



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 72 of 2021

Mr. Muhammad Akhtar Mirza, Chairman

...Appellant

versus

Executive Director, Adjudication-I SECP, Islamabad

...Respondent

Dates of hearing:

March 10, 2022, March 31, 2022
and December 30, 2022

Present:

For the Appellants:

Mr. Muhammad Hamza Khokhar, Advocate High Court

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP
3. Mr. Adnan Naseer, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 72 of 2021 filed by the Chairman (Appellant of M/s. Gulshan Spinning Mills Limited (the Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against Order dated March 26, 2021 (Impugned Order) passed by the Executive Director, Adjudication-I SECP, Islamabad (Respondent) for violation of Section 192 and Section 193 and Section 479 of the Companies Act, 2017 (the Act).
2. The brief facts of the case are that review of the annual audited financial statement of M/s. Gulshan Spinning Mills Limited (Company) for the year ended June 30, 2018 (Accounts) revealed that the Chairman's review report was not attached to the Accounts. Hence, the company was prima facie in

Appellate Bench



Securities and Exchange Commission of Pakistan

violation of the requirements of Section 192 and 193 and section 479 of the Act. Therefore, the Respondent issued a show-cause notice dated April 30, 2020 (the SCN) to the Appellant. The written reply of the SCN was received on May 28, 2020, whereas, hearing in the matter was held on March 18, 2021. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 35,000/- on the Appellant.

3. The Appellant has preferred this appeal *inter alia* on the grounds that he is fully cognizant of the fact that the chairman has a fiduciary duty towards the Company and its shareholders. The Appellant stated that due to new requirements of the Act, the Appellant was unable to publish a separate chairman's report in the annual audited accounts for the years 2017-2018. However, the director's report was duly endorsed by the Appellant. The Appellant requested to take a lenient view due to the adverse financial position of the Company and prayed to waive the penalty.

4. The Respondent rebutted the grounds of Appeals and put forth the following arguments:

i. The requirements of Section 192 of the Act are mandatory. The relevant provision of Section 192 of the Act states that:

*"Section 192(4) Every financial statement circulated under section 223 of this Act **shall** contain a review report by the chairman on the overall performance of the board and effectiveness of the role played by the board in achieving the company's objectives."*

The word "shall" in the given provision necessitates and makes it mandatory that financial statements contain a review report by the chairman on the overall performance of the board and the effectiveness of the role played by the board. In the instant appeal, the grounds that requirements of the Act were not known to the Appellant are not tenable and may be rejected as "ignorance of the law is not an excuse".

ii. The Appellant has admitted his default, therefore, instead imposing the maximum penalty provided under Section 193 of the Act, the Respondent while taking a lenient view has imposed a penalty of Rs. 35,000/-.




Securities and Exchange Commission of Pakistan

5. The Appellate Bench (the Bench) has heard the parties and perused the record. In view of the arguments put forth by the parties, the Bench's analysis and findings are as under:

- i. A Public listed company has a higher and more significant responsibility to disseminate true and accurate state of affairs to all the stakeholders in a judicious manner so that they may take appropriate decisions.
- ii. It is an admitted principle of law that "IGNORANTIA JURIS NON-EXCUSANT" i.e "ignorance of the law is not an excuse" so the argument made by the appellant that he was unaware of the changes made vide the Act, is lacking a sound basis.
- iii. The Appellant has admitted his default, however, despite admitting his default, he has not made any payment on account of the penalty so far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- iv. The Appellants' argument, that the penalty may be waived due to adverse financial conditions, is unacceptable.

6. In view of the above discussion, the Bench does not find any justification for interference in the impugned order, therefore decides as under:

- i. The decision made in the Impugned Order is maintained.
- ii. Although the real value (time value) of the penalty amount has significantly reduced due to high inflation, by giving due regard to the admission of default by the Appellant, the amount of the penalty is not enhanced.
- iii. The Appeal is dismissed without any order as to cost.



(Mujtaba Ahmad Lodhi)
Commissioner



(Abdul Rehman Warraich)
Commissioner

Announced on:

17 APR 2023