



**BEFORE
RECONSTITUTED APPELLATE BENCH NO. III**

In the matter of

Appeal No. 17 of 2005

Mian Farooq Ahmed Sheikh
Chief Executive Officer
Colony Sarhad Textile Mills Ltd.
125 Murree Road
Rawalpindi.....Appellant

Versus

Director (Enforcement), SECP.....Respondent

Date of Impugned Order April 05, 2005

Date of hearing of appeal August 25, 2005

Present:

Mian Farooq Ahmed Sheikh for himself

Mubasher Sæed, Joint Director & Abdul Ghafoor Khan, Deputy Director for the Respondent



ORDER

1. This order will dispose off appeal No.17 of 2005 filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 by Mian Farooq Ahmed Sheikh, the chief executive officer of Colony Sarhad Textile Mills Ltd ('Company') against the order dated 05-04-2005 ('Impugned Order') passed by Executive Director (CLD).

2. Brief facts leading to this appeal are that the Company was required under section 245 of the Companies Ordinance, 1984, ('Ordinance') to prepare and transmit its quarterly accounts for the 3rd quarter ended on 30-06-2004, to its members and the Commission, within one month of the close of the said quarter. The Company prepared the quarterly accounts and also transmitted them to the members, but failed to simultaneously file them with the Commission. A notice dated 23-09-2004 was served on all directors including the chief executive officer of the Company to show cause why penalty as provided in sub-section (3) of section 245 of the Ordinance should not be imposed on them. A reply dated 09-10-2004 to the show cause notice was filed by the company secretary on behalf of all directors. Subsequently, an opportunity of hearing was provided by the Executive Director (CLD), and not being satisfied with the arguments presented before him, he imposed a penalty of Rs.10,000/- on the chief executive officer vide the Impugned Order.

3. Mian Farooq Ahmed Sheikh, the chief executive officer of the Company ('Appellant') has filed the present appeal against the Impugned Order. The appeal was heard on 25-08-2005 when the Appellant appeared for himself and the Executive Director (CLD) was represented by Mr. Mubasher Saeed, Joint Director (Enforcement & Monitoring Department). The Appellant informed the Bench that he has already deposited the fine of Rs.10,000/- imposed by the Executive Director (CLD) to show his bona fide. However since he did not agree with the findings in the



Impugned Order, he has preferred the present appeal. He stated that the Company had a clean record and had never defaulted in complying with the statutory provisions. He informed the Bench that the quarterly accounts had been prepared by the Company within the stipulated time and were circulated among the members and the stock exchanges. He further informed the Bench that the accounts had also been transmitted to the Registrar of Companies as required under law. However, due to oversight the accounts could not be transmitted to the Commission simultaneously. He contended that at best this was a mistake and therefore a lenient view should have been taken by the Commission keeping in view the past record of the Company. He prayed that the Impugned Order should be set aside and the penalty deposited by him should be refunded to him.

4. Mr. Mubasher Saeed contended that the Company had failed to comply with the requirement laid down in section 245 of the Ordinance to transmit the accounts to the Commission. He stated that the accounts were transmitted only after the show cause notice was served upon the directors. He argued that the law required strict compliance and there was no discretion allowed. When question by the Bench as to whether the transmission of the accounts to the Registrar of Companies did not suffice, he stated that the law requires that the accounts should be transmitted to the Registrar as well as the Commission.

5. We have heard the arguments presented by the parties. Although we agree that the law requires that the accounts should be separately provided to the Registrar and the Commission, however it seems that no mala fide was intended by the Company or its management in not providing the accounts to the Commission. The office of the Registrar of Companies is part of the Commission, and if the accounts had been provided to the Registrar, there is no reason why they could not have been provided to the Commission. We are therefore inclined to agree with the Appellant that the default may have happened due to some oversight, and was not



committed knowingly. The Enforcement & Monitoring Department, therefore, should have taken a lenient view, and at best warned the Company and its management to be careful in the future.

6. In view of the foregoing, we set aside the Impugned Order passed by the Executive Director (CLD). The amount of fine deposited by the Appellant should be refunded by the Commission. The appeal is disposed off accordingly.

(SHAHID GHAFAR)
Commissioner

(SALMAN ALI SHAIKH)
Commissioner

Announced in Islamabad on August _____, 2005