



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 38 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)



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1. This order is in appeal No. 38 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 Enforcement department of the Commission (the "Department") while examining the annual audited accounts for the year 30/06/12 (the "Accounts") of Pak Chromical Ltd (the "Company") filed under section 242 of the Companies Ordinance, 1984 (the "Ordinance") observed that the Company being a medium-sized entity contravened the requirements of (i) Para 1.1 of Accounting and Financial Reporting Standards (AFRSs) for Small and Medium-Sized Entities (SMEs) by not preparing/attaching the 'Cash Flow Statement' and 'Statement of Changes in Equity' and partial Notes along with the Accounts and (ii) the requirements of Para 1.3 of the AFRS for SMSEs by not giving disclosure of the Statement of Compliance with the Accounts. It was also noticed that the Company failed to prepare and report Notes to the Accounts with respect to (a) accounting policies, (b) share capital, (c) fixed assets and (d) total net sales as per the requirements set out in Fifth Schedule of the Ordinance and AFRS. Furthermore, the Company had circulated the Auditors' Report of M/s Maqsood & Co., Chartered Accountants (the "Auditors") to the Members of the Company for the year ended 30/06/12 stating that the Auditors have audited the annexed balance sheet of the Company as at 30/06/12 together with the Profit and Loss Account and the Notes forming part thereof for the period ended and in their opinion books of accounts have been kept by the Company as required by the Ordinance, whereas the 'Cash Flow Statement' and 'Statement of Changes in Equity' were not prepared, audited and assessed.
3. Additionally, the Auditors, vide correspondence dated 06/09/13 to the Commission submitted that during audit they issued an audit observation letter to the management



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for presentation of financial statements but in response the Company vide letter dated 03/10/13 stated:

"...You are requested to kindly don't qualify/modify your report as such report may distort our credit line with bank.

The undersigned being Chief Executive once again ensure you that from next year financial statement will be presented as per international standards, but this year kindly complete audit as per previous format and we don't have sufficient time to rework on financial statement as we have to circulate accounts to the members latest by 10th October and Board of meeting is also due for authorization to issue the accounts."

4. Moreover, the Company held Rs.19.382 million (2011: Rs.19.382 million) as 'Advance against Shares', which the Company failed to substantiate.
5. The Company vide letter dated 23/09/13 in response to the Commission's letter dated 26/08/13 submitted original copies of the 'Cash Flow Statement', 'Statement of Changes in Equity' and partial 'Notes' for the year ended 30/06/12 having the signature of the Chief Executive and Director of the Company, which cannot be construed as statutory filing. The submission by the Company in response to the disclosure of statement of compliance could not be construed as compliance of the requirements of para 1.3 of the AFRS for SMSEs and 5th Schedule of the Ordinance. The Company's stance that the financial statements were authorized by the Board of Directors of the Company for issue on 06/10/13 could not be construed as compliance of Para 10 of section 14 of AFRS for SMEs. The Company also failed to substantiate the 'Advance against Shares'. The above mentioned facts indicated that the Company had 'prima facie' contravened the provisions of section 492 of the Ordinance.
6. Show Cause Notice dated 06/03/14 ("SCN") was issued to the Appellants under section 492 read with section 476 of the Ordinance. Hearing on the matter was fixed



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on 31/03/14 at the SECP Head Office, Islamabad via video conferencing facility. On the date of hearing, Mr. Maqsood Raza ("Authorised Representative") appeared before the Respondent through video-conferencing facility at the Companies Registration Office, Karachi (the "CRO"). During the course of the hearing, the Authorised Representative conceded to the default and made a request to take a lenient view on the matter.

7. The Respondent dissatisfied with the response of the Appellants held that the provisions of section 492 of the Ordinance were violated on six counts. The Appellants of the Company have failed to comply with the provisions of the Ordinance by submitting the missing/required information and not explaining/commenting the reasons for non-compliances. It is also pertinent to mention that the Authorized Representative accepted the default of the Ordinance. As the Appellants have failed to comply with the requirements of the Ordinance in true letter and spirit, and keeping in view the fact that the default was conceded to, a token penalty of Rs. 25,000 was imposed on each of the Appellants with the total amount aggregating to Rs. 75,000.
8. 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 AFRS and the default is accepted for the aforementioned violations. The members of the Company are not experts in accounting standards and 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



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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.

9. The department argued that there were significant violations committed by the Appellants. The discrepancies being rectified and subsequent filing of the Accounts does not absolve the Appellants of their responsibility to fully comply with the requirements of AFRS. The Company is a public listed 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.
10. We have heard the arguments. Section 492 of the Ordinance, Para 1.1 and Para 1.3 of the AFRS for SME's are 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 particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding [five]130 hundred thousand rupees.

Para 1.1 of the AFRS for SMEs:

"A complete set of financial statements includes the following components: (a) a balance sheet, (b) an income statement, (c) a statement showing either (i) all changes in equity, or (ii) changes in equity, or (ii) changes in equity other than those arising from capital transactions with owners and distribution to owners, (d)

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a cash flow statement, and (e) accounting policies and explanatory notes. Furthermore, Para 1.2 of AFRS for SMSEs also states that financial statements shall present fairly the financial position, financial performance and cash flows of an entity."

Para 1.3 of the AFRS for SMSEs:

"An entity whose financial statements are drawn up in compliance with the standard and the Companies Ordinance, 1984 shall specify in its accounting policy note that these financial statements are in compliance with Accounting and Financial Reporting Framework for MSEs and the Companies Ordinance, 1984."

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 meet the required accounting standards. The Respondent has argued that these were significant violations and a statutory auditor cannot provide consultancy to the Company. We are of the view the Company being a public listed company has a responsibility to ensure full compliance of the AFRS and provisions of the Ordinance, therefore, the violations cannot be excused and the penalty was rightly imposed on the Appellants.

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**