



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH IV

In the matter of

Appeal No. 71 of 2011

(i) Mr. Abdul Razak Diwan, Chief Executive
(ii) Mr. Shabbir Diwan, Director
(iii) Mr. Mohammad Arif Bilwani, Director
(iv) Mr. Iqbal Abdul Shakoor, Director
(v) Mr. Rizwan Diwan, Director
(vi) Mr. Saqib Bilwani, Director ...Appellants
(Appellant No.(i) Chief Executive and Appellants (ii) to (vi) all
directors of Novatex Limited)

Versus

Head of Enforcement Department
Securities and Exchange Commission of Pakistan.
Islamabad

...Respondent

Date of Hearing 14/10/15

Present:

For the Appellants:

(i) Mr. M. Javed Panni, Chief Executive MJ Panni & Associates

For the Respondent:

(i) Mr. Ali Azeem Ikram, Executive Director (Enforcement)

(ii) Ms. Maheen Fatima, Director (Enforcement)

Appellate Bench IV

ORDER



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1. This order is in appeal No 70 of 2011 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order (Impugned Order) dated 10/11/11 passed by the Respondent.
2. Novatex Limited (Company) was incorporated in Pakistan as a Public Limited Company on 14/01/91. The facts leading to the case are that the Respondent while examining the annual audited accounts of the Company for the financial year ended on 30/06/08 observed that the Company contravened the provisions of section 237 of the Ordinance by failing to submit the consolidated financial statements comprising its subsidiary company; M/s G-Pac Corporation (Incorporated in USA).
3. Notice was served on the Company, Chief Executive Officer and Directors of the Company asking them to explain as to why necessary penal action may not be taken against them under section 237(9) for making default in complying with the provision of the said section. The Company Secretary submitted its response vide letter dated 12/07/11. Hearing on the matter was held on 06/10/11 and Mr. Saifuddin Adeeb, Chief Advisor (Tax & Legal), authorised representative on behalf of the Chief Executive and Directors appeared on behalf of the Company.
4. The Respondent dissatisfied with the response of the Appellants held that the Company had not complied with provisions of section 237 of the Ordinance. However, keeping in view the arguments presented, a lenient view was taken and a token penalty of Rs.10,000 was imposed on each Director and Chief Executive Officer of the Company with the total penalty amounting to Rs.60,000.
5. The Appellants have preferred the appeal against the Impugned Order on the following grounds:
 - a) The Company is an unlisted public company, therefore, it is not required to consolidate the accounts in terms of section 237 of the Ordinance. The Company maintained the view that the requirement, as to consolidation, does

Appellate Bench

Appeal No 71 of 2011

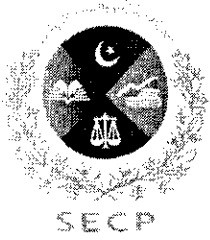
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not apply to unlisted public and private companies and in the absence of the specific requirement tantamounts to explicit and valid exemption. Pursuant to section 234(2) of the Ordinance, the Fourth Schedule is applicable, to listed public companies and for unlisted public companies and private companies, the disclosure requirements have been specified in the Fifth Schedule. Since these Schedules form part of the main law, these Schedules take primacy over IAS. If there is an inconsistency amongst these Schedules on the one hand and IASs on the other, the Schedules shall take primacy over IAS. Thus it can safely be concluded, that the law on consolidation is meant to be applied to listed companies alone, for if we were to implement this law and use Fourth Schedule, the said Schedule would be totally irrelevant to an unlisted or private company. The equity of the Company, during the same period ending 30/06/10 stood at Rs.5.861 billion and that of G-Pac at Rs.8.420 million therefore, the percentage of equity of subsidiary constituted only 0.14% which is a low fraction of one percent, which after consolidation of account with the Company shall have negligible and insignificant impact on the accounts of the Company. Furthermore, on the same grounds, exemption from the requirement to prepare consolidated financial statements had been granted for the period ended 30/06/11 vide letter dated 16/12/11. Exemption was also allowed from preparation of consolidated financial statements by the Appellate Bench-III in Appeal No. 50 of 2012 vide Order dated 09/12/14 for the accounting period 30/06/12. Moreover, the Registrar of Companies vide letter dated 23/06/15 had granted exemption under section 237(8) of the Ordinance from preparation of consolidated accounts for the period ended 30/06/15. It is also important to mention that the Company is family owned and has seventeen shareholders only; therefore, there is no public interest involved.

- b) Further, it is implied that IAS 27 is not applicable to private and public unlisted companies as the SRO 665[I]/2005 dated 28/06/05 issued by the Commission in exercise of powers under section 234[3] of the Ordinance



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relates to directions to follow IAS-27 in preparation of balance sheet and profits and loss account of listed companies only.

6. The Respondent rebutted the arguments as follows:

a) The provisions of section 237 of the Ordinance are explicit and are applicable on all holding companies including public unlisted companies as well as private limited companies as much as these are applicable on public listed companies. This provision makes no distinction amongst these companies. The Company fulfils the criteria of being a holding company of M/s G-Pac Corporation (a subsidiary company) by virtue of owning 100% shareholding. Pursuant to section 237 of the Ordinance, consolidated financial statements shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries at the end of the financial year at which the holding company's financial institution are made out and every consolidated financial statements shall be signed by the same persons by whom the individual balance sheet and the profit and loss account or income and expenditure account of the holding company are required to be signed under section 241. This section also requires that the consolidated accounts shall be on the form and style stipulated in the Fourth Schedule of the Ordinance. Section 237 of the Ordinance is the enabling law for consolidated accounts and prevails over all other provisions. Further, the Fourth and Fifth Schedules prescribe the criteria for presentation of accounts of listed and non-listed companies respectively.

b) The Company qualifies as a holding company under Para 9 of IAS 27 and does not qualify for the exemptions mentioned in Para 10 of IAS-27 which further makes the applicability of the provisions of section 237 imperative in the matter. The opinion of the Technical Services Directorate of Institute of Chartered Accountants of Pakistan (ICAP) was mentioned in the Order to support and corroborate the premise that public unlisted companies are also



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mandated to consolidate accounts. The opinion was not cited as the legal basis for adjudication on the matter.

7. We have heard the arguments of the Appellants and Respondents.
8. Section 237(1) of the Ordinance states that *“there shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company’s financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and an International Accounting Standards notified under section 234(3) of the Act.”* The section applies to a “holding company” and there is no difference in the above provision between listed and unlisted companies.
9. In the instant case, section 237 of the Ordinance was applicable to the Company as it was a holding company. The Fourth Schedule states that it applied to all listed companies, however, the Company as an unlisted company should have complied with the substantive law i.e. section 237 of the Ordinance which takes precedence over any schedule. Further, IAS-27 provides that the Standard applies to the preparation and presentation of consolidated financial statements for a group of entities under the control of a parent. There is no distinction between a listed and unlisted company. Further, the Company does not fall within the exemption of paragraph 10 of IAS-27 which provides that a parent company which itself is a subsidiary does not need to consolidate its investments in subsidiaries in accordance with the Standard. The S.R.O 665(I)/2005 dated 28/06/05 relied on by the Company in support of its argument is in respect of listed companies and has no correlation with the facts of the instant case. The opinion of the Technical Services Directorate of ICAP also states that all companies irrespective of their status have to comply with the requirements of section 237 of the Ordinance.



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10. Section 237(8) of the Ordinance provides, “*The Commission may, on an application or with the consent of the directors of a holding company, direct that in relation to any subsidiary, the provisions of this section shall not apply only to such extent as may be specified in the direction.*” We have noted that the Company had also requested for exemption under section 237(8) of the Ordinance which was granted to prepare consolidated financial statements for the period 30/06/11 and by the Appellate Bench for the accounting period 30/06/12 vide Order dated 09/12/14 in Appeal No. 50 of 2012. The Registrar of Companies vide letter dated 23/06/15 had also granted exemption from preparation of consolidated accounts for the period ended 30/06/15. The Company, therefore, has tacitly accepted that the requirement to consolidate the financial statements exists in law and in the event of failure to comply with the said requirement, an application pursuant to section 237(8) of the Ordinance can be made to the Commission. We are of the view that if for any reason the Company could not comply with the requirements of section 237 of the Ordinance and IAS-27, the Company had the option to make an application pursuant to section 237(8) of the Ordinance to the Commission for an exemption which they have chosen not to exercise in the instant case.

11. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah) -
Commissioner (SCD)

Announced on: **17 NOV 2015**