



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH No. III

In the matter of

Appeal No. 57 & 58 of 2012

1. Mr. Amjad Yaqoob, Chief Executive Officer (“CEO”)
2. Mr. Fayaz Haider, Director
of Bridge Securities (Pvt.) Limited APPELLANT

Versus

Head of Department (Enforcement)
Securities and Exchange Commission of Pakistan RESPONDENT

Date of hearing 04/09/13

ORDER

Present:

For the Appellants:

Mr. Sheikh Muhammad Yaseen, Advocate

Department representatives:

Mr. Bilal Rasul, Director (Enforcement)

Mr. Alshah Ali Raza, Deputy Director (Enforcement)

Mr. Moeed Hassan, Assistant Director (Enforcement)



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1. This order shall dispose of appeals No. 57 and 58 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 11/10/12 (the "Impugned Order") passed by the Respondent.
2. Bridge Securities (Private) Limited (the "Company") was incorporated on 07/04/06 as a private limited company. The facts leading to 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 on 30/06/10 (the "Accounts") observed that the Company had not prepared financial statements in accordance with the requirements of the Companies Ordinance, 1984 (the "Ordinance") by failing to incorporate the 'Cash Flow Statement' and 'Statement of Changes in Equity'. Moreover, the Accounts did not disclose the 'statement of compliance' specifying that the aforesaid Accounts are in compliance with Accounting and Financial Reporting Standards of Medium-Sized Entities (MSEs) and the Ordinance. The Company's auditors, namely Aslam Malik & Company Chartered Accountants (the "Auditors"), stated in the Auditors' Report for year ended 30/06/10 that they have audited the annexed balance sheet of the Company and related profit and loss account together with the Notes forming part thereof and in their opinion proper books of accounts have been kept by the Company as required by the Ordinance. However, the 'Cash Flow Statement' and 'Statement of Changes in Equity' were not audited and incorporated therewith the Accounts. The department, vide letter dated 16/03/12, advised the Company to explain its position in this regard but the Company, despite the reminder dated 03/05/12, failed to provide any clarification in the above stated matter.



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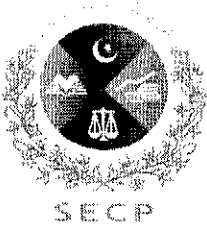
3. Show cause notice dated 04/06/12 (“SCN”) was issued to the Company and the Appellants advising them to explain as to why penal action may not be taken against them under section 492 read with section 476 of the Ordinance. Hearing in the matter was held and the Appellants’ authorized representative conceded the default and requested a lenient view from the Respondent. The Respondent, instead of imposing maximum penalty, imposed a token penalty of Rs. 20,000/- each on the Appellants. Furthermore, the CEO of the Company was directed to observe compliance of the law in letter and spirit and warned that in the future stern action will be taken if any default of the provisions of the Ordinance is observed.
4. The Appellants have preferred the appeal against the Impugned Order. The Appellants’ counsel appeared and argued that:
 - a) failure to incorporate the ‘Cash Flow Statement’ and ‘Statement of Changes in Equity’ in the Accounts has not affected any shareholder as the Company is a small private limited company which has only two shareholders and both are signatories on the Accounts; and
 - b) the penalty proceedings are criminal in nature and the case has to be proved beyond reasonable doubt in such proceedings, which was not done in the instant case. In absence of *mens rea* and without proving that the act of the Appellants was willful, no penalty could have been imposed. The penalty imposed by the Respondent in the Impugned Order is harsh and may be set aside.



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5. The department representatives argued that:
- a) the Company was required under S.R.O 860(I)/2007 dated 21/08/07, to prepare and to assure audit of the Accounts. The Company, however, omitted 'Cash Flow Statement' and 'Statement of Changes in Equity' from the Accounts and circulated an incorrect and false statement of the Auditors which is clear violation of section 492 of the Ordinance; and
 - b) the penalty proceedings are civil in nature as only a fine was imposed and, therefore, no *mens rea* needs to be established. The Appellants have committed the default knowingly and willfully and conceded the default before the Respondent during the SCN proceedings. The Respondent has already taken a lenient view by imposing penalty of Rs. 20,000/- only on each director of the Company instead of the maximum penalty of Rs. 500,000/- as provided in section 492 of the Ordinance.
6. We have heard the parties. Our para-wise findings on the issues are as under:
- a) section 492 of the Ordinance is reproduced for ease of reference:

"492. 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 direction given under this Ordinance makes a statement which is false or incorrect in any material



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particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.”

[Emphasis added]

The Company, being an MSE, was required under S.R.O 860(I)/2007 dated 21/08/07, to prepare and to assure audit of complete financial statements of the Company. The ‘Cash Flow Statement’ shows the flow of cash in and out of the company and is useful in determining the short-term viability of a company, particularly its ability to pay its liabilities. On the other hand, the ‘Statement of Changes in Equity’ provides useful information on how capital or funds of an entity are utilized. One of the main objectives and intent of section 492 of the Ordinance is to protect the users, including investors, shareholders, creditors, bankers, customers etc., of financial statements against misstatements so that reliable financial information which is vital for making a well informed decision is available to them. The Company contravened section 492 of the Ordinance by omitting ‘Cash Flow Statement’ and ‘Statement of Changes in Equity’ from the Accounts. Further, the Company circulated an incorrect and false statement of the Auditors to members of the Company and the Commission which gives an impression that audit of all financial statements including the ‘Cash Flow Statement’ and ‘Statement of Changes in Equity’ was carried out by the Auditors; and

- b) the proceedings against the Appellants were not criminal proceedings and the Respondent was not required to prove the case beyond reasonable doubt. We place reliance on the book of *Principle of Statutory Interpretation*, by Justice G.P. Singh (7th edition, Chapter



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11, page 653 & 659, published by Wadhwa & Company Nagpur) that; “.....existence of a guilty intent is an essential ingredient of a crime at common law and the principle is expressed in the maxim- *Actus non facit reum nisi mens sit rea*” “penalty imposable under an Act for breach of civil obligation by an adjudicatory proceeding which is not criminal in nature does not attract the rule that *mens rea* is essential before a penalty could be imposed”. We do not agree that *mens rea* should be present in proceedings under section 492 of the Ordinance as these proceedings are not of criminal nature but of civil nature.

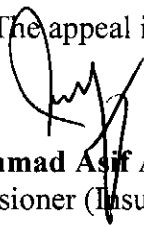
Moreover, the word “willful default” has been defined in Oxford Dictionary of Law Fifth Edition as “*The failure of the person to do what he should do, either intentionally or through recklessness.*” The argument of the Appellants that the default was not “willful” holds little merit as the act of the Appellants was reckless. The Appellants did not exercise the due skill and care required of them as directors of the Company at the time of submission of the Accounts. 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. 20,000/- on each director of the Company.

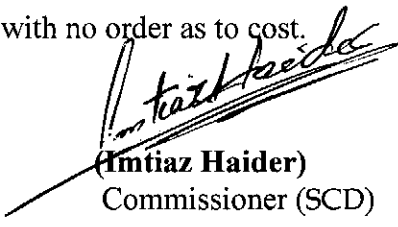
We would, further, like to add that Appellant No 2’s name i.e. Mr. Fayaz Haider, was mentioned inadvertently in the Impugned Order as Mr. Fazal-e-Hassan Abed, which was a typographical error. However, it has been observed that the name was correctly mentioned in the cover letter attached to the Impugned Order



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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.


(Mohammad Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SCD)

Announced on: 30/1/14