



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 39 of 2014

1. Mr. Maqsood Elahi, CEO/Director/Company Secretary
 2. Mr. Bilal Maqsood
 3. Ms. Sadaf Maqsood
 4. Ms. Tania Elahi
 5. Mrs. Munawar Jabeen
- (Serial No. 2-5 all directors of Pak Chromical Ltd)

...Appellants

Versus

Head of Department (Enforcement), SECP

...Respondent

Date of Hearing

06/02/15

ORDER

Present:

Appellant No.1 (through video conferencing)

1. Mr. Maqsood Elahi, CEO Pak Chromical Ltd

For the Respondent:

1. Ms. Amina Aziz, Director (Enforcement)
2. Mr. Shafiq-ur-Rehman, Deputy Director (Enforcement)



Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 39 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order (the "Impugned Order") dated 17/06/14 passed by the Respondent.
2. The brief facts of the case are that the examination of the annual audited financial statements for the year ended 30/06/12 (the "Accounts") filed under the provisions of section 242 of the Companies Ordinance, 1984 (the "Ordinance") by Pak Chromical Limited (the "Company") revealed that the Directors' Remuneration has not been disclosed in the Accounts. The Commission vide letter dated 26/08/13 advised the Company to furnish evidence of compliance with the provisions of section 218 of the Ordinance. In response to this, the Company vide its reply dated 23/09/13 submitted details of the remuneration paid to the Chief Executive and Directors of the Company as following:

Particulars	2012			2011		
	CEO	Directors	Total	CEO	Directors	Total
Remuneration and Benefits	690,000	1,180,000	1,870,000	490,000	535,000	1,025,000
Number of persons	1	3	4	1	2	3

3. The Company failed to make out disclosures for the remuneration of the Chief Executive and Directors in the Directors' Report and also failed to provide documentary evidence substantiating that the aforesaid abstract was circulated to the shareholders of the Company within twenty one days from the date of the aforesaid variation.
4. Show Cause Notice dated 06/03/14 ("SCN") was issued to the Appellants under section 218 read with section 476 of the Ordinance. Hearing in the matter was held on



Securities and Exchange Commission of Pakistan

31/03/14 at the SECP Head Office, Islamabad via video-conferencing facility. Mr. Maqsood Raza (the "Authorised Representative") appeared on behalf of the Appellants and conceded the default.

5. The Respondent dissatisfied with the response of the Appellants held that the Chief Executive/Company Secretary and Directors of the Company have violated the provisions of the law by failing to make out disclosures for the remuneration of Chief Executive/Company Secretary and Directors in the Directors' Report. The provisions of section 218 of the Ordinance were not complied with and a penalty of Rs. 1,000 was imposed on each of the Appellants with the total amount aggregating to Rs. 5,000.
6. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' representative argued that the Company is a public limited unlisted company and all paid up shares are owned by the family members. The Impugned Order pertains to the violation of section 218 of the Ordinance and the default is accepted. The members of the Company are not experts in complying with the provisions of the Ordinance and meeting the required accounting standards. It is the duty of the Chartered Accountant to ensure compliance of the required standards. Moreover, no harm was done and no loss was made. All the rules are to protect the public shareholders and in the instant case there were no outsiders. Therefore, even if the accounts do not meet the required standards, the family members have no objection and they have not filed a complaint with the Commission. Furthermore, after the Respondent notified the Appellants of the discrepancies, they were removed and the details of cash flow/notes were provided to the Commission. The Company is already struggling and the penalty is too harsh, therefore, order be revised and a warning be issued instead.



Securities and Exchange Commission of Pakistan

7. The department argued that the aforesaid violation of section 218 of the Ordinance was a significant one and it was not the default of 'rules' but mandatory provisions of section 218 of the Ordinance. The discrepancies being rectified and subsequent filing of the disclosure details with Commission does not absolve the Appellants of their responsibility to fully comply with the requirements of the Ordinance. The Company is a public limited unlisted company and it is their responsibility to ensure compliance and the Appellants cannot shift the blame on the Chartered Accountant being the statutory auditor who cannot provide consultancy to the Company. Preparation of accounts is the responsibility of the management of the Company and auditors are only required to give opinion thereon.
8. We have heard the arguments. Section 218 of the Ordinance is reproduced for ease of reference:

218. Disclosure to members of directors' interest in contract appointing chief executive, managing agent or secretary.- (1) Where a company—

(a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested;

or

(b) varies any such contract already in existence;

the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation.

(2) Where a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract, as the case may be, and if any other director of the company is concerned or interested in the appointment or contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the appointment of contract or variation shall also be sent to every member of the company with the abstract.



Securities and Exchange Commission of Pakistan

(3) Where a director becomes concerned or interested as aforesaid in any such contract as is referred to in sub-section (1) or sub-section (2) after it is made, the abstract and the memorandum, if any, referred to therein shall be sent to every member of the company within twenty-one days from the date of which the director becomes so concerned or interested.

(4) All contracts entered into by a company for the appointment of a managing agent, chief executive or secretary shall be kept at the registered office of the company; and shall be open to the inspection of any member of the company at such office; and extracts may be taken therefrom and certified copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 150 shall apply accordingly.

(5) The provisions of this section shall apply in relation to any resolution of the directors of a company appointing a managing agent, a secretary or a chief executive or other whole-time director, or varying any previous contract or resolution of the company relating to the appointment of a managing agent, a secretary or a chief executive or other whole-time director, as they apply in relation to any contract for the like purpose.

(6) If default is made in complying with any of the provisions of the section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine which may extend to five thousand rupees.

Emphasis Added

The Appellants have accepted the default and have asked for a warning to be issued instead of a penalty. Further, it was argued that it was the responsibility of the Chartered Accountant which the Company had hired to ensure compliance of the relevant provisions of the Ordinance and meet the required accounting standards. The Respondent has argued that this was a significant violation of section 218 of the Ordinance and a statutory auditor cannot provide consultancy to the Company. We are of the view the Company being a public limited unlisted company has a responsibility to ensure full compliance of the provisions of the Ordinance, therefore, the violations cannot be excused and the penalty was rightly imposed on the Appellants.



Securities and Exchange Commission of Pakistan

In view of the foregoing, we see no reason to interfere with the Impugned Order.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SMD)

Announced on: 19 FEB 2015