



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 45 of 2013

Saqib Bashir & Co. Chartered Accountants Appellant

Versus

Head of Department (Enforcement) Respondent
Securities and Exchange Commission of Pakistan

Date of hearing 05/09/13

ORDER

Present:

Appellant:

Mr. Saqib Bashir, FCA

For the Respondent: (through video link)

Ms. Maheen Fatima, Director (Enforcement)

Mr. Amjad Iqbal Rao, Assistant Director (Enforcement)



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1. This order is in appeal No. 45 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 06/06/13 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that M/s Saqib Bashir & Company Chartered Accountants (the "Appellant") were acting as the auditors of Center for Management Development Limited (the "Company"). The Enforcement Department (the "department") of the Commission while examining the annual audited accounts of the Company for the year ended 30/06/12 (the "Accounts") and Audit Report (the "Report") observed that, the Company was incorporated on 29/08/09, however, it was not operational during the year under review and in the preceding year. The accumulated losses of the Company had reached Rs. 405,836 as compared to the paid-up capital of Rs.475,000. Additionally, the Director's Report states that:

"The members had decided to keep this Company dormant in the given circumstances, and therefore, it has not been activated. It will only be activated if the circumstances change, and the members so direct to do."

Despite all the given facts, the Appellant issued an un-modified Report without highlighting the fact that the Company could not carry out any operations and is dormant for the last two years.

3. Show Cause Notice dated 25/03/13 ("SCN") was issued to the Appellant under section 255 read with section 260 and section 476 of the Companies Ordinance, 1984 (the "Ordinance") to explain within 14 days from the date of the SCN as to why penal action may not be taken against the Appellant. The Appellant responded to the SCN vide letter dated 07/04/13 which was



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found unsatisfactory by the Respondent. Hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and imposed a penalty of Rs.10,000 on the Appellant.

5. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant's counsel contended:

- a) the Company has been treated by the Respondent as a medium size entity ("MSE"). In fact the Company is small size entity ("SSE") as defined in Accounting and Financial reporting Standards ("AFRS") as its paid up capital plus undistributed reserves do not exceed Rs. 25 million and its annual turnover does not exceed Rs. 200 million. Under the AFRS, the objective of financial statement is to provide useful information to users and the statements are designed to reflect users need. The users in this case were the management only and there were no users as specified in para 8 of the AFRS for SSE;
- b) the Respondent has seen the *going concern* issue only with respect to the amounts as disclosed in the financial statements in isolation and without regard to the other information available with the Appellant including: i) the fact that the Company was very much operational in 2010 and it remained dormant due to policy decision of the members and directors and not because of financial disability. The Director's report was not quoted in entirety, which also indicated that the Company would start operations once approved by the members; ii) the accumulated loss had not eaten up the entire paid up capital; iii) the administrative expenditure was curtailed to large extent; iv) the members and directors of the company are family members and friends and majority of them are financially stable.



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Moreover, during the performance of audit procedures, certain events and conditions have to be considered as suggested by para 10 of the ISA-570. The existence of one or more of the uncertain items does not necessarily signify that a material uncertainty does exist. The factors such as i) the current ratio of the Company was positive; ii) no fixed term borrowing; iii) no third party liabilities; iv) no intention to liquidate the Company v) no loss of key management personal, major market, major customers vi) no non-compliance with statutory requirement vii) no pending legal or regulatory proceedings, were not considered by the Respondent at the time of forming an opinion about the audit conducted by the Appellant; and

- c) International Standard of Auditing (“ISA”) 570 on *going concern* has to be read in conjunction with ISA 200: overall objectives of the independent auditor and conduct of audit in accordance with ISA. It was emphasized that the auditor’s opinion deals with the financial statement as a whole, therefore, the auditor is not responsible for the detection of misstatements that are not material to the financial statements as a whole.

6. The department representatives argued that:

- a) the provisions of the Ordinance and the ISA have same implication on every company irrespective of their type i.e. SSE and MSE. The Appellant in their letter dated 07/04/13 have stated that the Company followed the AFRS for MSE issued by ICAP for preparation of its financial statements for the year ended 30/06/12. Even if based on size and turnover the Company is treated as SSE, the assumption of *going concern* will be the same as for MSE;



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- b) the Company stopped its operations during the year ended 30/06/11 and 30/06/12 and the management decided to keep the Company dormant. Moreover, the Appellant in its reply dated 07/04/13 stated that the Company has the option to run another company, which casts significant doubt about the ability of the Company to continue as *going concern*. The Appellant should have modified its report in accordance with the requirement of ISA 570. The Appellant has been penalized as it did not take into consideration substantial and material information on *going concern* while preparing the Report; and
- c) the ISA 200 has general application and the relevant ISA 570 provides the conditions under which an opinion on *going concern* is made.
7. We have heard the parties and have gone through the record. Our para-wise findings on the issues are as under:
- a) the Company should be treated as SSE in terms of SRO 23(I)/2012 dated 16/01/12, which provides the threshold of SSE as a company having paid up capital of Rs. 25 million and annual turnover not exceeding Rs 200 million. The AFRS, however, do not distinguish between an SSE or MSE on the issue of *going concern*. We, therefore see no reason to interfere with the findings of the Impugned Order on this issue;
- b) the plea of the Appellant that the Respondent has seen the *going concern* issue only with respect to the amounts as disclosed in the financial statements in isolation and without regard to the other information available with the Appellant has been examined . In our

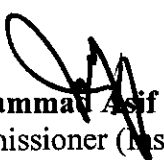


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view, the other information discussed in para 5(b) above would have been relevant, if the Company was in operations. The annual accounts for the year ended 30/06/11 and 30/06/12 shows that the Company was not in operation. The Director's reports states that the management has decided to keep the Company dormant. Both the facts are material. The above facts are sufficient for the Appellant to express its opinion in the Report that the financial condition of the Company casts significant doubt on the Company's ability to continue as a *going concern*. We are guided by para 19 of ISA 570 (*going concern*), which specifically requires that in such situation the Appellant should include an *emphasis of matter paragraph*. The Appellants failure to modify the Report is violation of the mandatory provisions of section 255 of the Ordinance, which requires that Appellant should provide *true and fair view* of the affairs of the Company; and

- c) ISA-200 deals with the overall objective of the audit of financial statements and also with the overall audit procedures to be adopted while carrying out the audit, whereas, ISA-570 deals with a specific area of *going concern*. The requirements of ISA-570 being specific to the case ought to have been followed in letter and spirit. In our view, ISA 200 has been introduced in aid and not in derogation of other ISA's.

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.


(Mohammad Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SCD)

Announced on: 03/10/13