



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 23 of 2018

1. Mian Shahzad Aslam
  2. Mian Farrukh Naseem
  3. Mian Aamir Naseem
  4. Mr. Maqbool Hussain Bhutta
  5. Mr. Muhammad Asghar
  6. Mr. Muhammad Abbas
  7. Mr. Sibgat Ullah
- (All Directors of Nazir Cotton Mills Limited)

...Appellants

Versus

The Executive Director (CSD), SECP

...Respondent

Date of hearing:

August 20, 2020

Present:

For Appellants:

1. Mr. Mohammed Hayat Jasra, FCMA.
2. Mr. Maqbool Hussain Bhutta, Director.

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director (Adjudication-I), SECP.

## ORDER

1. This Order shall dispose of Appeal No. 23 of 2018 filed by the directors(the Appellants) of Nazir Cotton Mills Limited (the Company) against the Order dated May 23, 2018 (the Impugned Order) passed by the Executive Director, CLD-CSD (the Respondent) under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).



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2. The Brief facts of the case are that inspection under Section 231 of the Ordinance was initiated against the Company vide Order dated January 6, 2017 (the Inspection). The Inspection, *inter alia*, revealed that the Company had contracted a loan from Samba Bank Limited (SBL) [then Doha Bank], however, in violation of the loan agreement with SBL, and without obtaining an NOC from SBL, a major part of the loan was loaned by the Company to its associated company, Silver Fiber Spinning Mills Limited (SFSML). The Company was required to record the full amount of loan as liability in its accounts, however, it recorded only 22.5% of the loan liability whereas, the corresponding 77.5% loan liability was recorded as receivable from SFSML. In view of the above, the Company's accounts for the year ended June 2016 were materially misstated. In the circumstance, a show-cause notice dated November 6, 2017 was issued to the directors of the Company. Hearing in the matter was held on November 30, 2017 wherein the Appellants were advised to file a written reply to the SCN. The reply was received vide letter dated February 9, 2018. The last hearing was held on February 22, 2018, which was attended by the Appellants' representatives. The Respondent, being dissatisfied with the response of the Appellants, imposed a penalty of Rs. 15,000/- on each Appellant (Aggregate amount of penalty Rs. 105,000/-).
3. The Appellants had filed this Appeal *inter alia* on the grounds that alleged misstatement has not caused a negative impact on the interest of shareholders, therefore, penal provision of Section 492 of the Ordinance is not applicable. The Appellants further contended that terms of the loan, its utilization and repayment was a mutual concern between the SBL and the Company, therefore, the Respondent was not authorized to adjudge a twenty-five years old matter. The Appellants further stated that now the matter of loan has been settled with the SBL and accordingly clearance letter has been issued by the Bank. The Appellants sated that penal action against the directors of an inactive company is patently excessive and unjustified. The Appellants stated that aforesaid transaction was approved by the shareholders of the Company in the Extra Ordinary General Meeting held on August 26, 1995 (EOGM) through a special resolution. On the other hand, the Respondent contended that the Company has not recorded the full amount of loan liability in its account, therefore, the Company's accounts were misstated and the Appellants being directors are responsible for such violations.
4. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and



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rebuttal thereof. Before proceeding towards the analysis and decision of this Appeal, we find it appropriate to mention here that this Appeal has been filed by above mentioned seven directors of the Company, however, in the Power of Attorney, Mr. Sibgat Ullah has put his signature before the name of another director namely; Mr. Muhammad Irfan (who is not a party to the Appeal). The Bench has compared the signatures of Mr. Sibgat Ullah available on the Appeal and Power of Attorney. The Bench is of the view that both signatures appear to be correct, therefore, we treat the Power of Attorney to be valid for Mr. Sibgat Ullah and for the purpose of this Appeal.

5. The Bench is of the view that the terms and conditions of the loan, its utilization and repayment was a mutual concern of the Company and SBL, however, the Appellants had failed to ensure the entire loan amount was reflected as a liability in the Company's accounts, hence, misstated the Accounts and violated the requirements of Section 492 of the Ordinance. The Bench also reject the Appellants' plea that the loan transaction was approved by the shareholders in EOGM through a special resolution under Section 208 of the Ordinance because the resolution does not in any way substantiate that the major part of the loan obtained by the Company was to be transferred to SFSML in any manner. The Bench believes that the Appellants have failed to discharge their duties as directors, therefore, the Respondent has rightly penalized them under the relevant law. As a matter of fact, the misstatement referred in the Impugned Order is material, hence we are not inclined to ignore it.
6. In view of the forgoing, the Bench find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on: **09 OCT 2020**