



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 56 of 2012

- (i) Fateh Textile Mills Ltd
 - (ii) Mr. Gohar Ullah
 - (iii) Mr. Humayaun Barkat
 - (iv) Mr. Asad Ullah Barkat
 - (v) Mr. Maqsood Ahmed Khan
 - (vi) Mr Muhammad Saleem
 - (vii) Mr. Soofi Taj Muhammad ... Appellants
- (Appellants No (ii) to (vii) all directors of Fateh Textile Mills Ltd)

Versus

Mr. Ali Azeem Ikram, Executive Director
Head of Enforcement Department
Securities and Exchange Commission of Pakistan
Islamabad ... Respondent

Date of Hearing 12/08/15

Present:

For the Appellants:

Ms. Amna Usmani, Associate (Muhammad Masood Khan & Associates)

For the Respondent:

- (i) Mr. Imran Iqbal Panjwani, Executive Director (CSD)
- (ii) Mr. Shahzad Afzal, Director (CSD)



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ORDER

1. This order is in appeal No. 56 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order (Impugned Order) dated 03/10/12 passed by the Respondent.
2. Brief facts of the case are that examination of the annual audited accounts (Accounts) of Fateh Textile Mills Limited (Company) for the year ended 30/06/09, revealed that during the year Company's sales witnessed a substantial drop of 35% from Rs.4.716 million in 2008 to Rs.3.051 million in 2009, while the trade debtors surged up by 29% during the same period, from Rs.3.848 million in 2008 to Rs.4.949 million in 2009. Due to these factors a detailed scrutiny of Company's debtor balances was necessary.
3. The Company was advised to provide following details about its trade debtors:
 - i) Party names along with complete addresses;
 - (ii) Total sales made during the period;
 - (iii) Closing balance; and
 - (iv) Relationship with Company or its directors
4. The required information, except the amount of total sales made to each customer during 2009, was provided by the Company vide its letter dated 21/10/10. Detailed scrutiny of the information provided by the Company revealed that almost 54% of total debtors were from entities which were prima facie related to the Company or its directors. In view of materiality of amounts receivable and the fact that these amounts were unsecured, it was imperative to further scrutinize these transactions. A thorough



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analysis of the information provided by the Company was carried out through independent sources which revealed that entities namely Barkat Inc. New York, USA, Barkat Int'l GMBH, Germany, Barkat Limited, Hong Kong and Fateh Int'l Hong Kong are connected with the Company through its Directors, receivables from whom amounted to 36% of total debtors. Receivables from remaining three entities, Barkat Int'l Limited, UK, Fateh Int'l Limited, UK and Barkat Limited, Moscow, Russia, amounted to 18% of total debtors. However, incorporation status of the companies in UK and Russia could not be verified through independent sources. The aforesaid fact not only cast serious doubt about existence of these entities but also supported the apprehension that these entities are related to the Company.

5. It was further observed that the Company never made any disclosure about transactions with above mentioned parties, as required under International Accounting Standard-24 (IAS 24), in its accounts for the period ended 30/06/09 and earlier or subsequent periods. Moreover, existence of any association through its directors or shareholders was not mentioned and when the Company was specifically asked to state its relationship with these entities, the Company stated its commercial relationship only. The aforesaid material omission and false statement necessitated penal action against the directors of the Company under section 492 of the Companies Ordinance, 1984 (Ordinance).
6. Show Cause Notice (SCN) was issued under section 492 of the Ordinance on 12/05/11 calling upon the directors of the Company to show cause in writing as to why penal action may not be taken against them.

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SECP

7. The hearing in the matter was held on 05/07/12 in which the Appellants and their Counsel failed to appear. After careful consideration of the facts and the Appellant's Counsel's written arguments, the Respondent held that the directors of the Company had committed the default knowingly under section 492 of the Ordinance and imposed fine of Rs.100,000 on each of the six directors, aggregating to a total of Rs.600,000. However, no fine was imposed on Mr. Muhammad Ayub, nominee director of NIT considering his submissions but he was strictly warned to be careful in the future. Furthermore, it was held that a mere imposition of penalty was not sufficient and the dealing officer was directed to initiate proceedings for investigation into the affairs of the Company.

8. The Appellants have preferred the appeal against the Impugned Order. The Appellants' counsel at the hearing and in written submissions argued that:

- (i) the details were ascertainable from audited accounts of the Appellant No.1 which were duly provided to the Commission on the relevant time through its annual audited accounts as well as by way of response to the Commission as per requirement by the Appellant No.1 vide letter dated 21/08/10. Therefore, provisions of section 492 of the Ordinance were not attracted under the circumstances of the case. Further, the details required by the Commission for the purpose of inspection of accounts of Appellant No.1 was provided by the Respondent vide its letter dated 21/10/10. None of the documents even slightly suggested that the required information was not provided or was withheld by the Appellants knowingly to be false or omitted the same which according to the Impugned Order was material in nature. There should be no discrimination between the management of the Company and the Nominee Director of the Company who was not penalized for the default. Further, the Nominee Director of



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NIT in his reply had also stated that the Company's accounts for the year ended 30/06/09 did not contain any false statement. Further, the transaction relating to the trade debtors were duly disclosed in the accounts, therefore, the accounts as submitted did not suffer from any suppression of the facts or transaction. Similarly, it was also pointed out by the Nominee Director that the transaction between the Company and the trade debtors were in nature of commercial transactions. The SCN dated 12/05/11 issued by the Respondent did not even slightly allege that the actions of the directors of not providing material information or its alleged suppression was intentional or false. Therefore, the action taken on the basis of the SCN and penalty imposed is beyond the scope and mandate of the SCN and is liable to be set aside.

9. The Respondent rebutted the arguments of the Appellants as follows:

- (i) The submissions of the Appellants made in their letter dated 21/10/10 were duly considered. Penal action was taken for providing incorrect information i.e. relation with some trade debtors, and non-disclosure of material facts i.e. related party disclosures in the Company accounts. Lenient view has been taken against the NIT Nominee Director due to the statement given by him during the course of the hearing that he did not have any information about these related parties and further, he was the only director of the Company who responded to the SCN and also appeared at the hearing. Moreover, the directors of the Company have omitted material disclosures regarding huge related party transactions from its accounts as required by IAS 24. The plea of the Appellants that the details were ascertainable from the annual audited accounts and information provided to the Commission is not valid. The SCN clearly states that material omission of related party transactions and false statement regarding relation with trade debtors



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tantamount to contravention of section 492 of the Ordinance. Further, several opportunities of personal hearing were provided to the Appellants which were not availed. The respondent stated that the disclosure of receivable from related party amounting to Rs.2.6 million was not disclosed in the financial statements, detail of which is as follows:

S. No.	Name of customer	Amount Receivable (Rs. in million)	Related party relationship established through different sources	Separately disclosed in the accounts (Y/N)*
1	Barkat Inc New York	1,754.196	Yes	N
2	Barkat Int'l GMBH Germany	4.236	Yes	N
3	Barkat Limited, Hong Kong	20.768	Yes	N
4	Fateh Int' Hong Kong	1.054	Yes	N
5	Barkat Int'l Limited UK	819.170	May be related	N
6	Fateh Int'l Limited UK	48.146	May be related	N
7	Barkat Limited, Russia	11.228	May be related	N
		2,658.798		



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10. We have heard the arguments and perused the record provided to us by the parties i.e. the Appellants and Respondent. Section 492 of the Ordinance is reproduced for ease of reference:

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 (five) hundred thousand rupees.

Emphasis Added

11. The Appellants have argued that required information was not withheld by the Appellants knowingly to be false or omitted the same which according to the Impugned order was material in nature. The Respondent has rebutted that the directors concealed information about relation with trade debtors, non-disclosure of material facts and related party disclosures in the Company Accounts. Moreover, the NIT Nominee Director submitted his statement to the Respondent in which he stated that he was unaware of the subject transactions and may be absolved from the responsibilities of the aforesaid contravention. Neither the other directors nor their Counsel attended the hearings held by the Respondent to clarify their position.
12. The Bench has perused the Accounts of Company. Disclosure as per Paragraph 20 of Trade Debts-Unsecured in the Accounts is reproduced below:

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“20. Trade Debts- Unsecured	Rupees
	2009
Considered good	4,949,818,505
Considered doubtful	<u>312,208,453</u>
	5,262,026,958
Provision for bad and doubtful debts	<u>(312,208,453)</u>
	<u>4,949,818,505</u>

The amounts due from associated undertakings included in the above good balance are as under:

<i>Barkat Cotton Mills Limited</i>	0
<i>Fateh Limited</i>	0
<i>Fateh Outerwear Limited</i>	0
<i>Hero Motors Limited</i>	<u>20,035, 035</u>
	<u>20,035,035”</u>

13. We have observed from the above that the following associated companies were not disclosed in the Accounts:

S. No.	Name of customer	Amount Receivable (Rs. in million)
1	Barkat Inc New York	1,754.196
2	Barkat Int'l GMBH Germany	4.236
3	Barkat Limited, Hong Kong	20.768
4	Fateh Int' Hong Kong	1.054
5	Barkat Int'l Limited UK	819.170



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6	Fateh Int'l Limited UK	48.146
7	Barkat Limited, Russia	11.228
		2,658.798

Furthermore, we have noticed that when the Company was specifically asked to state its relationship with these entities, information submitted by the Company stated commercial relationship only. Existence of any association through its directors or shareholders was not mentioned. Therefore, we are of the view that the Appellants have not satisfactorily convinced the Bench that full and accurate information was provided in the Accounts. As far as the misstatements not being willful is concerned, 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.

14. In view of the foregoing, the Impugned Order is upheld with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **07 SEP 2015**