



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 76 of 2024

Mr. Nauman Mahmood

...Appellant

versus

Head of Department, Adjudication -I, SECP

...Respondent

Date of hearing:

January 8, 2025

Present:

For the Appellant:

1. Mr. Mohsin Kamal, Advocate High Court
2. Mr. Nauman Mehmood

For the Respondent:

1. Mr. Sohail Qadri, HOD/Director, Adjudication-I, SECP
2. Mr. Rizwan-ul-Haq, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 76 of 2024 filed by Mr. Nauman Mahmood, Engagement Partner, and M/s. RSM Avais Hyder Liaquat Nauman, (the Appellant) against the Order dated August 28, 2024 (Impugned Order) passed by the Director/Head of Department, Adjudication-I (the Respondent) under Section 253(1) read with Section 249 and 479 of the Companies Act, 2017 (the Act).



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2. The brief facts of the case are that in pursuance of the investigation order dated March 24, 2021, the inspectors submitted the investigation report dated November 5, 2021, which highlighted that the Appellant being the auditor of Pakistan Engineering Company Limited (the Company) issued an undated auditor's report on financial statements for the year ended June 30, 2019 (the Audit Report) without the approval of the Board of Directors (BoD). In view thereof, a show-cause notice dated December 23, 2021 (the SCN) was issued to the Appellant and M/s. RSM Avais Hyder Liaquat Nauman, Chartered Accountants, for alleged violation of Section 249 of the Act and International Standards on Auditing (ISAs), particularly ISA 700. The record reflects that hearings in the matter were scheduled on February 10, 2022, March 14, 2022, April 7, 2022, February 1, 2023 and February 13, 2023. The Appellant participated in the proceedings and furnished written submissions dated February 21, 2022, April 25, 2022, and April 27, 2022. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 200,000/- on the Appellant.
3. The Appellant challenged the Impugned Order, *inter alia*, on the grounds that the Respondent had merely discussed the general obligations of auditors without establishing any specific misconduct, which is contrary to the principle laid down in CLD 2007 Lahore 1439 whereby it was held that specific violations should be alleged instead of general allegations. The Appellant further submitted that the Respondent failed to verify from the Company why NAB letter dated December 27, 2019 was not shared with the Appellant whereby the Company was allowed to convene its BoD meetings to meet the obligations under the Act. The Appellant further stated that the Company submitted a legal opinion dated January 2, 2019 along with NAB letter dated November 20, 2018 whereby it was stated that due to the Economic Reforms Order, 1972, the Managing Director is empowered to use the powers of the Board of Directors, therefore, the Appellant had no other option but to audit the Accounts which were duly approved by the Managing Director.
4. The Appellant further contended that as per ISA 705, a disclaimer was issued in the audit report due to uncertainties existed regarding the completeness and accuracy of the financial information, therefore, no opinion was expressed regarding the Audit report. The Appellant emphasized that the Company itself had objected to the disclaimer in its letter dated December 8, 2020, yet the Respondent failed to appreciate this crucial aspect.



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5. The Respondent rebutted the grounds of appeal and denied the Appellant's assertion that the Impugned Order has been passed contrary to the principle laid down in *CLD 2007 Lahore 1439* whereby it has been held that instead of general allegations, specific violations should be alleged.
6. The Respondent submitted that the Appellant had issued an audit report on unapproved financial statements, which was not dated, thereby violating the provisions of Sections 249 and 251 of the Act. The Respondent reiterated that the violations alleged in the SCN were grave, and the Impugned Order was a well-reasoned determination based on law and facts. The Respondent asserted that due process was duly observed, and multiple opportunities were provided to the Appellant to present his defense. It was emphasized that the Impugned Order was neither mechanical nor arbitrary but rather a carefully reasoned decision that addressed and refuted the arguments advanced by the Appellant with cogent reasoning. The Respondent stated that two varying audit reports were submitted: the contents of the audit report submitted by the company with the Commission was different from the audit report submitted by the appellant during the SCN proceedings. The Respondent further stated that the Commission, upon review, found that the Board of Directors was not legally incapacitated, as the National Accountability Bureau ("NAB"), through a letter dated December 27, 2019, had explicitly allowed the Company to convene Board meetings, therefore, the Appellant's reliance on the unsigned legal opinion was not correct.
7. The Bench has heard the parties and examined the record. The Bench notes that the Appellant's reliance on *CLD 2007 Lahore 1439* is misplaced, as the said judgment pertains to the absence of specific findings in an order, whereas the Impugned Order comprehensively identifies the violations committed by the Appellant.
8. The Bench has observed that two audit reports are on record, one report is dated December 7, 2020 whereas the other report is not dated. The Appellant stated that the dated report was prepared and shared with the Company. The Appellant further stated that on December 8, 2020, the Company's representative came and asked for five additional copies of the audit report which were prepared but not dated. It is pertinent to mention here that the only difference between the original report and the additional copies of auditor report is that the date was not inserted in the copies handed over to the company subsequently. Submission of the undated auditor report, compelled the Commission to take



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action against the auditor of the Company, therefore, a SCN was issued to the appellant. During the SCN proceedings, the Appellant submitted a dated copy of the audit report (December 7, 2020) and stated that he is not liable for any undated report submitted by the Company. The Bench has perused the audit report submitted by the Company (undated audit report) and the report submitted by the Appellant (dated audit report). Upon perusal of both reports, the Bench finds that the contents of both audit reports are different. The Bench is of the view that as both the audit reports are admittedly prepared by the Appellant, therefore, any difference in contents of these reports cast serious doubts on the authenticity and credibility of the latter document and suggest that it was prepared *post facto* to justify the actions of the respondent rather than being the actual audit report issued in due course.


9. With regards to the appellant's contention regarding disclaimer, the Bench is of the view that a disclaimer provided in the audit report was in accordance with ISA 705 (Revised). The bench is of the view that the auditors may issue disclaimers under certain circumstances, however, such a disclaimer does not absolve an auditor from adhering to fundamental legal and regulatory requirements applicable to the auditors.
10. The Bench has further noted that the Appellant's contention that the Company has not provided a copy of the NAB letter dated December 27, 2019, whereby, the Company was allowed to convene the BOD meetings of the Company to meet the requirements of the Applicable law. The Bench observes that the Appellant's assertion that the Company failed to provide the NAB letter does not exonerate him from ensuring compliance with the statutory obligations under the Act.
11. The Bench further finds that the Respondent adhered to the due process, as multiple hearing opportunities were afforded to the Appellant. The Bench is of the view that the absence of the Company from the proceedings does not render the them unfair, as the burden of compliance with auditing standards and statutory requirements rests with the Appellant. The Bench observes that the discrepancies in the audit reports, the absence of a date on the report, and the issuance of an audit report on unapproved financial statements are substantive violations. The Bench, therefore, finds that these violations justify the penalty imposed through the Impugned Order.



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12. In view of the foregoing, the Bench finds no merit in the Appeal. Consequently, the instant Appeal is dismissed without any order as to costs.


(Zeeshan Rehman Khattak)
Commissioner


(Akif Saeed)
Chairman/ Commissioner

Announced on: **17 APR 2025**