



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 47, 48, 49, 50, 51, 52 and 53 of 2016

Al-Qaim Textile Mills Limited

Appellant

Versus

Corporate Supervision Department, SECP

Respondent

Date of hearing:

05/10/16

Present:

For Appellant:

1. Mr. Nazir Ahmed Shaheen
2. Ch. Muhammad Atif, Advocate High Court

For Respondent:

Ms. Amina Aziz, Director (CSD)

ORDER

1. This consolidated order shall dispose of following seven appeals:

- i. Appeal No. 47 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 178,180(1), 186, 199 and section 204 read with section 476 of the Companies Ordinance, 1984 (the Ordinance).
- ii. Appeal No. 48 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 204-A (1) read with section 498 of the Ordinance.

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- iii. Appeal No. 49 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 147 read with section 476 of the Ordinance.
- iv. Appeal No. 50 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 173 read with section 476 of the Ordinance.
- v. Appeal No. 51 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 171 read with section 476 of the Ordinance.
- vi. Appeal No. 52 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 193 read with section 476 of the Ordinance.
- vii. Appeal No. 53 of 2016 filed under section 33 of the Act against the order dated 09/02/10 (the Impugned Order) passed by the Respondent under section 204-A(2) read with section 498 of the Ordinance.

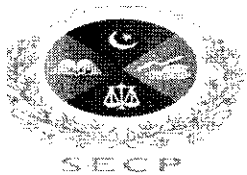
2. Brief facts of appeal No. 47 of 2016 are that election for directors of Al-Qaim Textile Mills Limited (the Appellant) was held on 31/01/05 and next election was due after completion of 3 years; however, it was observed that no election was held subsequently. The matter was inquired from the Appellant vide letter dated 15/09/08 and 29/09/08 by the Respondent however, no response was received. Thereafter, a Show Cause Notice (the SCN) dated 14/10/08 was served on the Appellant, its Chief Executive Officer (the CEO) and other directors but they failed to respond. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under section 186 read with section 476 of the Ordinance, imposed a fine of Rs.10,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	10,000
2.	Ch. Nazar Hussain, Director	10,000

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3.	Haji Ghulam Hussain, Director	10,000
4.	Mr. Shaukat Mehmood Awan, Director	10,000
5.	Mr. Naeem Mustafa, Director	10,000
6.	Ms. Naseem Begum, Director	10,000
7.	Ms. Anayat Begum, Director	10,000
Total		70,000

3. Brief facts of appeal No. 48 of 2016 are that during the inspection of Appellant books of accounts under section 231 of the Ordinance it was observed that company secretary Mr. Imran Haider Awan, is residing and doing job in United Arab Emirates for last more than two and half and years. This signifies that the Appellant had not appointed whole time secretary which is a contravention of section 204-A (1). Therefore, a SCN dated 09/03/09 was issued to the CEO and other directors however, no response was received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under Section 498 of the Ordinance, imposed a fine of Rs.20,000 on the CEO and the other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	20,000
2.	Ch. Nazar Hussain, Director	20,000
3.	Haji Ghulam Hussain, Director	20,000
4.	Mr. Shaukat Mehmood Awan, Director	20,000
5.	Mr. Naeem Mustafa, Director	20,000
6.	Ms. Naseem Begum, Director	20,000
7.	Ms. Anayat Begum, Director	20,000
Total		140,000

4. Brief facts of appeal No. 49 of 2016 are that during the inspection of Appellant books of accounts under section 231 of the Ordinance revealed that Appellant Register of Members is maintained by M/s Your Secretary (Pvt) Limited who was the Share Registrar as per annual audited accounts for the year ended 30/06/06. However, in reply to the query of the Respondent M/s Your Secretary (Pvt) Limited clarified that

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since 01/07/08 they have stopped their services as Share Registrar of the Appellant. In view of this information it was construed that *prima facie* the Appellant has violated section 147 of the Ordinance; therefore a SCN dated 01/04/09 was issued to the CEO and other directors however, no response was received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under section 147(4) of the Ordinance, imposed a fine of Rs. 20,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	20,000
2.	Ch. Nazar Hussain, Director	20,000
3.	Haji Ghulam Hussain, Director	20,000
4.	Mr. Shaukat Mehmood Awan, Director	20,000
5.	Mr. Naeem Mustafa, Director	20,000
6.	Ms. Naseem Begum, Director	20,000
7.	Ms. Anayat Begum, Director	20,000
Total		140,000

5. Brief facts of appeal No. 50 of 2016 are that inspection of Appellant books of accounts under section 231 of the Ordinance minutes of the Appellant board meetings were not provided to the inspection team. The CEO and other directors were provided with ample time to produce required document; however they failed. *Prima facie*, the Appellant was in contravention of section 173 of the Ordinance therefore, a SCN dated 18/03/09 was issued to the CEO and other directors; however, no response was received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under section 173 read with section 476 of the Ordinance, imposed a fine of Rs.5,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	5,000

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2.	Ch. Nazar Hussain, Director	5,000
3.	Haji Ghulam Hussain, Director	5,000
4.	Mr. Shaukat Mehmood Awan, Director	5,000
5.	Mr. Naeem Mustafa, Director	5,000
6.	Ms. Naseem Begum, Director	5,000
7.	Ms. Anayat Begum, Director	5,000
Total		35,000

6. Brief facts of appeal No. 51 of 2016 are that the Appellant was required to hold its Annual General Meeting (the AGM) for the year ended 30/06/07 on or before 31/10/07; however, it failed. The Respondent vide letter dated 14/10/08 directed the Appellant under section 170 of the Ordinance to convene the overdue AGM for the year ended 30/06/07 within one month of the issuance of the direction i.e. up to 14/11/08 and to submit the compliance report along with attested copies of the minutes and approved audited accounts within a week of the date of meeting so held; however, said directions were not complied. Therefore, the CEO and other directors were served with a SCN dated 01/04/09 under section 171 of the Ordinance; however, no response was received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers conferred upon under section 171 read with section 476 of the Ordinance, imposed a fine of Rs.10,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	10,000
2.	Ch. Nazar Hussain, Director	10,000
3.	Haji Ghulam Hussain, Director	10,000
4.	Mr. Shaukat Mehmood Awan, Director	10,000
5.	Mr. Naeem Mustafa, Director	10,000
6.	Ms. Naseem Begum, Director	10,000
7.	Ms. Anayat Begum, Director	10,000
Total		70,000

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7. Brief facts of appeal No. 52 of 2016 are that directors of the Appellant were required to hold their meeting at least once in each quarter of year in pursuance of section 193(2) of the Ordinance; however they failed. During the inspection of Appellant books of accounts under section 231 of the Ordinance it came on record that Mr. Muhammad Ali Awan, chief executive and Mr. Imran Haider Awan, company secretary was residing in Dubai and the Appellant has not convened any board meetings in the years 2007 and 2008. Therefore, a SCN dated 09/03/09 was issued to the CEO and other directors; however, no response was received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under section 193(3)(a) read with section 476 of the Ordinance, imposed a fine of Rs.10,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	10,000
2.	Ch. Nazar Hussain, Director	10,000
3.	Haji Ghulam Hussain, Director	10,000
4.	Mr. Shaukat Mehmood Awan, Director	10,000
5.	Mr. Naeem Mustafa, Director	10,000
6.	Ms. Naseem Begum, Director	10,000
7.	Ms. Anayat Begum, Director	10,000
Total		70,000

8. Brief facts of appeal No. 53 of 2016 are that during the inspection of Appellant books of accounts under section 231 of the Ordinance it came on record that the Appellant Register of Members is maintained by M/s Your Secretary (Pvt) Limited who was Share Registrar as per last annual audited accounts for the year ended 30/06/06. However, in reply to the query of the Respondent, M/s Your Secretary (Pvt) Limited, clarified that since 01/07/08 they have stopped their services as Share Registrar of the Appellant. In view of this information it was construed that prima facie the Appellant has contravened the section 204-A (2) of the Ordinance. Therefore, a SCN dated 01/04/09 was issued to the CEO and other directors; however, no response was

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received. Hearing in the matter was fixed on 23/12/09 but no one appeared. Therefore, the Respondent proceeded ex-parte and in exercise of powers under section 498 of the Ordinance, imposed a fine of Rs.20,000 on the CEO and other directors in the following manner:

S. No.	Name of Respondents	Amount Rupees
1.	Mr. Muhammad Ali Awan, Chief Executive	20,000
2.	Ch. Nazar Hussain, Director	20,000
3.	Haji Ghulam Hussain, Director	20,000
4.	Mr. Shaukat Mehmood Awan, Director	20,000
5.	Mr. Naeem Mustafa, Director	20,000
6.	Ms. Naseem Begum, Director	20,000
7.	Ms. Anayat Begum, Director	20,000
Total		140,000

9. The Appellant being aggrieved of the above discussed seven Impugned Orders, filed seven separate appeals before the Appellate Bench (the Bench). The Appellant Representative (the Representative) inter alia has taken a specific plea that no letter or the SCN was received by the Appellant or any of its directors and the Impugned Orders were passed ex-parte.

10. The Respondent has rebutted the grounds of appeals and stated that in compliance of requirements of section 48 of the Ordinance, the notices were served at the registered office of the Appellant. The SCN dated 14/10/08 was served in accordance with law and same was also not returned as un-delivered. The Appellant was given ample opportunity to file written replies and to plead the case during hearing; however, it failed. The principle of fair trial and due process has been followed by the Respondent.

11. We have heard the parties i.e. Appellant and Respondent and perused the record of all seven appeals. The Appellant has filed these appeals with the delay of more than six years, whereas section 33 of the Act stipulates only 30 days to file appeal. To meet the

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procedural requirements, the Appellant has filed an application for condonation in all appeals and reiterated the grounds of appeal as the grounds of condonation. The Bench has considered the applications and in the interest of justice, condoned the delay.

12. Appellant core plea in all appeals is that, notices were not served and therefore, the matter was proceeded ex-parte. Whereas the Respondent has categorically stated that notices were served in accordance with law at Appellant registered address and at its directors' addressees, however, they failed to join the proceedings. Admittedly, notices were served but Appellant has denied any such service. In the circumstances we believe that opportunity of fair trial must be given to the Appellant and technicalities could not be allowed to create any hurdle in the way of substantial justice. Furthermore, it has been observed by the apex court in numerous verdicts that law favours adjudication on merits rather than technicalities.

13. In view of above discussion, to provide an opportunity of hearing to the Appellant, we hereby set-aside the seven Impugned Orders mentioned in para one of this order and remand the matter to the Respondent to decide it afresh. We further direct the Appellant to provide valid postal address/contact details to the Respondent for necessary correspondence. Therefore, these seven appeals are disposed of, with no order to cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 02 NOV 2016