



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 72 of 2022

1. Mr. Muhammad Akhtar Mirza, Chairman
2. Mr. Sohail Maqsood, Chief Executive Officer
3. Mr. Muhammad Ashraf Khan, Director
4. Mr. Salman Ali Riaz, CFO

...Appellants

versus

Additional Director/Head of Wing, Listed Companies, Adjudication-I, SECP

...Respondent

Date of hearing:

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 2022 filed by the Chairman, the Chief Executive Officer, a director and the Chief Financial Officer (Appellants) of M/s. Gulistan Spinning Mills Limited (the



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Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order passed under Section 237 of the Companies Act, 2017 (the Act) on June 28, 2022 (Impugned Order) by the Additional Director/Head of Wing, Listed Companies, Adjudication-I, SECP (Respondent).

2. The brief facts of the case are that the Company failed to its interim financial statements for the quarters ended March 31, 2019, September 30, 2019, December 31, 2019, March 31, 2020, September 30, 2020, December 31, 2020, March 31, 2021 and September 30, 2021 (the Accounts). Therefore, a show-cause notice dated January 10, 2022 (the SCN) was issued to the Appellants along with others. The Appellants submitted reply to the SCN vide letter dated April 5, 2022, whereas, hearing in the matter was held on May 26, 2022. The Appellants' representatives stated that delay in filing of the Accounts was caused due to resignation of the statutory auditor in November, 2020 without signing the Accounts for the year ended June 30, 2020. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 40,000/- on each Appellant (Aggregate Rs. 160,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that the Company is well aware of its responsibility to file the Accounts within the stipulated time, however, delay in filing of the Accounts was caused due to resignation of the statutory auditor of the Company namely; M/s. Baker Tilly Mehmood Idrees Qamar, Chartered Accountants (the Auditor) without signing the Accounts. The Appellants stated that the Auditor also refused to issue an NOC to the new auditor and they brought this fact into the notice of SECP through letters dated November 13, 2020 and November 16, 2020. The Appellants further stated that the issue was also highlighted to the ICAP through letter dated January 19, 2020. The Appellants stated that without considering the Company's efforts, they were penalized through the Impugned Order. The Appellants prayed for a lenient view on account of subsequent compliance and in support thereof, they relied on the Appellant Bench's orders, cited as 2018 CLD 197 (NTDC case), 2018 CLD 44 and 2018 CLD 1031. The Appellants also stated that delay in filing the Accounts had not caused harm to the rights of the stakeholders, therefore, penalties may



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be waived and be converted into a warning. It has also been argued by the Appellants that the High Court of Sindh has approved a scheme of arrangement with respect to the Company's revival, therefore, this factor may be considered for a lenient view.

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

- i. The compliance history of the Company was not satisfactory. There had been multiple instances of delays and non-compliances and in many cases the compliances were made only after SECP took notice of the matter.
- ii. The Appellants admitted their failure to comply with the requirement of Section 237 of the Act.
- iii. The Appellants acted irresponsibly by delaying the filing of the Accounts without seeking extension for filing of the Accounts.
- iv. Timely filing of the Accounts was important to ensure transparency and information for the stakeholders. In order to foster a culture of compliance, the SECP ought to enforce the relevant legal requirements in an effective manner.
- v. The facts of case laws mentioned by the Appellants are different from the case in hand, therefore, not applicable in this case.

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 responsibility to disseminate true and accurate state of affairs to all the stakeholders in a timely manner so that they may take appropriate decisions.
- ii. If a company's financial statements are not available to the stakeholders within the stipulated time prescribed in law, then its Board is responsible for such default and liable to penal consequences.



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- iii. The Appellants have an unsatisfactory compliance history as there have been multiple instances of non-compliance in recent years.
- iv. The Appellants have committed default in the matter under consideration and have acted irresponsibly by not even seeking extension within due date from SECP.
- v. Upon resignation of the Auditor without signing the Accounts, the Company and the Appellants have failed to follow the procedure provided under Section 246 of the Act, therefore, letters dated November 13, 2020 and November 16, 2020, which are referred by the Appellants in their defense are not acceptable. It was the responsibility of the Company and the Appellants to ensure compilation and audit of the Accounts in a timely manner.
- vi. The Appellants have admitted their default however, despite admitting their default, they have not made any payment on account of penalty so far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- vii. Approval of the scheme of arrangement by Sindh High Court does not absolve the Appellants from their legal obligations.
- viii. The Appellants' have argued that, as a rule, the delay in compliance should be condoned and penalty should not be imposed in all cases where compliance is eventually made. They have referred to a few past decisions of the Appellate Bench in which penalties were waived by the Bench by considering subsequent compliance as one of the reasons for the relief. This Bench is of the opinion that such decisions cannot act as binding precedents for the future. Subsequent compliance can neither be the sole reason, nor be the rule, for complete waiver of a penalty. The decision, whether or not to reduce or waive a penalty, must be based on full appreciation and consideration of the facts and circumstances and to what extent the reasons of non-compliance were within or outside the control of the person. Any attempt to interpret a past decision of Appellate Bench in this manner needs to be discouraged.

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6. In view of the above, the Bench 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, the amount of the penalty is not enhanced by giving due regard to the admission of default by the Appellants.
- iii. The Appeal is dismissed without any order as to cost.

(Mujtaba Ahmad Lodhi)
Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on:

01 MAR 2023