



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 45 of 2017

1. TRG Pakistan limited
2. Mr. Peter H.R. Riepenhausen
3. Mr. Ziaullah Khan Chishti
4. Mr. Muhammad Ali Jameel
5. Mr. Ameer S. Qureshi
6. Mr. Patrick McGinnis
7. Mr. John Leone
8. Mr. Rafiq K. Dossani
9. Mr. Abu Bakr Chowdhury
10. Mr. Mohammedullah Khan Khaishgi
11. Mr. Saleem Butt

(Appellant No.2 to 11 are the directors of TRG Pakistan limited)

Appellants

Versus

The Director Corporate Supervision Department, SECP.

Respondent

Date of hearing:

30/10/17

Present:

For Appellants:

Shaikh Mohammad Tanvir (Kreston Hyder Bhimji & Co.)

For Respondent:

Ms. Amina Aziz, Director (CSD)

ORDER

1. This Order shall dispose of Appeal No.45 of 2017, registered on 30/06/17 (the Appeal), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act)



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against the order dated 13/01/17 (the Impugned Order) passed by the Respondent under Section 245 read with Section 476 of the Companies Ordinance 1984 (the Ordinance) and the application for condonation of delay (the Application).

2. The Appellants had filed this Appeal on 31/03/17 after the expiration of thirty days limitation period provided under Section 33 of the Act, however, to seek condonation of this delay, the Appellants had also filed the Application before the Appellate Bench (the Bench). The Bench has considered the Application. As a matter of fact, the Appellants have failed to exercise their statutory right of appeal within prescribed time, and is time barred, however, it is a contestant view of the Bench that appeals under Section 33 of the Act should be adjudicated on merits rather than technicalities. Therefore, without strict scrutiny and determination of reasons of delay and in the best interest of justice, the Bench is of the view that a fair opportunity must be given to the Appellants to present their case on merits, therefore, the Application is allowed.
3. Brief facts of the case are that TRG Pakistan Limited (the Company) had not filed the accounts for the quarter ended 30/9/13 with the Registrar and the Securities and Exchange Commission of Pakistan (the Commission) under Section 245 of the Ordinance. Furthermore, the Company also failed to prepare, transmit and file the accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15 to the shareholders, Registrar and the Commission under Section 245 of the Ordinance. In addition to above default, the Company filed half yearly accounts for the period ended 31/12/13, on 07/07/14 with the delay of 129 days.
4. In view of aforesaid non-compliance, the Respondent issued a Show Cause Notice dated 05/11/15 (the SCN) to the Appellants being directors of the Company. The chief executive officer of the Company responded to the SCN vide written reply dated 16/11/15 and stated that the Commission had granted exemption to file consolidated accounts for the quarter ended 30/9/13, therefore, unconsolidated accounts for the same quarter were transmitted to the KSE and the shareholders. The Company also filed applications for exemption in preparation of consolidated accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15.



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because the Company was not able to acquire quarterly financial information from indirect subsidiaries IBEX Global Solutions Plc. (the IBEX) and Digital Globe Services Private Limited (the DGS), however, said applications were not allowed by the Commission. It was also stated in the written reply that the Commission had granted exemption to file consolidated accounts for the quarter ended 30/09/15.

5. Hearing in the matter was held on 20/05/16, the representative of the Appellants reiterated the arguments of the written reply and assured to file quarterly accounts for which SCN was issued. However, the Respondent being dissatisfied with the response of the Appellants, had imposed a fine of Rs. 35,000/- on each of the Appellants (aggregated fine Rs. 350,000).
6. The Appellants have preferred this Appeal before the Bench *inter alia* on the grounds that the Impugned Order had been passed in violation of Section 24-A of the General Clauses Act, 1897 as the powers conferred on the Respondent had not been exercised reasonably, fairly and justly. The Respondent had ignored the fact, that the Commission had granted exemptions to file consolidated accounts for the quarters ended 30/09/13 and 30/09/15. Furthermore, the alleged delay in filing the quarterly accounts of the Company had not caused any harm or detrimental impact to the rights of stakeholders. The Company had written letters to its subsidiaries on 02/04/14 to provide their quarterly accounts, however, the subsidiaries vide their letters dated 16/04/14 and 18/04/14 declined the request, as the subsidiaries were not legally required to prepare their quarterly accounts under the respective jurisdictions.
7. The Respondent had rebutted the grounds of Appeal and stated that the Impugned Order had been passed after evaluating the facts and circumstances of the case, therefore, Section 24-A of the General Clauses Act, 1897 had not been violated. The Appellants had failed to file quarterly accounts with the Registrar and the Commission within prescribed time. Interim accounts and very important and their provision to the end users cannot be conditioned with the grant of exemption by the Commission from consolidation of quarterly accounts, which is an independent jurisdiction of the Commission. Timely provision of financial information through annual and interim accounts is among the primary obligations of the directors. It has



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unfortunately been noted that the directors of the Company had failed to comply the requirements of law and had not transmitted or filed the quarterly accounts of the Company to the shareholders, Registrar and the Commission within the prescribed time. The fine imposed by the Respondent is not excessive, rather a lenient view is taken and instead of imposing maximum fine of Rs. one hundred thousand on each director for each quarter, had imposed fine of Rs. 5,000 for late filing and Rs. 10,000 on each director for non-filing of accounts.

8. We have heard the parties (Appellants and Respondent) and perused the record of Appeal. The Company had two subsidiaries i.e. the IBEX and the DGS, therefore, as per applicable legal frame work under the Ordinance, the Company was required to file two sets of accounts i.e. company accounts (its stand alone accounts) and consolidated accounts (Company accounts along with accounts of its subsidiaries). The exemption granted by the Commission was only to the extent of consolidated accounts of two quarters ended 30/9/13 and 30/9/15, therefore, this exemption does not exempt the Company to prepare, transmit and file company's accounts under Section 245 of the Ordinance. Furthermore, the issue of non-filing or exemption to file consolidated accounts had not been addressed in the Impugned Order, therefore, grounds of Appeal in this regard are entirely irrelevant to the case in hand. The Appellants had admitted that they had not transmitted and filed the company's accounts for the quarters ended 31/03/14, 30/09/14 and 31/03/15 to the shareholders, Registrar and the Commission, whereas, the company's accounts for the quarter ended 30/9/13 were only transmitted to the Stock exchange and shareholders. As per law, the Appellants were also required to file company's accounts for the quarter ended 30/9/13 with the Registrar and the Commission by 31/10/13, however, said accounts were filed on 16/11/15. The aforesaid admissions and record manifest to understand that violations had been committed by the Appellants.
9. The representative of the Appellant argued during the hearing that the Company had prepared its accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15, however, same were neither transmitted to stock exchange, shareholders nor filed with the Registrar and the Commission. The Bench has asked the representative to submit such accounts for perusal. After hearing of



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the Bench, copies of accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15 were received via email dated 2/11/17 and same were shared with the Respondent.

10. In view of the above facts, it is clear that the exemption or refusal to file consolidated accounts does not bar the Company to transmit and file its quarterly accounts to the shareholders, Registrar and the Commission. The Company had transmitted the quarterly accounts for the quarter ended 30/9/13 to the stock exchange and shareholders, however, said accounts were filed with the Commission after considerable delay. Furthermore, accounts for the quarter ended 31/3/14, 30/9/14 and 31/3/15 were prepared, however, same were not transmitted or filed.
11. The Bench has reached the conclusion that although violation of Section 245(1) of the Ordinance is established against the Appellants, however, preparation of the accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15 and Company's satisfactory compliance history, may be considered as mitigating factors to reconsider the appropriate nature of penalty. Therefore, we hereby convert the penalty of fine imposed on the Appellants into a warning and direct the Appellants to transmit and file the accounts for the quarters ended 31/3/14, 30/9/14 and 31/3/15 in accordance with the law and procedure laid down under the Ordinance and ensure compliance of Section 245 of the Ordinance in future to avoid legal consequences. The Appeal is disposed of accordingly, parties to bear their own cost.

(Zafar Abdullah)
Acting Chairman/Commissioner (SCD)

(Tahir Mahmood)
Commissioner (CCD-CLD)

Announced on:

20 DEC 2017