



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH**

In the matter of

**Appeal No. 35 of 2010**

1. Vazir Ali F. Mohammad, Chief Executive (former)
  2. Sadruddin Hashwani, Director
  3. Shiraz Noordin, Director (former)
  4. Sarah Hashwani, Director
  5. Zulfiquar Ali A Jumani, Director
  6. S A Arjani, Company Secretary
  7. Hashoo Holding (Pvt.) Ltd
- .....Appellants

Versus

Director (Enforcement)/ Additional Registrar of Companies  
Securities and Exchange Commission of Pakistan

.....Respondent

**ORDER**

Date of hearing

28-04-11

**Present:**

For the Appellant:

Furkan Ali, Advocate

Respondent:

Bilal Rasul, Additional Registrar/ Director (Enforcement)



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1. This order will dispose of appeal No. 35 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 25-06-10 ("Impugned Order") passed by the Respondent.
2. On examination of the annual accounts of Hashoo Holding (Pvt.) Ltd (the "Company") for the year ended 30-06-08 and 30-06-09 (the "Accounts"), it transpired that the Company holds more than 50% of voting shares in the following unquoted companies :

<u>Company Name</u>	<u>% of holding</u>
Murtaza Construction Corporation (Pvt.) Ltd	98.99
Nadia Estates (Pvt.) Ltd	95.99
Hassan Ali and Company (Pvt.) Ltd	97.85
Hashoo Properties Limited	72.48
Hashoo Limited	98.82
Hashoo International (Pvt.) Ltd	51.53
Bagh-e-Landi Properties (Pvt.) Ltd	93.88
Bagh-e-Korangi (Pvt.) Ltd	98.27
Transair Travels (Pvt.) Ltd	100.0

3. The Company is a holding company of the aforementioned subsidiaries, by virtue of holding more than 50 % of voting securities and the power to elect and appoint more than 50% of its directors as specified in section 3(a) of the Companies Ordinance , 1984 ( the " Ordinance"). The Company in violation of section 237 of the Ordinance failed to prepare and attach to its financial statements the consolidated financial statements of the group.
4. Show cause notice ("SCN") was issued to the Company, Chief Executive Officer and directors calling upon them to show cause in writing as to why necessary penal action may not be taken against them under section 237(9) of



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the Ordinance for making default in complying with the provisions of the section 237 of the Ordinance. The Appellants filed response to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs 25,000 on each Appellant for violating section 237 of the Ordinance.

5. The Appellants, dissatisfied with the Impugned Order, have preferred the instant appeal. The Appellants' counsel argued:

a) that the Company is a private limited company and was complying with the disclosure requirements of Fifth Schedule of the Ordinance under a bona fide mistake. The Appellants have corrected the mistake and have filed the account for the year ended 30-06-10 in compliance with the Fourth Schedule of the Ordinance and section 237 of the Ordinance.

b) that the default was not willful and intentional, as such, the penalty imposed on the Appellants should be set aside. The Appellants' counsel also placed reliance on the Black Law Dictionary where the term 'wilful' is defined as an "*act done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently*".

6. The Respondent argued that section 237(1) of the Ordinance requires that a holding company, whether it is a public company or a private company, having a subsidiary or subsidiaries shall prepare and attach to its financial statements, the consolidated financial statements of the group. The Appellants were required to comply with the disclosure requirements of the Fourth Schedule of the Ordinance, instead the Appellants filed their accounts under the Fifth Schedule of the Ordinance. Further, it cannot be treated as bona fide mistake as the position of Chief Executive, directors and the Company Secretary requires a higher level of knowledge and skill, which was not



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exhibited by the Appellants. The act of the Appellants was willful, as such, the penalty was rightly imposed on the Appellant.

7. We have heard the parties. Section 237 of the Ordinance is reproduced for ease of reference:

*[237. Consolidated financial statements. - (1) There shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and an International Accounting Standards notified under sub-section (3) of section 234.*

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8).....

(9) *If ~~a~~ holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable with fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not willful and intentional.*

**Emphasis added**




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The requirement of law is clear and unambiguous, which is for holding company to submit the consolidated financial statements presented as a single enterprise in accordance with Fourth Schedule of the Ordinance, International Accounting Standard-27 and Circular No 1 of 2001 dated 21-01-01. The failure on part of the Appellants cannot be termed as bona fide as the law imposes a duty on every officer of the Company to comply with its requirements. Moreover, the Chief Executive and directors of the Company have a fiduciary relationship with the Company. The fiduciary is required to have greater knowledge and expertise about the matters being handled. If the requirements of law on a particular matter are clear, it is unacceptable for the fiduciary to claim that he was unaware of the requirements. We also place our reliance on the case titled City Equitable Fire Insurance Co Ltd Re, 1925 Ch 407, referred to in 2005 CLD 333 in case titled Shaikh JALALUDDIN F.C.A. versus Commissioner (Enforcement and Monitoring) SEC where it was held that a default, in case of breach of duty, will be considered 'wilful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent.

The Appellants, by not complying with the requirements of section 237 of the Ordinance, are in violation of the law and their in-action will be termed as recklessly careless in light of the case law cited above.

In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

  
(MUHAMMAD ALI)  
Chairman

  
(MR.TAHIR MEHMOOD)  
Commissioner (CLD)

Announced on: 26<sup>th</sup> May 2011