



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 06 of 2014

- i. M/s. Central Forest Products Limited
- ii. Mr. Abdul Aziz Yaqoob, Chief Executive
- iii. Mr. Aamir Aziz, Director
- iv. Mr. Muhammad Sharif, Director
- v. Mst. Qamrunnisa A. Aziz, Director
- vi. Mst. Saira Adam Parwani, Director
- vii. Mst. Farhana Zain Allah Rakha, Director
- viii. Mst. Fouzia Adnan, Director

.... Appellants

Versus

Head of Department (Enforcement), Securities and Exchange Commission of  
Pakistan

.... Respondent

Date of hearings:

06/04/15, 18/08/15

### Present:

#### For Appellants:

- i. Mr. Ishaque Ahmed Khawaja, Advocate High Court
- ii. Mr. Aamir Aziz

#### For Respondent:

- i. Mr. Muhammad Siddiqui, Executive Director (C&CD)
- ii. Mr. Irfan Afzal, Deputy Director (C& CD)



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## ORDER

1. This order shall dispose of appeal no. 06 of 2014 , filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 17/01/2014 (the Impugned Order) passed by the Respondent.
2. The brief facts of the case are that examination of annual audited accounts of the Appellant no.1 for the year ended 30/06/12 (the Accounts) revealed that the statutory auditors (Auditors) have expressed an adverse opinion and stated that the Accounts do not give true and fair view of Appellant no.1 affairs and the management has inappropriately valued stock in trade including; work in-process valuing Rs.176,201,485 and finished goods Rs.69,266,705 at cost, as these stocks should have been valued at Net Realizable Value (NRV). Further no provision has been made in the Accounts for mark-up held in suspense account by the National Bank of Pakistan (NBP). The Appellant no.1 approved "Duty and Tax Remission Exports" scheme (DTRE) expired on 30/03/08 and an amount of Rs.51.975 million along with additional taxes and consequently penalties were required to be paid to the Custom Sales Tax and Income Tax Departments as the Appellant no.1 remained unable to obtain extension of DTRE. Accumulated losses of the Appellant no.1 wiped out the equity by Rs.23,497,791 and these events indicated material uncertainty existed which may cast significant doubt on the Appellant no.1 ability to continue as a going concern. However, the Appellant no.2 to 8 have contended the qualifications of the Auditor in their report for the year for the year ended 30/06/12 and stated Appellant no.1 has the ability to continue as going concern and the NBP has agreed to allow the Appellant no.1 to sell Nooriabad Plot and clear their liabilities. The NBP has also agreed to reschedule the entire liabilities of Appellant no.1. Furthermore, the Appellants have taken necessary steps for renewal of DTRE and disposal of present stock.
3. The explanations provided by the Appellants, in response to the Auditors qualification were misleading and it appeared that the Appellants have contravened



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the provisions of Section 492 of the Companies Ordinance 1984 (Ordinance) by authorizing and approving the Accounts wherein the liabilities and loss for the relevant period have been understated. Therefore, the Respondent issued a Show Cause Notice dated 15/05/13 (SCN) to the Chief Executive/Managing Director and Directors of the Appellant no.1 as to why penal action under section 492 of the Ordinance be not taken. A written reply of SCN was submitted vide letter dated 20/06/13 and hearings in the matter were conducted on 22/10/13 and 08/01/14 .The Respondent being dissatisfied with the response of the Appellants imposed a total fine of Rs.350,000 on the directors including the Chief Executive in the following manner:

S. No.	Name of Director	Penalty (Rs.)
1.	Mr. Abdul Aziz Yaqoob, Chairman/CEO/MD	50,000
2.	Mr. Aamir Aziz, Director	50,000
3.	Mr. Muhammad Sharif, Director	50,000
4.	Mrs. Qamrunnisa A. Aziz, Director	50,000
5.	Mrs. Saira Adam, Director	50,000
6.	Mrs. Farhana Zain, Director	50,000
7.	Mrs. Fouzia Adnan, Director	50,000
	Total	350,000/-

4. The Appellants have preferred the instant appeal against the Impugned Order on the following grounds:

- The Respondent has served the SCN on the Appellant No.02 to 08 in their personal capacity rather to treat them as Board of Directors of Appellant No.1. Further no SCN was issued to the Appellant no.1 which is unjustifiable and against the Article 4, 18 & 25 of the Constitution of Pakistan, 1973.
- The Respondent has not passed a well-reasoned order in terms of Judgment of Honorable High Court (1996 CLC 293).



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- c) The Appellant no.2 to 8 has not committed willful default.
- d) The Auditors are responsible for alleged default and they have not taken due care.
- e) The Respondent has separated the Appellant no. 1 and Appellants no. 2 to 8 while passing the Impugned Order, hence violated Article 10-A of the Constitution.
- f) The Appellants resolved through board resolution dated 05/10/12 to file a suit against the NBP for recovery of Rs.1,259,857,666. The Accounts were signed by the Auditor and Appellants no. 2 to 8 on 09/10/12 and at time NBP communicated that they are ready to settle the principal loan amount without charging markup, therefore markup issue was not placed in statement of Accounts in question.
- g) The Appellant no.2 to 8 have provided State Bank of Pakistan (SBP) policy regarding freezing the markup, however the Respondent has not mentioned this fact in the Impugned Order. The Respondent also failed to call said policy from the SBP, therefore Appellate Bench may call that policy to resolve the controversy of para 8 of the Impugned Order.
- h) The Appellants were condemned unheard which is contrary to the Honorable Supreme Court judgment cited as PLD 1959 SC 45. Further the Respondent presumption regarding existence of "approved contractors of United Nations" list is incorrect.
- i) The NBP valuer has verified the stocks from July 2013 to 31/01/14 to determine the Net Realization Value (NRV).
- j) The Custom Authorities have inspected Appellant no.1 and verified whether the entire stock manufactured under DTRE is properly stocked. After physical examination, they were satisfied and have taken an undertaking from Appellant no.1 that the entire stock will be exported.
- k) The Respondent has passed the Impugned Order during the pendency of the litigation, which is against the law and prejudice to the Appellants rights.



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Further, the Appellate Bench may consider the revival plan dated 22/11/2013 for wellbeing of the Appellants.

5. The Respondent rebutted the grounds of appeal in the following manner:

- a) The Appellant no.2 to 8 were penalized in their personal capacity being directors of Appellant no.1 and they were required by Section 233 and 236 to prepare and present duly audited Accounts and Reports in general meeting. The directors have contravened the provisions of Section 492 of the Ordinance by authorizing and approving the Accounts for the year ended 30/06/12 wherein the liabilities and loss have been understated. The Appellants were aware of material uncertainties; however, they failed to report the same to the members.
- b) The Impugned Order is a speaking and well-reasoned order by keeping in view the relevant facts and evidence submitted by the Appellants.
- c) The alleged violations were in the knowledge of Appellant no.1 to 8 and they have committed willful default in compliance of the relevant provisions. More significantly, Appellant no. 2 to 8, at the time of their appointment as directors consented to act as directors of the Appellant no.1. Therefore, by virtue of their consent they were required to perform fiduciary duties with due care, greater knowledge and expertise about the matters being handled. In the case of City Equitable Fire Insurance Co. Ltd Re. 1925 Ch 407, it was held that a default, in case of breach of duty, will be considered 'willful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent.
- d) The annual accounts of Appellant no.1 for the preceding 8 years i.e. from June 30, 2004 to 2012 were audited by three different audit firms namely, Rafiq & Co, A.H. Habib & Co. and Ibrahim, Shaikh & Co, who also gave the same adverse opinion as highlighted in the Accounts for the year 2012. The Auditors have already expressed their qualification with respect to Accounts as required by law; therefore there is no need to call comments from auditors to determine their default.



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- e) The impugned Order was passed under Section 492 which provides that whoever in any return, report, balance sheet, profit and loss account, income and expenditure account, 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.
- f) The subject proceeding under Section 492 were initiated on the basis of the Accounts for the year ended 30/06/12, which was initiated much before the matter moved to the Court i.e. in December 2012. Therefore, the Respondent was not barred to proceed with the matter.
- g) The Appellants failed to produce any documentary evidence from SBP with regard to freeze markup on export re-finance facility availed by the Appellant no.1 except NBP letter dated October 8, 2003 which disclosed that SBP has declined such relief and debited NBP's account on due date on account of Appellant no.1 export facility.
- h) The Appellants were given ample hearing opportunities to plead their case and to produce evidence in their favor. Further the denial and assertion of the Appellants that the Respondent has presumed about the approved contractors of United Nation cannot be acceded being contrary to the record. As matter of fact the Appellants have admitted in a report dated 22/11/13 that in October 2003, they were given a list of 7 contracts, however the UN-Habitat dropped Appellant no.1 name from that list without assigning any reason.
- i) The Appellants argument that NRV of the stocks is higher than its cost cannot be accepted because stocks of finished goods and major part of work in process were made as per customized specifications and for last more than 12 years such stocks are lying in godown and are subject to extreme weather conditions and wear tear of wood's life cycle. Moreover, all the auditors qualified their reports for ascertainment of valuation of closing stock and reported that management has inappropriately valued the stocks at cost as these stocks should have been valued at Net Realizable Value.



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- j) The Appellant no.1 has availed the tax rebate under "Duty and Tax Remission Exports" scheme (DTRE). However, the Appellants have admitted that they could not find any customer, for their products lying in finished goods and work-in-progress stocks due to mismatch of specifications. There is chance that the Appellant no.1 may fail to avail tax rebate under DRTR, which resultantly requires adjustment/provision for a liability of Rs.51.974 million.
- k) The proceedings against the Appellants were initiated on the basis of misstatement in the Accounts and on the contravention of requirement of International Financial Reporting Standards ("IFRS") resulted into misstatement of the balance sheet and profit and loss account of the Appellant no.1 for the year ended June 30, 2012; the preparation of the accounts on the inappropriate basis of going concern in view of the material uncertainties and closed operations of the Appellant no.1 also led to initiate these proceedings.
6. We have heard the parties at length and perused the relevant record with the able assistance of the parties i.e. Appellants and Respondent. The record has revealed that the Appellant no.1 prepared Accounts as a going concern, which is against the fact as the Appellant no.1 has closed its operations since long, therefore such Accounts could not be treated as true and fair in terms of provisions of the Ordinance and applicable IFRS standards. The directors of Appellant no.1 have also acted contrary to the requirements of fiduciary relationship with the Appellant no.1 as they were required to implement and follow the required standards for preparation of Accounts. Further, the directors have opted to record the value of stocks at cost however they were required to follow NRV method to calculate the real value of the stocks. The act of Appellants to record the value of stock at cost could not be permitted because they have failed to consider the wear tear and impairment of stocks during last 12 years.
7. It is also an admitted fact that the Appellants have not found yet a customer for their products lying as finished goods and work-in-progress stocks due to mismatch of specifications as it was a customized order. The Appellant no.1 has lost the original customer and due to customize stocks the possibility of getting a new customer



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appears to be remote. Therefore, the Appellant no.1 may fail to claim tax rebate under DTRE. In the above circumstances the Appellants were required to make adjustments in the Accounts for a liability of Rs.51.974 million; however the same had not been provided. Therefore, the violation of Section 492 of the Ordinance has been established against the Appellants.

8. In view of the aforesaid, the Respondent has successfully established the default and violation on the part of Appellants. We find no reason to interfere with the Impugned Order dated 17/01/14 passed by the Respondent, therefore appeal is dismissed.

9. Parties to bear their own cost.

( Fida Hussain Samoo )  
Commissioner (Insurance)

( Zafar Abdullah )  
Commissioner (SCD)

Announced on: **07 SEP 2015**