



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH III

In the matter of

Appeal No. 50 of 2012

Novatex Limited

...Appellant

Versus

Executive Director

Corporatization and Compliance Department

Securities and Exchange Commission of Pakistan.

Islamabad

...Respondent

Date of Hearing

03/12/14

For the Appellant:

Mr. M Javed Panni, MJ Panni & Associates (Authorised Representative)

For the Respondent:

Ms. Sumaira Siddiqui (Joint Director)

Mr. Irfan Afzal (Deputy Director)

ORDER

1. This order is in appeal No 50. of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order (the "Impugned Order") dated 08/10/2012 passed by the Respondent.



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2. Novatex Ltd vide letter dated 20/09/2012 made an application under section 237(8) of the Companies Ordinance, 1984 ("the Ordinance") vide letter dated 20/09/2012 to grant waiver from consolidation of financial statements of the wholly owned subsidiaries G-Pac Corporation USA, Novatex Power (Pvt) Ltd and Kyrstopac Energy (Pvt.) Ltd with the parent company M/s Novatex Ltd for the accounting year ended 30/06/2012.
3. It was held by the Deputy Registrar of Companies through letter dated 08/10/2012 that the Novatex Ltd's stance that consolidation of financial statements of the group companies would have insignificant impact due to disproportionate net equity ratio in respect of G-Pac Corporation (G-Pac) and non-operational issue of the other two subsidiaries, was without any cogent justification. Further, comparative analysis of financial statement of G-Pac with its holding company i.e. Novatex Ltd revealed that the disproportionate net equity ratio of the G-Pac was due to its accumulated loss carried forward. However, ratio of other line items of profit and loss accounts and balance sheet of the G-Pac was fairly on higher side if compared with its holding company. Therefore the exemption sought by Novatex Limited under section 237(8) of the Ordinance cannot be granted.
4. The Appellant preferred instant appeal against the Impugned Order. The Appellant's representative argued that all the three companies i.e. G-Pac Corporation, Novatex Power (Pvt) Limited and Krystopac Energy (Pvt.) Limited are wholly owned subsidiaries and neither have any third party shareholders nor any creditors of the subsidiaries. Therefore, public interest is not involved and as no one's interest is affected by non-consolidation of the financial statements. Furthermore, the Respondent failed to take into account that the holding company's equity is Rs 7.729 million as against Rs 32.398 million of G-Pac which in percentage terms is just 0.41% of Novatex. The paid up capital of Novatex Limited is only Rs. 10,000 and it had not commenced its operations as on 30/06/11. The paid-up capital of Krystopac Energy (Pvt) Limited as on 30/06/11 is Rs. 15 million and had not commenced its



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operations. Therefore, the current status of the wholly owned subsidiaries of Novatex Ltd shows that it will have an insignificant and immaterial impact on the consolidated financial statements. Furthermore, section 237 of the Ordinance empowers the Commission to grant exemption from consolidation of accounts wherever there is insignificant impact on the consolidated accounts. In the instant case, Novatex Ltd had given specific and justifiable grounds for grant of waiver.

5. The department's representative argued that the financial analysis provided by Novatex Ltd in respect of G-Pac Corporation is misconceived. The impact may become significant if individual items of the balance sheet and profit and loss account of the holding and subsidiaries are consolidated thereby influencing the overall decision making process of the user of the consolidated financial statements. Section 237 of the Ordinance does not provide any special treatment for relaxation in exemption to companies with less significant stake in its holding companies.
6. We have heard the arguments. Section 237(8) of the Ordinance is reproduced for ease of reference:

Section 237(8) of Companies Ordinance, 1984

237. Consolidated financial statements. -

(8) The Commission may, on an application or with the consent of the directors of a holding company, direct that in relation to any subsidiary, the provisions of this section shall not apply only to such extent as may be specified in the direction.

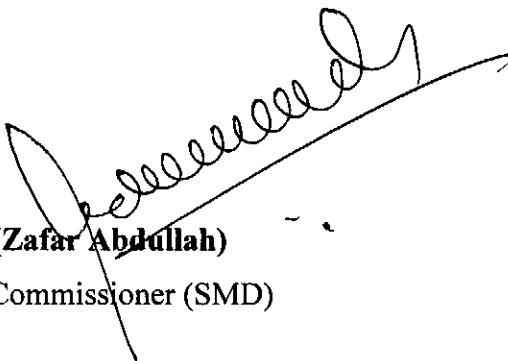
Form A of the annual return of Novatex Ltd dated 23/11/12 shows that all shareholders are individuals and that no public interest would be affected as a result of waiver from consolidation of financial statements. An overview of the financial position as well as the status of the wholly owned subsidiaries of the Company show that the consolidation of financial statements of G-Pac Corporation, Novatex Power (Pvt) Ltd, and Kyrstopac Energy (Pvt) Ltd, with those of Novatex Limited shall have insignificant impact on the financial results of the group. Moreover, the waiver had

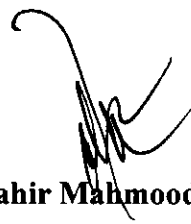


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been granted to Novatex Ltd from consolidation of wholly owned subsidiaries on the same grounds in previous years.

In view of the foregoing, we allow the waiver to Novatex Ltd under section 237 of the Ordinance to prepare consolidated annual financial statements for the year 30/06/12.


(Zafar Abdullah)
Commissioner (SMD)


(Tahir Mahmood)
(Chairman)

Announced on: 9/12/14