



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 56 of 2016

(i) M/s Apollo Textile Mills Limited ...Appellants

(ii) Ikram Zahoor

(iii) Abdul Rahman Zahoor

(iv) Muhammad Tahir Khan

(v) Muhammad Farooq

(vi) Shabir Ahmed

(vii) Riaz Hussain

(viii) Muhammad Liaquat

(Appellant No. (ii) CEO and Appellants (iii) to (viii) all directors of M/s
Apollo Textile Mills Limited)

Versus

Director (CSD)

....Respondent

Date of Hearing 05/10/16

Present:

For the Appellants (i),(iii),(iv),(v),(vi),(vii)&(viii)

(i) Mr. Adnan Abdullah, Advocate

For Appellant No.(ii)

(i) Nemo

For the Respondent:

(i) Ms. Amina Aziz, Director (CSD)

ORDER

Appellate Bench No. IV

Appeal No. 56 of 2016



Securities and Exchange Commission of Pakistan

1. This Order is in appeal No. 56 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 16/05/16 (Impugned Order) passed by the Respondent.
2. Brief facts of the case are that as per record, Apollo Textile Mills Limited (Company) failed to file the interim financial statements (Quarterly Accounts) for the following periods with the Commission, in a timely manner, as per section 245 of the Companies Ordinance 1984 (Ordinance):

Quarter ended	Due Date of Filing	Filed on
30 Sep-14	31-Oct 14	Not Filed
31 Dec- 14	28 Feb- 15	Not Filed
31 March -15	30 Apr- 15	Not Filed
30 Sep- 15	31 Oct-15	Not Filed

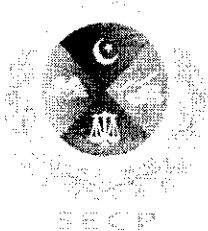
3. Show Cause Notice dated 15/03/16 (SCN) was served upon the Appellants under section 245(3) read with section 476 of the Ordinance for not filing the aforesaid Quarterly Accounts, in a timely manner as per the law. As no reply to the SCN was received within due time, the case was fixed for hearing on 06/04/16, but the Company requested for rescheduling of the hearing. Another hearing in the matter was fixed on 22/04/16 in which Mr. Adnan Abdullah and Mr. Raheel appeared on behalf of the Appellants and made their submissions.
4. The Respondent dissatisfied with the response of the Appellants imposed an aggregate penalty of Rs.140,000 on the directors (Appellants 2-8) in exercise of powers under section 245(3) of the Ordinance in the following manner:

Name of Respondents	Total (Rs.)
1. Mr. Ikram Zahoor, Director	20,000

Appellate Bench No. IV

Appeal No. 56 of 2016

Page 2 of 6



Securities and Exchange Commission of Pakistan

2. Mr. Abdul Rehman Zahur, Director	20,000
3. Mr. Muhammad Tahir Khan, Director	20,000
4. Mr. Muhammad Farooq, Director	20,000
5. Mr. Shabbir Ahmed, Director	20,000
6. Mr. Riaz Hussain, Director	20,000
7. Mr. Muhammad Liaquat Director	20,000
TOTAL	140,000

5. The Appellants preferred the instant appeal against the Respondent on the following grounds:

a) The reason for non-filing of quarterly statement of accounts by M/s. Apollo Textile Mills (Pvt.) Limited was that in the year 2013 the entire accounts data of the Company got corrupted and despite the best endeavours was not retrieved. The Company on account of this reason was not able to hold Annual General Meeting (AGM) in 2014 and 2015.

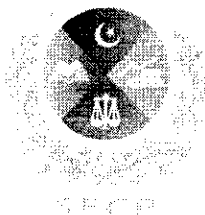
On the issue of delayed AGMs of 2014 and 2015, the Commission had issued SCN dated 24/02/15 under section 158 read with section 476 of the Ordinance to the Company. The Company had disclosed all facts to the Commission in reply to the SCN that the data corrupted and Company's IT staff was trying to recover such data, however, the Company remained unsuccessful. Furthermore, as the data was corrupted, therefore, it was not possible for the Company to file Quarterly Accounts. Subsequently, the Company hired services of professional IT Expert of M/s. Sidat Hyder Morshed (Pvt.) Ltd who after hectic efforts retrieved the accounts data of the Company. The Commission, subsequently passed order dated 24/02/16 and imposed fine on the Company for failure to hold AGM for the year 2014 and 2015 on time. It is injustice, therefore, to impose fine again for non-submission of accounts. The Impugned Order amounts to double jeopardy, therefore, the same is liable to be set aside.

b) The learned Commissioner during the course of the hearing of the SCN directed the Appellants through their counsel to show whether delayed quarterly accounts have been submitted to the Commission or not. In

Appellate Bench No. IV

Appeal No. 56 of 2016

Page 3 of 6



Securities and Exchange Commission of Pakistan

compliance of the said directions, the accounts were submitted and TCS confirmation was sent to the learned Commissioner through letter dated 22/04/16 but the same was not taken into consideration by the learned Commissioner.

c) The Respondent observed in the Impugned Order that the written reply was not filed by the Appellants within time but failed to appreciate that the SCN did not stipulate time for filing reply. The Respondent failed to appreciate the material and documents available on record, therefore, the Order passed by the Respondent is not sustainable in law.

6) The Respondent rebutted the arguments of the Appellants on the following grounds:

a) A listed company is required to file its quarterly accounts within the stipulated time. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. It was the responsibility of the Appellants to keep appropriate systems and back up to ensure retrieval of data in time, in case of any failure of the system. Moreover, the Appellants allowed unnecessary and inordinate delays in engaging the service of experts to retrieve data. The Appellants, therefore, cannot absolve themselves of their statutory duties regarding filing of annual and quarterly accounts citing the reasons of data corruption. The Appellants' assertion that the Impugned Order is a case of double jeopardy is misconceived. The provisions of sections 158 and 245 of the Ordinance are separately applicable for holding of annual general meeting and filing of quarterly accounts, respectively. Penalty imposed under section 158 of the Ordinance for not holding the AGM in a timely manner does not preclude the operation of section 245 of the Ordinance which required filing of quarterly accounts within the prescribed time.

b) The Appellants through letter dated 22/04/16 only provided a courier receipt dated 02/03/16 regarding dispatch of half yearly accounts for the year ended 31/12/15. The Appellants further stated that meeting of the

Appellate Bench No. IV

Appeal No. 56 of 2016

- Page 4 of 6



Securities and Exchange Commission of Pakistan

directors was scheduled to be held on 28/04/16 to approve quarterly accounts for quarter ended 31/03/16 and the same will be dispatched to the Commission after approval. However, the Appellants did not provide any evidence of filing of the Quarterly Accounts for September 2014, December 2014, March 2015 and September 2015, which were the subject matter of the proceedings.

c) The Appellants were given time of fourteen days to appear in person and clarify their position with regard to alleged violations but failed to submit the reply in writing during this time. Further, they were given adequate time and hearing was rescheduled upon their request. The Appellants submitted the reply subsequently which has been duly considered in the Impugned Order.

7. We have heard the parties i.e. the Counsel for Appellants 1, 3, 4, 5, 6, 7, 8 and the Respondent. However, no one appeared on behalf of Appellant No.2, therefore, the order is being passed ex parte to the extent of Appellant No.2.

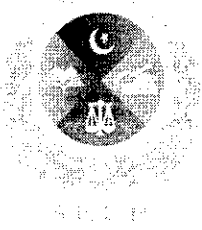
8. The Appellants' Counsel has argued that as the accounts data was damaged; the Company could not hold AGM in the year 2014 and 2015 and file quarterly accounts. Further, the Commission has already penalized the Company for non-holding of AGMs. The Impugned Order is, therefore, a case of double jeopardy. The Respondent has argued that the Appellants used inordinate delay to retrieve the data and being a listed company it was the responsibility of the Appellants to ensure that the quarterly accounts were filed within the stipulated time.

9. We concur with the Respondent that the Appellants had a responsibility as a listed company to file quarterly accounts on time. The Appellants had to ensure that safety mechanisms were in place for protection of sensitive and important data and a data backup mechanism was in place. Further, the Impugned Order is not a case of double jeopardy as violation of section 245 of the Ordinance is a separate violation from non-holding of AGM

Appellate Bench No. IV

Appeal No. 56 of 2016

Page 5 of 6



Securities and Exchange Commission of Pakistan

under section 158 of the Ordinance. The penalties, therefore, were rightly imposed on the Appellants for violation of section 245 of the Ordinance.

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

(Fida Hussain Samoo)
Commissioner (Insurance)
(SCD)

(Zafar Abdullah)
Commissioner

Announced on: 31 OCT 2016