



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 35 of 2014

- | | |
|--------------------------------|--------------------|
| 1. Dr. Allah Dad Luni | ... Appellant No.1 |
| 2. Dr. Sher Sahah Syed | ... Appellant No.2 |
| 3. Ms. Rehana Rasheed | ...Appellant No.3 |
| 4. Ms. Zeenat Yaqoob Yousafzai | ...Appellant No.4 |
| 5. Mr. Pervez Iqbal |Appellant No.5 |
| 6. Mr. Amjad Rashid |Appellant No.6 |
| 7. Taraqee Foundation Company |Appellant No.7 |
- (Appellants No.1-5 all directors and Appellant No.6 Former CEO of Taraqee Foundation)

Versus

Executive Director (CLD) Respondent

Date of Hearing 10/09/14

ORDER

Present

For the Appellant

1. Mr. Farooq Akhtar Advocate

For the Respondent:

1. Mr. Muhammad Akram, Assistant Director (CCD)
2. Mr. Mubasher Saddozai, Director (CCD)


Appellate Bench No. III



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1. This order is in appeal No. 35 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 30/06/14 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that Taraqee Foundation (the "Company") was granted license under section 4 of the Companies Ordinance, 1984 (the "Ordinance") on 18/03/02 and incorporated as an association not for profit on 01/07/02. During review of the annual audited financial statements filed by the Company under section 242 of the Ordinance for the years ended 30th June 2012, 2011 and 2010 (the "Financial Statements"), it was revealed that Company's member namely Mr. Amjad Rashid was acting as CEO of the Company and has drawn remuneration of Rs. 3.42 million, Rs. 2.40 million and Rs. 3.60 million as disclosed in the financial statements. Provisions of rule 6 (4) (ii) of the Companies Rules, 1985 (the "Rules"), framed under section 42(2) of the Ordinance, prohibit the payment of remuneration of services or otherwise to its members whether holding an office in the Company or not.
3. Show Cause Notice dated 28/03/14 ("SCN") was issued to the Appellants for the prima facie violation of rule 6(4)(ii) of the Rules, framed under section 42(2) of the Ordinance for appointing its member to the salaried post of CEO of the Company. The Appellants were asked to explain and clarify as to why penalty may not be imposed on them as provided in rule 35 of the Rules read with section 498 and section 506 (2) of the Ordinance. Hearing in the matter was held and the Appellants submitted their response to the SCN vide letter dated 30/04/14.

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4. The Respondent, dissatisfied with the response of the Appellants, imposed penalty of Rs. 125,000 on Mr. Amjad Rashid as ex-CEO of the Company and Rs. 62,500 each on the rest of the Directors of the Company.
5. The Appellants have preferred to file the instant appeal against the Impugned Order. The Appellants' counsel argued that:
 - a) the requirement of rule 6 of the Rules was fulfilled when the Commission prescribed the conditions at the time of grant of license under section 42 of the Ordinance. Furthermore, it was a mistake on part of the Company to show the former CEO Mr. Amjad Rashid as a member and Director of the Company who in fact was only a full time employee of the Company. The payment of remuneration to CEO was a violation of condition of license but this condition of license does not entail any penalties under the law. Rule 6 itself does not prohibit payment of remuneration to any member and outlines the mode and procedure for filing "Application for grant of a licence under section 42". One of the requirements of rule 6 states, "*the Commission (SECP) may grant licence applied for subject to such conditions as it may deem seem fit to impose*" and that a "*licence shall be granted subject, besides others, to the following conditions*" which depicts that rule 6, in itself, does not impose any conditions, rather it empowers SECP to impose condition subject to which the licence is granted. Therefore, any violation of rule 6 of the Rules could lead to cancellation of license, however penalties could not be imposed; and
 - b) the direction by the Respondent that the total amount of remuneration paid to the then CEO i.e. Rs 9.42 million be recovered and deposited



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within 30 days in the account of the Company, is illogical and practically impossible to implement. The Company would have no options available except to issue notice to former CEO for recovery as the former CEO has already resigned from the Company.

6. The department's representative argued that:

- a) rule 6(4) of the Rules imposes certain conditions for the grant of licence to the association and one of the condition restricts payment of remuneration to its members. Furthermore, this condition, among others, is binding on the association under section 42(2) of the Ordinance. Therefore, the conditions imposed through said rule 6 while granting license, are applicable in conduct of activities of the Company and violation of condition which was imposed through said rule 6 and made part of the licence, is considered as violation of said rule 6 for which the penalty is provided in rule 35 of the Rules; and
- b) the Company's management on behalf of the Company is responsible to run/control the operation of the Company. It is the responsibility of the Company to comply with the direction of the Respondent i.e. the Company to recover and deposit, within 30 days of the date of the order in the account of the Company, the total amount of remuneration paid to the said chief executive. Funds of a non-profit organization are required to be utilized solely for achievement of objects for which the organization is established and no portion of funds or benefit can be taken by the members of the organization, in form of remuneration or otherwise.



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7. We have heard the arguments. Sections 42(2), 498 and 506(1), rules 6(4)(ii) and 35 of the Rules are reproduced for ease of reference:

Section 42(2) of the Ordinance

A licence under section 42(1) of the Ordinance may be granted on such conditions and subject to such regulations as the Commission thinks fit and those conditions and regulations shall be binding on the association and shall, if the Commission so directs, be inserted in the memorandum and articles, or in one of those documents of the Company.

Rule 6(4)(ii) of the Rules

Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited.

Rule 35 of the Rules

whoever fails or refuses to comply with, or contravenes any provision of the Rules, or knowingly and willfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the Ordinance, be also punishable with fine and, in the case of continuing failure, to a further fine, as provided in section 506(2) of the Ordinance.

Section 506(2) of the Ordinance

Any rule made under sub-section (1) of section 506 of the Ordinance, may provide that a contravention thereof shall be punishable with a fine which may extend to five hundred thousand rupees and, where the contravention is a continuing one,

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with a further fine which may extend to ten thousand rupees for every day after the first during which such contravention continues.

Section 498 of the Ordinance

if a company or any other person contravenes or fails to comply with any provision of the Ordinance or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in the Ordinance, the company and every officer of the Company who is in default or such other person shall be punishable with a fine which may extend to one million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day after the first during which the contravention continues.

Emphasis Added

- a) the above-mentioned provisions of the law are clear and explicit. Rule 6(4)(ii) of the Rules prohibits payments of remuneration to members of the company whether holding office or not. In the instant case, the Appellants have argued that the Chief Executive Officer was erroneously mentioned as member of the Company who in fact was an employee and that violation of rule 6(4)(ii) of the Rules does not entail penalties. The department has argued that penalty is provided in rule 35 of the Rules for violation of Rule 6 of the Rules which states, "whoever fails or refuses to comply with, or contravenes any provision of the Rules,... shall, in addition to any other liability under the Ordinance, be also punishable with fine and, in the case of continuing failure, to a further fine..." In the instant case, it is apparent that violation of rule 6 of the Rules was committed even though the Company had erroneously mentioned the former CEO as a member of the Company. It was the

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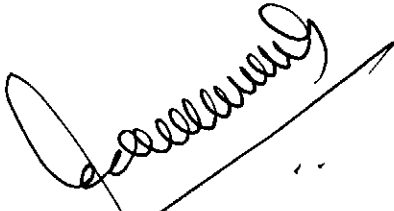


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responsibility of the Company to ensure such an error was not made when filing the Financial Statements; and

- b) it is the responsibility of the Company to ensure that full compliance is made of all the rules and regulations governing it. Therefore, it is also the responsibility of the Company to recover the amount of remuneration paid to the former CEO. Having said that, we acknowledge that the Company has not violated any rules willfully. Moreover, the Company has also been doing some good work in social welfare as a non-profit organization in the most difficult circumstances in the province of Baluchistan.

In view of the foregoing, taking a lenient view, we set aside the Impugned order and direct the Appellants to be careful in future and ensure strict compliance with the applicable rules and regulations.



(Zafar Abdullah)
Commissioner (SMD)



(Tahir Mahmood)
(Chairman)

Announced on: 12/12/14