



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 22 of 2017

- i. Mr. Zulfiqar Ali, Chief Executive
- ii. Ch. Naseer Ahmed, Director
- iii. Mr. Abdul Shakoor, Director
- iv. Syed Hameed-ud-Din, Director
- v. Mr. Imtiaz Hussain Qureshi, Director
- vi. Mr. Nadeem Abbas, Director
- vii. Mr. Nafees Iqbal, Director

(Chief Executive & Directors of Mubarak Textile Mills Limited)

...Appellants

Versus

Executive Director (Corporate Supervision Department)
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 18/02/21

Present:

For the Appellant:

Mr. Faisal Latif, Faisal Latif & Co.

For the Respondent:

- i. Mr. Amir Saleem, Additional Director (Adjudication-1)
- ii. Mr. Muhammad Anwar Hashmi, Additional Joint Director (Adjudication-1)

ORDER

1. This Order is passed in Appeal No. 22 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the Order dated 08/02/17 (the



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Impugned Order) passed by Executive Director, Corporate Supervision Department of the Securities and Exchange Commission of Pakistan (the Respondent).

2. The brief facts of the case are that inspection of books of account of Mubarak Textile Mills Limited (the Company) conducted under section 231 of the Companies Ordinance, 1984 (the Companies Ordinance) and review of the annual audited financial statements of the Company for the year ended 30/06/15 (the Accounts) revealed the following:
 - a) Overstatement of financial assets, financial liabilities and understatement of profits.
 - b) Incorrect values of Property, Plant and Equipment.
 - c) Wrong accounting treatment of investment property.
 - d) Lack of disclosure for asset not held in Company's name as required under Para 5 of Part 1 of the Fourth Schedule to the Companies Ordinance.
 - e) Misstatement regarding current business in accounts.
3. In view of the incorrect information provided and omission of material facts in the Accounts, the Show-Cause Notice dated 14/11/16 (the SCN) was issued for *prima facie* contravention of the provisions of section 492 of the Companies Ordinance. The reply was received through M/s. Faisal Latif & Company, Chartered Accountants (the Counsel) vide letter dated 28/11/16 on behalf of the Directors including the Chief Executive (the Appellants). Hearing in the matter was held on 12/01/17 which was attended by the Counsel who agreed with the point of view of the Respondent that deficiencies had been rightly pointed out. However, the Counsel argued that there was no malafide on part of the management of the Company and he further requested that a lenient view be taken in the matter. The Counsel further stated that he would ensure that necessary corrections required in the Accounts would be carried out by the Company accordingly.
4. The Respondent dissatisfied with the response with the of the Appellants held that provision of section 492 of the Companies Ordinance has been violated and the Appellants are liable for the fine as prescribed by the section. Therefore, in exercise of the powers conferred by the aforesaid provision of the Companies Ordinance, a fine of Rs 700,000 was imposed in aggregate on the



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following Appellants for contravening the provision of section 492 of the Companies Ordinance.

The Appellants were directed to deposit the fine in the following manner:

	Name of Appellants	Amount in Rupees
1.	Mr. Zulfiqar Ali	100,000
2.	Ch. Naseer Ahmed	100,000
3.	Mr. Abdul Shakoor	100,000
4.	Syed Hameed-ud-Din	100,000
5.	Mr. Imtiaz Hussain Qureshi	100,000
6.	Mr. Nadeem Abbas	100,000
7	Mr. Nafees Iqbal	100,000
	Total	700,000

5. The Appellant preferred the appeal *inter alia* on the grounds that the Impugned Order is bad in law and contrary to the facts and circumstances. The Appellant argued that circumstances do not warrant imposition of such penalty. Furthermore, the Appellant argued that management of the Company had agreed to account for all the adjustments without delay, therefore, penalty should not have been imposed. Furthermore, the Appellant argued that it was not a willful default and the said violations do not constitute an offence in terms of section 492 of the Companies Ordinance.
6. The Respondent rebutted the arguments of the Appellant *inter alia* on the grounds that the Impugned Order is based on facts, evidence and investigation and nothing in the Impugned Order is beyond or against the scope of the law. Furthermore, the Respondent argued that the Appellant has admitted default of all the violations mentioned in the Impugned Order. Moreover, the Auditor in their Audit report dated 07/10/15 had given an adverse opinion on their Accounts and the Company had not conducted revaluation of its Property, Plant and Equipment for the last 13 years, whereas, it has to be done every three to five years in accordance with Para 34 of the International Accounting Standard (the IAS-16). Furthermore, the Respondent argued that the Company Secretary in his reply stated that due to cessation of operations, indicators of impairment exist, however, the Company's management has not performed any impairment test.



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The Respondent further argued that the Company has been keeping the stakeholders misinformed by providing false information as the Company is no longer in operation.

7. We have heard the parties i.e. the Appellants and the Respondent. We are of the view that section 492 of the Companies Ordinance is very clear and unequivocal. Section 492 of the Companies Ordinance provides that, *"Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information, or explanation required by or for the purposes of any of the provisions of the Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with a fine not exceeding five hundred thousand rupees."* The Appellants have already admitted their default and have not given any satisfactory explanation as to why the misstatement in the Accounts took place and why a true and fair view of the state of affairs of the Company was not brought before the shareholders. The argument of the Appellants that the default was not "willful" holds little merit as the Appellants did not exercise the due skill and care required of them as Directors. The word "willful default" has been defined in Oxford Dictionary of Law Fifth Edition as *"The failure of the person to do what he should do, either intentionally or through recklessness."* The default, therefore, would be considered as willful. We have also reviewed the Audit Report of the Company for the year ended 30/06/20 and noted that the qualified opinion of the Auditor has not changed since the default was pointed out by the Respondent in 2016.
8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs. Furthermore, we also give direction to the Respondent that in future in all such proceedings, the Surveillance/Supervision Department should be kept in the loop about the status of compliance during the entire proceedings.



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9. The Appeal is disposed of accordingly.

Sadia Khan

Commissioner (SCD-S&ED)

Farrukh Sabzwari

Commissioner (SCD-PRDD)

Announced on: **29 APR 2021**