



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 60 of 2013

Muhammad Ayub C/O Muhammad Ayub & Co.

.... Appellant

Versus

The Securities and Exchange Commission of Pakistan (Enforcement)

.... Respondent

Date of hearings:

14/05/15, 18/08/15

Present:

For Appellant:

Mr. Afzal Hussain, Advocate High Court

For Respondent:

- i. Mr. Ali Azeem Akram, Executive Director (CSD)
- ii. Mrs. Maheen Fatima, Director (CSD)
- iii. Mr. Amjad Iqbal, Deputy Director(CSD)

ORDER

1. This order shall dispose of appeal no. 60 of 2013, filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997, against the order dated 11/10/13 (the Impugned Order) passed by the Respondent under Section 255 read with Section 260 and Section 476 of the Companies Ordinance 1984 (the Ordinance).
2. The facts leading to the case are that the Appellant audited the accounts of the Lion Steel Mills (Pvt) Limited (the Company) for the years ended June 30, 2008, 2009,



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2010, and 2011 (the Accounts) and issued un-modified audit reports (the Reports). The Respondent examined the Accounts of the Company to determine, whether the Reports pertaining to the aforesaid financial years have been made in conformity with the requirements of Section 255 of the Ordinance. Detailed scrutiny of the Accounts in the light of the provisions of the Ordinance, Accounting and Financial Reporting Standards for Medium Sized Entities (the "AFRS, MSEs") and applicable International Standards on Auditing (the "ISAs") revealed that the value of stocks, spares and stores in trade is "*as taken and verified by the management of the Company*" (Note 4 to the Accounts) which establishes that the Auditor has failed to observe physical stock checking / counting. The Respondent issued a notice to the Appellant to obtain the clarification on the said matter, however the Appellant submitted that the observation mentioned in the notice is not correct.

3. The Appellant vide letter no. 003/13-76 dated April 22, 2013 submitted copies of correspondence letters between the Company and the Appellant and extract from the stock checking sheets as evidence of stock taking. Careful examination of aforementioned correspondence letters revealed that the Appellant's letterheads that were used for the correspondence with the Company on June 03, 2008 and on June 02, 2009 contained the phone numbers with an extra digit (i.e. 3) which was added by the Pakistan Telecommunication Company Limited (PTCL) in Lahore and Karachi from July 01, 2009. This exhibits that Auditor has submitted fabricated documents to the Commission.
4. Hearing in the matter was conducted on September 25, 2013 and the Authorized Representative of the Appellant accepted the default i.e. they had not observed the physical stock counting and assured to be compliant with the relevant provisions of the laws in future. The Respondent being dissatisfied with the response of the Appellant passed the Impugned Order and imposed a penalty of Rs.30,000 (Thirty Thousand Rupees only) on the Appellant. The Appellant, being aggrieved by the



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Impugned Order preferred an appeal before the Appellate Bench on the following grounds:

- a. The Impugned Order is bad in the eyes of law, arbitrary, illegal, contrary to the natural justice and is against the facts.
- b. The submissions made by the Appellant were not adjudicated and documentary evidence in support of Appellant was totally ignored by the Respondent.
- c. The Impugned Order has been passed on the base of a typographical mistake/ clerical entry of routine nature made at the printing stage of the audited accounts, therefore the Appellant may not be penalized.
- d. The principle of *mens rea* is not attracted because the Appellant had no bad motive.
- e. The Appellant has committed no forgery as the previous correspondence was printed on new letter-head, as the previous copy was not available in hard form.
- f. The imposition of penalty is un-called for due to following:
 - i) The penalty was imposed on the basis of imaginary default and no one's interest has been jeopardized.
 - ii) The un-qualified reports were issued in accordance with the applicable laws.
 - iii) Professional cannot be treated and equated with common criminal.

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

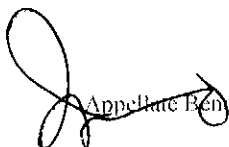
- a. The Impugned Order was passed in accordance with the facts and keeping in view legal provisions therefore, it cannot be considered bad in law. In this case the Appellant failed to obtain necessary information with regard to stocks, spares and stores in trade required to form an opinion under the sub-section 3 of Section 255 of the Ordinance. The Appellant was required to obtain sufficient appropriate audit evidence regarding the stocks, spare and stores in trade as required by International Standard on Auditing 501 before forming his opinion.



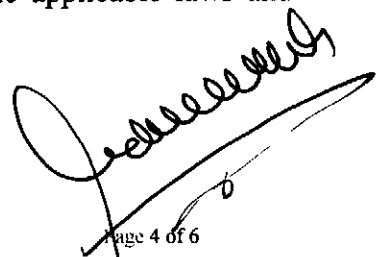
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Para 4 of ISA- 501, (Audit Evidence-Specific Considerations for Selected Items) stipulates that “If inventory is material to the financial statements, the auditor shall obtain sufficient appropriate audit evidence regarding the existence and condition of inventory by attendance at physical inventory counting, unless impracticable”. However the Appellant failed to observe auditing standards applicable in Pakistan and violated Sub-section 3 of Section 255 of the Ordinance by failing to conduct physical stock count.

- b. The Appellant submissions were duly considered during the hearing and the Impugned Order was passed on the basis of available evidence. Further, the documentary evidence provided by the Appellant was found forged, therefore reliance could not be made on fabricated documents.
- c. The Impugned Order is based on the facts and Appellant’s written submissions. The statement “As taken and verified by the management” was incorporated in all four years Accounts therefore it cannot be considered as typographical mistake.
- d. Submission of fabricated documents depicts the bad intention of the Appellant, hence *mens rea* is proved.
- e. The Appellant has failed to adduce any plausible reasons for providing alleged previous years date on new letter heads. The Appellant has submitted fabricated documents as evidence without mentioning that these were reprinted and signed.
- f. The penalty was imposed after considering each and every aspect of the case.
 - i. The authorized representative of the Appellant admitted during the hearing that Appellant has committed default; therefore actual default was admitted and proved as per the evidence.
 - ii. The un-qualified reports were contrary to the aforementioned provisions applicable in Pakistan.
 - iii. The Auditors are considered as ultimate supervisor of shareholders interest, therefore they are required to follow the applicable laws and mechanism strictly.


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6. We have heard the parties at length and perused the relevant record with the able assistance of the parties i.e. Appellant and Respondent.
7. The Appellant Counsel (Counsel) argued the appeal, inter alia, on the ground that Respondent Head of Department was not authorized to pass the Impugned Order as the powers invoked by the Respondent were vested with the Commission or the Registrar, therefore he prayed to set aside the Impugned Order on this ground. Thereafter he argued the case on merits as well. Before we proceed to address the merits of the case we would like to decide the preliminary objection raised by the Counsel that the Respondent was not authorized to pass the Impugned Order. As per the Statutory Notification No. 706/2011 published in official Gazette the Securities and Exchange Commission of Pakistan in exercise of the powers conferred by Section 10 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) (the Act) read with section 20 (4) (0) thereof, and in supersession of its previous notifications has delegated the Powers and functions of the Commission to the Respondent, therefore the Respondent was authorized to pass the Impugned Order. Hence, the objection of the Appellant cannot be acceded. The Counsel further argued that if the Respondent has passed the Impugned Order in exercise of powers of the Commission delegated to him, the same fact should have been mentioned in the Impugned Order. The Appellate Bench considers this point valid and direct the Respondent to incorporate the fact of delegation of Powers in future adjudication orders, if required and applicable. Further, failure of the Respondent to mention in the Impugned Order that the order is being passed in exercise of delegated powers, cannot be considered as a valid ground to set aside the Impugned Order because it is not prejudice to rights of any party.
8. The Appellant has failed to establish its stance that the Impugned Order was passed contrary to the facts and prevailing laws and requirements envisaged in ISA-501. The Appellant was required to obtain sufficient appropriate audit evidence regarding the stocks, spare and stores in trade, however it failed to perform its responsibilities and

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violated Sub-section 3 of Section 255 of the Ordinance. The Appellant also provided forged documents to prove its case, therefore same could not be relied. Further, the Accounts audited by the Appellant for four consecutive years incorporated a statement "As taken and verified by the management" which depicts that for a period of four years the Appellant has failed to discharge its duty as auditor. As per the above stated facts the Respondent has successfully established the default and violation on the part of Appellant.

9. In view of the aforesaid, there being no reason to interfere with the Impugned Order dated 11/10/13 passed by the Respondent, therefore appeal is dismissed.

10. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner(SCD)

Announced on: 26 AUG 2015