



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH III

In the matter of

Appeal No. 55 of 2012

Hameed Khan and Co., Chartered Accountant

..... Appellant

Versus

Head of Department (Enforcement)

..... Respondent

ORDER

Date of hearing

11/12/13

Present:

Appellant:

Mr. Abdul Hameed Khan, Engagement Partner

For the Appellant:

Mr. Atta Muhammad Khan, Advocate

Department representatives: (through video conference)

Mr. Shahzad Afzal, Joint Director (Enforcement)

Mr. Jawad Ahmed, Management Executive (Enforcement)



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1. This order shall dispose of appeal No. 55 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 17/10/12 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that Hameed Khan & Co. Chartered Accountants (the "Auditor"), had audited the annual accounts of Kohinoor Spinning Mills Limited (the "Company") for year ended 30/06/11 (the "Accounts") and had given a positive review report to the members on 'Statement of Compliance' with best practices of Code of Corporate Governance ("CCG"), prepared by the Board of Directors of the Company (the "BoD"). The Auditor, while authenticating the said document which has to be laid before the members in the general meeting along with the Accounts, disclosed and certified that their responsibility is to review, to the extent where such compliance reflects the status of the Company's compliance with that of the relevant law. The Statement of Compliance in para 18 states that the Auditors of the Company have confirmed that they have been given satisfactory rating under the Quality Control Review (the "QCR") of the Institute of Chartered Accountants of Pakistan (the "ICAP"). It was observed from the record that the Quality Assurance Board ("QAB") of ICAP had removed the name of the Auditor from the list of practicing firms having Satisfactory QCR rating on 27/09/10. The Auditor, however, despite having knowledge of this fact, offered themselves and were reappointed in the Annual General Meeting held on 30/10/10 (the "AGM"). It appeared that the Auditor, while in possession of this material information provided wrong/no confirmation to the BoD of the Company regarding the QCR status of their firm, and also had given a positive review report to the members on the Statement of Compliance which had misstated the status of the Auditor.
3. Show cause notice dated 02/02/12 ("SCN") was issued to the Appellant under the provisions of section 260 read with section 476 of Companies Ordinance, 1984 (the



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“Ordinance”) and 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. 100,000 under section 260(1) of the Ordinance on all partners of the Auditor.

4. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant and the Appellant’s counsel argued that:
 - a) section 260 of the Ordinance provides penal action against non-holding of statutory meeting under section 157; auditor’s report under section 255 of the Ordinance; and signing of the financial statement under section 257 of the Ordinance. The provisions of section 260 of the Ordinance are not applicable in the instant case; and
 - b) the matter relating to the Appellant’s deletion from the list of firms with satisfactory QCR is pending before the Lahore High Court, Lahore, and the matter is expected to be decided in the Appellant’s favour.
5. The department representatives argued that:
 - a) section 260 of the Ordinance clearly states that in case any document of the company, signed or authenticated by the auditor, is untrue or fails to bring out material information, the auditor who signs that document is liable to a fine. The Appellant counsel’s argument that section 260 of the Ordinance is not applicable in the instant case is unjustified; and
 - b) the information regarding pendency of appeal before the Lahore High Court, Lahore was not disclosed in the Statement of Compliance. Further, it is an admitted position on the part of the Appellant that they were removed by the QAB of ICAP from the list of firms having satisfactory QCR rating and they were cognizant of this fact at the time of offering themselves for appointment as



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Auditors in the AGM. The position of the Appellant shall remain the same since the decision of ICAP has not been suspended by the Lahore High Court, Lahore.

6. We have heard the parties. Our para-wise findings on the issues are as under:
- a) section 260 of the Ordinance has been reproduced for ease of reference:

“260. Penalty for non-compliance with provisions by auditors.- (1) If any auditor’s report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 157, section 255 or section 257 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall, if the default is wilful, be punishable with fine which may extend to one hundred thousand rupees.”

[Emphasis added]

Para 19 of Annexure B of CCG is reproduced for ease of reference:

“19. The statutory auditors of the company have confirmed that they have been given a satisfactory rating under the quality control review program of the ICAP, that they or any of the partners of the firm, their spouses and minor children do not hold shares of the company and that the firm and all its partners are in compliance with International Federation of Accountants (IFAC) guidelines on code of ethics as adopted by the ICAP.”

[Emphasis added]

Section 260 of the Ordinance clearly states that if any document of the company is signed or authenticated and which is otherwise untrue or fails to bring out

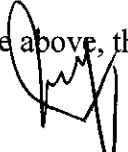


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material matters to which it purports to relate, the auditor who signs or authenticates such a document is liable to a fine which may extend to one hundred thousand rupees. In the instant case, the Company, in the Statement of Compliance, misstated the factual position of the Appellant regarding its deletion from the list of firms with satisfactory QCR in terms of *para 19 of Annexure B of CCG* and the Appellant, instead of highlighting this misstatement during review, authenticated the Statement of Compliance by signing the same, which makes them liable under section 260 of the Ordinance. The Appellant counsel's argument that section 260 of the Ordinance is inapplicable in the instant case is unjustified; and

- b) the decision of the QAB of ICAP regarding removal of the Appellant from the list of firms with satisfactory QCR is a valid decision till it is set aside by the Lahore High Court, Lahore. The Appellant failed to mention the pendency of the case regarding its QCR before the Lahore High Court, Lahore, in its review of the Statement of Compliance.

In view of the above, the appeal is dismissed with no order as to cost.


(Mohammed Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SCD)

Announced on: 30/11/14