



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 88 of 2017

1. Mr. Gohar Ullah
2. Mr. Muhammad Saleem
3. Mr. Hasinuddin
4. Ms. Kiran Barkat
5. Mrs. Leena Barkat

Versus

The Director, CSD, SECP

Appellants

Respondent

Dates of hearing:

August 20, 2020
September 23, 2021 &
October 14, 2021

Present:

For the Appellants:

Mr. Atta-ur-Rehman Shaikh, 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.

ORDER

1. This Order shall dispose of Appeal No. 88 of 2017 filed by five directors of M/s. Fateh Textile Mills Limited (the Appellants) against the Order dated June 30, 2017 (Impugned Order) passed by the Director, CSD (the Respondent) under Section 158 and 245 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that M/s. Fateh Textile Mills Limited (Company) failed to convene its annual general meeting (the AGM) for the year ended June 30, 2016 on or before October 31, 2016 in terms of section 158(1) of the Ordinance. Furthermore, the Company also did not file interim financial statements (Quarterly Accounts) under Section 245 of the Ordinance, for the period ended September 30, 2016 with the Securities and Exchange Commission of Pakistan (the Commission). Therefore, a show-cause notice dated February 20, 2017 (SCN) was issued to the Appellants. The Appellants failed to submit any reply to the SCN. Hearing in the matter was fixed for March 6, 2017, March 28, 2017 and May 2, 2017, however, neither the Appellants nor their representative appeared. In the circumstances, the Respondent proceeded ex-parte against the Appellants and imposed a fine for violation of Sections 158 and 245 of the Ordinance, in the following manner;

S. No.	Names of Directors	Penalty under Section 158 of the Ordinance	Penalty under Section 245 of the Ordinance
1.	Mr. Gohar Ullah	50,000	10,000
2.	Mr. Muhammad Saleem	50,000	10,000
3.	Mr. Hasiuddin	50,000	10,000
4.	Mr. Muhammad Salman Hussain Chawla	50,000	10,000
5.	Mr. Imran Ahmed Karatela	50,000	10,000
6.	Ms. Leena Barkat	50,000	10,000
7.	Ms. Kiran Barkat	50,000	10,000
	TOTAL	350,000/-	70,000/-

3. The Appellants filed Appeals *inter alia* on the grounds that they have been condemned unheard and an ex-parte order has been passed. The Appellants further stated that default in holding of the AGM and filing of the Quarterly Accounts was due to the Auditors' refusal to conduct audit of the Company. The Appellants further stated that due to non-availability of opening balance of the accounts, the Quarterly Accounts were neither circulated nor filed with the Commission. The Appellants stated that Section 158(4) and 245(3) of the Ordinance are default provisions and, therefore, do not confer powers on the Respondent to impose fine under the said provisions. The Appellants stated that in case of default under Section 158 of the Ordinance, fine could have been imposed on the Company and all the



Securities and Exchange Commission of Pakistan

directors, however, in the instant case, only the directors have been penalized, which amounts to discrimination. The Appellants stated that Section 476(1)(c) of the Ordinance confers powers on the adjudicating officer, where the amount of fine imposed is either Rs 100,000 or more, whereas, in the instant case Rs 50,000/- and Rs. 10,000/- have been imposed under Section 158 and Section 245 of the Ordinance respectively, hence, the order is without jurisdiction. The Appellants further submitted that the Impugned Order is without jurisdiction since in terms of the Commission's notification SRO 1003(I)/2015 dated October 15, 2015 (the SRO), under Section 245(3) of the Ordinance, the Respondent was empowered to impose a fine on an insurance company, whereas, the Company is engaged in textile business. The Appellants stated that under Section 245(3) of the Ordinance, the fine could have been imposed on every director including chief executive and chief accountant of the company, however, in the instant case only the directors are penalized, hence being discriminatory in nature, the Impugned Order is liable to be set aside. The Impugned Order is also violative of Article 10A of the Constitution of the Islamic Republic of Pakistan (the Constitution) since no opportunity for hearing was provided.

4. The Respondent has rebutted the grounds of Appeal and stated that Sections 158(4) and 245(3) of the Ordinance clearly mention that in case of violation, the directors of a company shall be liable to a fine. The Respondent stated that penalty is not imposed under section 476 of the Ordinance rather penal provisions of Section 158 and 245 of the Ordinance have been invoked to impose penalties on the Appellants, therefore, no illegality can be attributed to the Impugned Order. The Respondent submitted that the Appellants had failed to ensure holding of the AGM and filing of the Quarterly Accounts, therefore, while exercising powers delegated through the SRO, the fine has been imposed on the Appellants under Sections 158(4) and 245(3) of the Ordinance. The Respondent stated that the Appellants were given ample opportunity to explain their position with regard to the alleged violations and accordingly hearing opportunities were provided on March 6, 2017, March 28, 2017 and May 2, 2017, however, they failed to attend the hearings. The Respondent stated that a company is a legal entity, which, operates through natural persons i.e. directors, who are responsible to run the day-to-day affairs of a company. The Respondent stated that directors, in addition to their responsibility of overseeing and managing affairs of the Company, also have fiduciary duties towards the Company and its shareholders. The Respondent further submitted that the directors of a company are liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence.



Securities and Exchange Commission of Pakistan

5. Final hearing in the matter was held before the Appellate Bench (Bench) on October 14, 2021 wherein the Respondent's representative attended the hearing, however, the Appellants' representative Mr. Attar Rehman, advocate vide email dated October 14, 2021 stated that "It is requested that subject appeal is fixed for arguments. in this regards facts and grounds of the appeal may kindly be treated as my arguments." In view of above the Bench has given due consideration to the rebuttal arguments of the Respondent and perused the grounds of Appeal and other relevant facts highlighted by the Appellants in the Appeal.
6. Admittedly, the AGM of the Company has not been convened, therefore, in our view violation of Section 158 of the Ordinance is established. In Appeal, the Appellants have raised an objection that in case of default under Section 158 of the Ordinance, both, the company and every officer of the company should have been penalized, however, fine has been imposed on directors only, which tantamount to discrimination. The Bench has perused the Impugned Order and noted that the Respondent has adequately mentioned the required role and responsibilities conferred upon the directors and their failure in this regard, therefore, in our view plausible justification for imposition of fine on them has been provided. The Bench is of the view that mechanical application of penalty clause of Section 158 of the Ordinance on the Company is unjust because violation was caused by the Appellants, who had the responsibility to ensure compliance of law. In view thereof, the Bench is of the view that by imposing fine on directors alone, the Respondent has not committed any illegality.
7. The Bench has also reviewed the contention of the Appellants that opportunity of fair trial under Article 10-A of the Constitution has not been provided by the Respondent, however, this assertion is against the facts of this case. The Bench is not inclined to accept the Appellants' assertion that they have been deprived of fair trial because as per the record, adequate hearing opportunities were provided to the Appellants on March 6, 2017, March 28, 2017 and May 2, 2017, however, they failed to appear and plead their defense before the Respondent. Furthermore, in our view the conduct of the Appellants whereby, despite several opportunities, they failed to respond to the SCN which reflects unprofessional and casual demeanor of the Company's Board of Directors.
8. The Bench also rejects the Appellants stance that Section 158 of the Ordinance is a default provision, therefore, penalty cannot be imposed under this provision. As a matter of fact, and record, the Respondent had imposed penalty under Section 158(4) of the Ordinance, which is a penal provision,



Securities and Exchange Commission of Pakistan

therefore, we also reject the Appellants plea that penalty has been imposed under Section 476 of the Ordinance.

9. The Bench is of the view that as per the SRO, the Respondent was authorized to take penal action against a listed insurance company, however, admittedly, the Company is not engaged in insurance business, therefore, imposition of penalty under Section 245(3) of the Ordinance was without jurisdiction.
10. In view of the above, we partially admit this Appeal and *set aside* the Impugned Order to the extent of issuance of the SCN and imposition of penalty under Section 245(3) of the Ordinance. Whereas, we hereby dismiss this Appeal to the extent of issuance of the SCN and imposition of penalty under Section 158(4) of the Ordinance. The order is passed without any order as to cost.

(Sadia Khan)
Commissioner

(Farrukh Hamid Sabzwari)
Commissioner

Announced on: 09 NOV 2021.