



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 54 of 2010

(i) Muhammad Zafar Saeed

(ii) Chaudry Abdul Aziz

..... Appellants

Versus

Commissioner (CLD)

Securities and Exchange Commission of Pakistan

..... Respondent

Date of Hearing

12/08/15

Present:

Appellant No (i):

(i) Mr. M. Zafar Saeed

For the Respondent:

(i) Mr. Imran Iqbal Panjwani, Executive Director (CSD)

(ii) Mr. Rohail Abbas, Deputy Director (CSD)

(iii) Mr. Moeed Hasan, Assistant Director (CSD)

ORDER

1. This order is in appeal No. 54 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 20/10/10 (Impugned Order) passed by the Respondent.

Appellate Bench No. IV

Appeal No. 54 of 2010

Page 1 of 5



Securities and Exchange Commission of Pakistan

2. The facts leading to this case are that Mr. Khurram Sattar Malik, Mrs. Bushra Khurram and Mrs. Abida Omar ex-directors of the Hamid Textile Mills Limited (Company) in their letters dated 10/10/09 and 15/10/09 informed that they had resigned as directors of the Company since 10/05/08. It was claimed that the resignation was sent by TCS to the Chief Executive of the Company and copies of the resignation letters were also sent to the office of the Company by hand. The acknowledgment of receiving the resignation was made and it was contended that the casual vacancy has neither been filled as per law nor the matter has been intimated to the Commission in any other manner. The Company concealed this fact from the Commission and other stakeholders and showed Mr. Khurram Sattar Malik, Mrs. Bushra Khurram and Mrs. Abida Omar as directors of the Company in the annual audited accounts for the year ended 30/06/08 (Accounts) approved in the Annual General Meeting (AGM) held on 09/05/09 and submitted to the Commission on 23/05/09. The Company prima facie made false statements regarding directors in the Accounts submitted under Section 233 of the Ordinance. Furthermore, casual vacancies of directors were not filled as per Section 180 of the Ordinance.
3. Show Cause Notice dated 02/12/09 (SCN) under section 492 and 186 read with section 476 of the Ordinance was issued to directors and Chief Executive, calling upon them to show cause in writing within 14 days or appear in person as to why the penalty, provided under section 492 and 186 of the Ordinance, may not be imposed on them for making false statements in the Accounts. The Appellants filed reply to the SCN and hearing in the matter was held. The Respondent after hearing the parties passed the Impugned Order and imposed a penalty of Rs.100,000 on each of the directors including

Appellate Bench No. IV

Appeal No. 54 of 2010

Page 2 of 5



Securities and Exchange Commission of Pakistan

the Chief Executive and the Appellants with an aggregate penalty of Rs.400,000.

4. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants argued that they are a victim of fraud as the Chief Executive namely Mr. Khawar Almas Khawaja (CEO) manipulated the record of the Company and the shareholding of the Appellants has been falsely reflected as 0.73% and 0.867% to keep the Appellants out of the affairs of the Company despite being 34% shareholders. The CEO of the Company is illegally withholding the true Register of Members of the Company or has intentionally destroyed the same. Further, the CEO of the Company is conducting the operational matters of the Company in defiance of the memorandum and articles of association of the Company and the provisions of the Ordinance. Furthermore, the tripartite agreement with NBP was neither properly executed nor signed by the Appellants. The matter of resignation was never reported to the board nor was in the knowledge of the Appellants, It has also been falsely reported to the Commission that the Company is not maintaining the Register of Members. The Appellants have already filed petition under section 152 and 153 of the Ordinance for rectification of the Register of Members, which is pending before the Honourable Lahore High Court (Court). In addition to the aforesaid petition, an application under section 265 and 290 of the Ordinance has also been preferred for appointment of inspectors and regulating the affairs of the Company. The Appellants have time and again approached the Commission for redressal of their grievances and brought the mismanagement of the affairs of the Company by the CEO to the notice of the Commission vide their "Application for holding of Extra Ordinary General Meeting and Election of Directors" dated 16/03/10 and save the company from impending default. Therefore, a lenient view should be taken in favour of the Appellants and the Impugned Order be set aside.

Appellate Bench No. IV

Appeal No. 54 of 2010

Page 3 of 5



Securities and Exchange Commission of Pakistan

5. The department representatives argued that it is the prime responsibility of the CEO to maintain the Register of Members. As per section 180(2) of the Ordinance any casual vacancy occurring among the directors may be filled by the directors. All directors, therefore, are equally responsible for the default. The directors of the Company failed to fill in the casual vacancy of directors as per section 180 of the Ordinance. Moreover, by showing Mr. Khurram Sattar Malik, Mrs. Bushra Khurram and Mrs. Abida Omar as directors of the Company in the Accounts, the Appellants have contravened provisions of section 492 of the Ordinance for making false statements in the Accounts. Further, it is admitted that Register of Members is in dispute, however, there is evidence to show that in accordance with the tripartite agreement with the National Bank of Pakistan ("NBP"), the Appellants had acquired 54% of the shareholding of the Company
6. We have reviewed the arguments. Section 492 of the Ordinance is reproduced for ease of reference:

Section 492 of Companies Ordinance, 1984

492. Penalty for false statement. - 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 one hundred thousand rupees.

Section 186 of Companies Ordinance

186. Penalties. - Whoever knowingly and willfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from

Appellate Bench No. IV

Appeal No. 54 of 2010

Page 4 of 5



Securities and Exchange Commission of Pakistan

becoming or continuing a director of the company for a period not exceeding three years.

Emphasis Added

Section 492 of the Ordinance provides that anyone who, “.... *makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material...*” is punishable with a fine. In the instant case, the Appellants have stated they cannot be made responsible as the Register of Members or Register of Transfer of Shares is disputed and petition for rectification vide Company Application No. 27/10 is pending before the Court. Further, the management affairs of the Company are not within their control as they have been a victim of fraud at the hands of the CEO and have approached the Commission previously for reprieve. In the instant case, the Respondent has also confirmed that the Register of Members is in dispute and has been challenged before the Court. Further, we have reviewed the tripartite agreement with NBP and confirmed that it was neither properly executed nor signed by the Appellants. We are of the view that while it is true that no misstatement should have been made in the Accounts, it has not been proven to our satisfaction that the Appellants have willfully made a misstatement in violation of section 492 of the Ordinance. The Impugned Order, therefore, is set aside to the extent of penalty on the Appellants with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **26 AUG 2015**