



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 81 of 2017

Hajra Textile Mills Limited

...Appellant

Versus

Director, Corporate Supervision Department, SECP

...Respondent

Date of hearing:

May 30, 2024

Present:

For the Appellant:

1. Sardar Qasim Hassan Khan, Advocate

For the Respondent:

1. Mr. Muhammad Tanveer Alam, Additional Director, Supervision Division, SECP
2. Mr. Kashif Ali, Joint Director, Supervision Division, SECP

ORDER

1. This order shall dispose of Appeal No. 81 of 2017 filed by M/s. Hajra Textile Mills Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated April 24, 2017 (the "Impugned Order") passed by the Director - Corporate Supervision Department ("CSD"), SECP (the "Respondent") under Section 231 of the Companies Ordinance, 1984 (the "Ordinance").



Securities and Exchange Commission of Pakistan

2. Brief facts of the case are that the annual audited accounts (the “Accounts”) of the Appellant for the year-ended June 30, 2016 reflected a dismal financial position of the Appellant and it had closed business operations since March, 2012. The accumulated losses of the Appellant stood at Rs. 826.49 million and its current liabilities exceed its current assets by Rs. 885.2 million. The Accounts were prepared on the ‘going-concern’ assumption whereas, as per the auditor’s report, the use of the term ‘going-concern’ was not appropriate. Furthermore, the auditors of the Appellant were unable to carry out physical verification of the property, plant and equipment, and stores and spares. Non-confirmation of markups from different banks and trade creditors also added towards the pronouncement of the Impugned Order. Furthermore, revaluation of fixed assets charged an impairment loss of Rs. 190 million which is in excess of the revaluation loss of Rs. 126 million as per revaluation report on plant and machinery and gas power generation plant. The Appellant has been incurring loss after tax since the year 2004 and incurred a net loss after tax of Rs. 204.66 million and Rs. 13.44 million in year 2015 and 2016, respectively. Keeping in view the above circumstances, the Respondent in exercise of the powers conferred under Section 231(1) of the Ordinance ordered an inspection of the books of accounts and appointed two officers to probe into the affairs of the Appellant.

3. The Appellant has challenged the Impugned Order, *inter alia*, on the grounds that the Respondent has failed to consider the fact that the textile sector was facing severe financial and energy crises and liquidity crunch in the market which still persists, as well as the fact that the Appellant had closed its business operation in the year 2012 to avoid cash losses. The Appellant stated that it injected funds in the company in the form of ‘director’s loan’ of Rs. 339.748 million to meet the working capital requirements and fulfilment of financial commitments. The Appellant argued that the Respondent ignored the fact that due to closure of business there was no staff in the factory and head office, therefore, the Appellant could not facilitate the auditor for stock-taking. The Appellant further stated that revaluation of fixed assets was carried out in the financial statements on a ‘written-down value’ basis and all additions or deletions in the fixed assets were recorded as and when a transaction was executed. The Appellant argued that all the record is updated except the fixed assets register which has not been updated for the last few years and could only be updated after resumption of operational activities. The Appellant further argued that the auditor’s qualifications pertaining to unconfirmed bank loans, leasing liabilities and insurance claims was



Securities and Exchange Commission of Pakistan

due to pending litigations and the Appellant was not able to pursue the confirmations from the concerned institutions and parties due to suspension of business and non-availability of staff. The Appellant further submitted that the Appellant has made efforts for revival, and in this regard, entered into a settlement with Silk Bank Limited and paid Rs. 2.85 million towards the settlement of liabilities despite closure of the business. The Appellant submitted that it is ready for delisting/buyback of minority shares, therefore, the Impugned Order is not in the interest of justice.

4. The Appellant, during the hearing before the Appellate Bench, submitted that the Director (CSD) has no jurisdiction to pass an order under Section 231(1) of the Ordinance and highlighted provisions of Section 10 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act") regarding delegation of the Commission's functions or powers. It was argued by the Appellant that the Director (CSD) was not an authorized officer of the Commission to pass an order under Section 231(1) of the Ordinance as no delegation of the same is available on record. The Appellant also relied upon the interm order of Islamabad High Court dated 17 November, 2022 in Writ Petition No. 4267 of 2022 (*Unity Foods Limited vs. Securities and Exchange Commission of Pakistan*) during the course of arguments.
5. The Respondent has rebutted the grounds of the Appeal and presented arguments in support of their stance. It was contended by the Respondent that the overall dismal condition of the textile sector does not bar the Commission from appointing inspectors for inspecting books of account of the Appellant. The Respondent argued that the Appellant is not operational since March, 2012 and no measures have been taken by the management for revival. The Respondent submitted that the auditors of the Appellant were unable to carry out physical verification of the property, plant and equipment, and stores and spares and one of the factors leading to inspection is to carry out physical verification to check existence of assets on ground. The Respondent further argued that the revaluation of fixed assets on a 'written-down value' basis is not an appropriate basis for revaluation and the auditor also failed to obtain direct confirmations from financial institutions and qualified the balances. The Respondent argued that the Appellant has been unable to revive business operations, buy-back shares from minority shareholders and have also failed to provide the auditor's certificate with respect to existence of fixed assets, therefore, the Impugned Order was issued accordingly.



Securities and Exchange Commission of Pakistan

6. The Respondent contended that the issue raised by the Appellant regarding non-delegation of powers under section 231(1) of the Ordinance to Director (CSD) is frivolous and baseless and referred to SECP's S.R.O. No. 1003(I)/2015 dated October 15, 2015. It was argued by the Respondent that in exercise of powers conferred by Section 10 of the Act, the Commission has delegated the powers under Section 231(1) of the Ordinance to Director (CSD).
7. We have heard the parties and have gone through the case law on the subject. Section 231(1) and (2) of the Ordinance and Section 33 of the Act are reproduced for ease of reference:

231. Inspection of books of account by registrar, etc: -

- 1) *The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorised by the Commission in this behalf if, for reasons to be recorded in writing, the registrar or the Commission considers it necessary so to do.*
- 2) *It shall be the duty of every director, officer or other employee of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such time and at such place as he may specify.*

33. Appeal to the Appellate Bench of the Commission.: (1) *Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2) Provided that no appeal shall lie against ----*

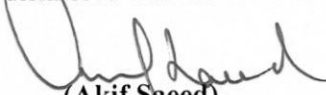
- a) An administrative direction given by a Commissioner or an officer of the Commission,
- b) *An order passed in exercise of the powers of revision or review;*
- c) *A sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and*
- d) *An interim order which does not dispose of the entire matter.*


8. We have perused the Impugned inspection order passed by the Respondent to inspect the books and records of the Appellant which has been passed in accordance with the law. Section 33(1)(a) of the Act states that no appeal shall lie against, "*an administrative direction given by a Commissioner or an officer of the Commission*". Reliance is placed on the following judgments:



Securities and Exchange Commission of Pakistan

- Judgment of Sindh High Court, Karachi in the matter of *Ofspace (Private) Limited vs. Federation of the Islamic Republic of Pakistan and 3 others* cited at 2012 CLD 923, wherein, it was held that, " ... *Exercise of powers under section 231 of the Ordinance is administrative in nature and limited to conducting inspection and preliminary inquiries into the affairs and books of accounts and papers of a company ...*"
 - Judgment of Islamabad High Court, Islamabad in the matter of *Saif Power Limited vs. Federation of the Islamic Republic of Pakistan* cited at 2022 CLD 1382, wherein, it was held that, "... *Order of Commission was in the nature of "an administrative order" and Constitutional petition was not maintainable---If the orders passed by the Commission in terms of Section 231 of the Companies Ordinance, 1984 were subject to challenge, that would paralyze functions of the Commission and the Commission could not be expected to perform its regulatory functions.....*"
9. In view of the dictum laid down by the Superior Courts and Section 33(1)(a) of the Act, no appeal shall lie against an administrative order and, as such, the appeal is not maintainable. Further, after the perusal of the interm order dated 17 November, 2022 passed by the Islamabad High Court in Writ Petition No. 4267 of 2022, it is noted that no judgement has yet been passed by the Honorable Islamabad High Court that may have any effect on the proceedings of the instant appeal.
10. The Bench considers it important to emphasize that it is the prime responsibility of the Commission as a regulator to collect information for effective enforcement of the laws being administered by it. In the absence of such information, the Commission cannot be expected to make fair and impartial decisions. It is, therefore, extremely important for the regulatees/concerned persons to fully cooperate for providing such information.
11. In view of the foregoing, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on:

04 JUL 2024

04 JUL 2024