



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

### Appeal No. 59 of 2012

1. Col (R) Asghar Ali Malik, Chief Executive Officer
2. Mr. Sohail Latif, Director
3. Mr. Foo Chee Mian Micheal, Director
4. Ms Tan Siok Bee, Director  
(of M/s Petrosin Ravi Industries Ltd) .....

Appellant

Versus

Head of Department (Enforcement)

Securities and Exchange Commission of Pakistan .....

Respondent

Date of hearing

22/07/13

### **ORDER**

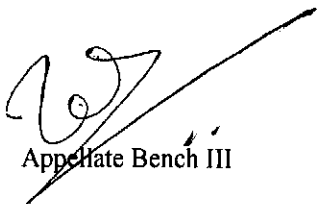
#### **Present:**

#### For the Appellants:


Mr. Tariq Mahmood, Advocate

#### Department representative:

Mr. Bilal Rasul, Director (Enforcement)

  
Appellate Bench III

Appeal No. 59 of 2012

  
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1. This order is in appeal No. 59 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 29/08/12 (the "Impugned Order") passed by the Respondent.
2. The brief facts of the case are that the Enforcement Department (the "department") of the Commission while examining the annual audited accounts of the Company for the financial year ended 30/06/10 (the "Accounts") revealed that the Company had re-classified comparative figures of 'Trade debtors' of Rs. 74 million and disclosed the same as Rs. 3,626,885 and Rs. 71,131,623 against 'Trade debtors' and 'other receivables due from associated undertaking', respectively. Furthermore, the disclosure of figures reported in Note 28 on 'transactions with related parties' did not reconcile with the balances appearing in the Accounts with respect to the associated undertakings.
3. An inspection was ordered by the department under section 231 of the Companies Ordinance, 1984 (the "Ordinance") to inspect the books of accounts, papers and statutory record of the Company. The Company filed a civil suit against the order of inspection and the inspection was deferred as a result. The Company later withdrew its suit and requested the department to undertake the inspection. The inspection team visited the registered office of the Company on 15/03/12 and reported that:
  - a) the Company was not able to provide proper justification with regard to reclassification/regrouping of the transaction with the associated undertaking. The only submission made was that the reclassification



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has been made on advice of the auditors and that the balances which are outstanding are usually classified as 'Trade debtors' otherwise they are classified as 'due from associated undertaking';

- b) the balances of ledger accounts of the related parties do not reconcile with those reported in the Accounts of the Company;
  - c) Sale of scrap by Petrosin Gas Pakistan (Pvt.) Ltd ("Petrosin Gas") of Rs. 16,243,755/- was not disclosed in Note 28 of the Accounts in 'transactions with related party'.
4. Show cause notice dated 25/05/12 (the "SCN") under section 492 of the Ordinance was issued to the Appellants to show as to why penal action may not be taken against them as provided under section 492 read with section 476 of the Ordinance. The reply to the SCN was not submitted despite various reminders. Hearing in the matter was held and the Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs 50,000 each on the Appellants.
5. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' counsel argued that that Company has been facing financial and administrative problems since few years. Compliance with legal requirements has become an issue as business loss has led the Company to downsize and additional work was handed over to retained staff. The Appellants' counsel argued that:



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- a) the transactions were reclassified/regrouped in the Accounts. These transactions were executed with associated companies and were disclosed in audited financial statements of the year 2009 as 'Trade debtors' which was clearly a mistake of disclosure. The auditor while examining the Accounts pointed out the mistake and the Appellants rectified the disclosure accordingly in the Accounts;
  - b) the charge that balances of ledger accounts of the related parties do not reconcile with those reported in the Accounts was denied. It was argued that complete reconciliation statements of all transactions with associated companies was submitted after the transactions with the associated companies were completely reconciled;
  - c) the charge regarding non- disclosure of sale of scrap to Petrosin Gas was denied as the same was clearly disclosed in the Accounts; and
  - d) penalty can only be levied when the default has been committed knowingly and willfully. The Respondent failed to establish beyond doubt that the default was within knowledge of the Appellant and was willfull.
6. The department representative argued that the Appellants had conceded the default during the show cause proceedings. The department representative further argued that:
- a) the Appellants were unable to provide justification of reclassification of 'Trade debtors' in the Accounts as it included day to day transactions and transfer of funds which were not in the nature of



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normal trade credit. The transactions have been incorrectly reported as 'Trade debtors' in the Accounts;

- b) the Company does not have a clear distinction of balances pertaining to the transactions with associated companies and the trade debtors, which in turn effect the true and fair reporting of figures in the Accounts;
- c) the Company has admitted that a re-conciliation difference of Rs. 16,384,281 was missed in the disclosure of related parties as given in Note 28 of the Accounts; and
- d) the Appellants have committed the default knowingly and willfully and have also conceded the default before the Respondent. The Company has reported incorrect figures in the Accounts which attracts the provisions of section 492 of the Ordinance. The Respondent has already taken a lenient view and instead of imposing the maximum penalty of Rs. 500,000/- as provided in section 492 of the Ordinance has imposed a penalty of Rs. 50,000/- on each director of the Company.

7. We have heard the parties. Section 492 of the Ordinance is reproduced for ease of reference:

*"Penalty for false statement. - 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 this Ordinance or pursuant to an order or*



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*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 fine not exceeding five hundred thousand rupees.”*

Our para-wise findings on the issues are as under:

- a) regarding reclassification of ‘Trade debtors’ in the accounts, it has been admitted by the Appellants that the Company had been incorrectly classifying the transactions with associated companies as ‘Trade debtors’ in the accounts for the year 2009. In the Accounts, the Appellant had incorrectly included ‘day to day transactions which are not in the nature of normal trade credit and transfer of funds under the head of ‘Trade debtors’, as such, the stance of the Appellants that the default has been rectified in the Accounts is not acceptable;
- b) regarding the issue pertaining to reconciliation of ledger balances with the Accounts, the inspection team reported that the Company does not have a clear distinction of balances pertaining to ‘transactions with associated companies’ and the ‘trade debtors’, due to which the Company intermingles balances at the time of presenting figures in the accounts. No evidence has been produced to substantiate the argument of the Appellant’s counsel that complete reconciliation statements of all transactions with associated companies were submitted at the time of inspection. This practice affected the true and fair reporting of figures in the Accounts, as such, the argument of Appellant’s counsel is not tenable;
- c) the Company has submitted to the department the reconciliation of inter-company transactions of Petrosin Gas in which the Company has admitted



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that a reconciliation difference of Rs. 16,384,281 was missed in the disclosure of related parties as given in Note 28 of the Accounts. The Company ought to have proper disclosure in the accounts in order to provide users of the financial statements with true nature and details of the transactions undertaken by the Company with the related parties; and

- d) the act of the Appellants was willful, as they failed to comply with requirements of section 492 of the Ordinance. We place our reliance *on Jalaluddin F.C.A vs. Commissioner SEC, 2005 CLD 333*, where the meaning of willful has been discussed and it was held that:

*“whereas intent is a necessary ingredient of willfulness, impropriety is not (1960) 30 Com cases 523. It is therefore not necessary to prove that the default committed by the Appellant was mala fide.”*

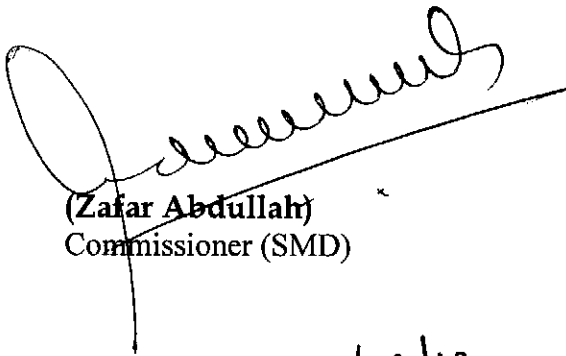
From the above case law it is clear that the Respondent need not show that failure to comply with the requirements of section 492 of the Ordinance was *mala fide*, it was sufficient to show that the act of the Appellant was done stubbornly and in an unseemliness manner despite the express provision in the law. We would also rely on case titled *City Equitable Fire Insurance Co Ltd Re, 1925 Ch 407*, referred to in *2005 CLD 333*:



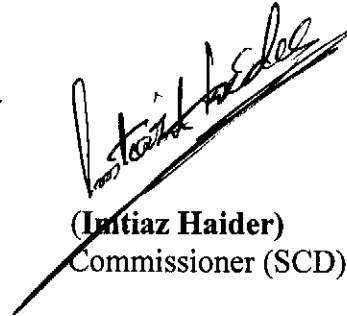
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*“that a default, in case of breach of duty, will be considered ‘wilful’ even if it arises out of being recklessly careless, even though there may not be knowledge or intent.”*

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.



(Zafar Abdullah)  
Commissioner (SMD)



(Imtiaz Haider)  
Commissioner (SCD)

Announced on: 22/10/13