issued a warning to ensure strict compliance of all legal requirements in future and imposed a fine of Rs. 50,000/-.
4. The Appellant *inter alia* filed this Appeal on the grounds that transactions relating to the loan from SBL were recorded prior to 1998 and since then in view of the concept of "Substance Over Form", the Company has been showing liability of 22.5% of the bank loan as its proportionate share, whereas, the remaining 77.5% of the loan has been reflected in SFSML accounts, as its proportionate share. The Appellant stated that the aforesaid transaction was approved by the shareholders of the Company in an Extra Ordinary General Meeting held on August 26, 1995 (EOGM) through a special resolution and for the last 24 years the transaction is being reflected in the Company's and SFSML's accounts. The Appellant contended that in the past 24 years the above transaction was never disregarded by any auditor. The Appellant contended that on the basis of the principle of consistency the previous practice was followed in year 2015. The Appellant stated that the Company has settled its loan vide agreement dated August 27, 2015 and paid Rs. 71 million to SBL, however, the Respondent has not considered this fact.
5. The Appellant stated that difference in calculation of assets was caused due to an 'old list', which was prepared in 1998, whereas, actual physical assets were in accordance with the updated list, therefore, comparing the physical balance of assets with an outdated list would not be appropriate. The Appellant also stated that the Company is maintaining the fixed assets register under Section 230 (6) of the Ordinance since its inception, therefore, till 2018 the auditors of the Company have not highlighted any non-compliance. The Appellant apprised that



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the Company's 2018 audit was not conducted by the Appellant. The Appellant stated non-provision of fixed asset register during the Inspection does not implicate the Appellant rather the Company and its management should be penalized for such an act.

6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof.
7. The Bench is of the view that the loan was sanctioned in the name of the Company, therefore, the complete loan liability should have been carried in the Company's accounts. The Bench has noted that the Company has loaned a major part of the SBL loan to SFSML and recorded 77.5% as receivable from SFSML, and not as the Company's complete liability. Therefore, we have no doubt that Company's accounts were misstated and the Appellant being auditors of the Company have failed to highlight this aspect in the Auditors Report.
8. The Bench is not inclined to accept the Appellant's interpretation regarding "Substance Over Form" because repayment of the loan was the Company's responsibility, therefore, recording of full amount of liability in the Company's accounts was the only appropriate option to ensure 'true and fair' accounts. The Bench is of the view that the Company's shareholders decision to invest in SFSML is not relevant to exonerate the Company and the Appellant from the consequences of the above-mentioned violation. Furthermore, the Appellant cannot take refuge behind the practices of auditors followed during the past 24 years as 'two wrongs do not make a right'. The Bench believes that settlement of the loan with SBL vide agreement dated August 27, 2015 is not a relevant fact to undo the violation committed by the Appellant or the Company.
9. Furthermore, the Bench has noted with great concern that during the Inspection and SCN proceedings the Company has presented two different lists to prove that existing assets were recorded properly, however, this act has aroused a suspicion in our minds that the Company might have double books of accounts. Furthermore, the Appellant has also failed to highlight the existence of two different assets lists. Therefore, we are not inclined to accept the Appellant's assertion that during Inspection the Company had provided an outdated list, whereas, the actual assets were as per updated list. The Bench is of the view that the Appellant had not physically examined and reconciled the assets as per the list and failed to identify the difference in the



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Auditors Report. The Bench also reject the Appellant's plea that the Company has a fixed asset register because during the Inspection no such register was ever produced by the Company. Furthermore, loose pages and excel sheets presented before us by the Appellant during the hearing cannot be termed as original and verified fixed asset register. In the circumstances, we have no doubt that the Company's accounts were misstated and the Appellant had not highlighted such violation in the Auditors Report.

10. In view of the forgoing, the Bench find no reason 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: **09 OCT 2020**