



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

### Appeal No. 10 of 2013

1. Mr. Sheikh Muhammad Saeed, Chief Executive Officer

2. Mr. Sheikh Muhammad Ikram, Director

3. Muhamamd Shafiq Sheikh, Director

4. Mrs. Nusrat Shafiq, Director

(of Mehtab Industries Limited)

..... Appellants

Versus

Head of Department (Enforcement)

..... Respondent

Date of Hearing

11/12/13

### **ORDER**

Present:

For the Appellant:

Mr. Anjum Pervez (Advocate High Court)

For the Respondent: (through video conference)

Ms. Maheen Fatima, Director (Enforcement)

Mr. Haroon Abdullah, Deputy Director (Enforcement)



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1. This order is in appeal No. 10 of 2013 filed under section 33 of Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 against the order dated 10/01/13 (the “Impugned Order”) passed by the Respondent.
  
2. The facts leading to the case are that the Enforcement Department (“the Department”) while examining the annual audited accounts (the “Accounts”) of the Company for the financial year ended 30/06/11, observed that the Mehtab Industries Limited (the “Company”) had failed to comply with the disclosure requirements of Accounting and Financial Reporting Standards for Small and Medium Sized Entities issued by ICAP (“AFRS for SMSEs”) and the Companies Ordinance, 1984 (the “Ordinance”) in the following manner:
  - Director’s Report in compliance with section 236 of the Ordinance was not attached.
  
  - Director’s remuneration: Disclosure of director’s remuneration as required by clause 3 of Part III of fifth schedule to the Ordinance was found to be missing in the accounts.
  
  - The Company had not filed Statement of Changes in Equity and Cash Flow Statement with the accounts of the Company in compliance of Para 1.1 (c) i & ii and (d) of section 1 of AFRS for SMSEs.
  
  - The Company had not disclosed its policies and explanatory notes in its accounts in compliance of Para 1.1 (e) of section 1 of AFRS for SMSEs.



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- The Statement of Compliance with regards to preparation of financial statements had not been given in the accounts of the Company in compliance of Para 1.3 of section 1 of AFRS for SMSEs.
  - The address of the registered office of the Company had not been disclosed in the financial statements of the Company in compliance of Para 1.36 (a) of section 1 AFRS for SMSEs.
  - The Company had failed to classify the long term loan as required vide Clause 8(B) of Part II of fifth schedule of the Ordinance.
  - The Company had failed to disclose the date of authorization for issuance of financial statements as per the requirement of Para 14.10 of section 14 of AFRS for MSE's.
3. Show Cause Notice dated 08/06/12 ("SCN") under the provisions of section 492 read with section 476 of the Ordinance was issued to the Appellants and hearing in the matter was held. The Appellants admitted default and submitted the revised accounts and ensured to comply with the provisions of the Ordinance in future. The Respondent, therefore, took a lenient view and imposed penalty of Rs 20,000 each on the Appellants.
4. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' counsel argued that the Respondent failed to take into consideration that the omissions by the Company in the Accounts were made bona fide and had been made for the first time. The Company had also assured the Respondent that such omissions will not occur in the future and had requested to drop the proceedings. It is pertinent to mention that immediately



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after the SCN was served on the Appellants, the Company filed copies of the revised audited accounts with the Company Registration Office, Lahore. Further, the Company is dormant and could not afford to pay the penalty. The penalty, therefore, should be withdrawn or reduced substantially.

5. The department's representative argued that the Appellants have admitted their default and, therefore, a lenient view was taken. Instead of imposing the maximum penalty under section 492 of the Ordinance, a much reduced penalty of Rs.20,000 was imposed on each of the Appellants with the total amounting aggregating to Rs.80,000.
6. We have heard the parties. 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 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 Appellants have requested for further leniency on the grounds that the omissions in the Accounts were made bona fide and the revised audited accounts were also filed with the Commission after SCN was served on the Appellants.



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The Appellants have substantially complied with the SCN by promptly submitting the revised accounts. We are taking a further lenient view in the matter by reducing the penalty to a sum of Rs.5000 on each Appellant. The penalty has been imposed on the Appellants in their personal capacity and should be paid by the Appellants personally and not from the coffers of the Company.

The Appeal is disposed of with no order as to cost.

(Muhammad Asif Arif)  
Commissioner (Insurance)

(Imtiaz Haider)  
Commissioner (SCD)

Announced on: 30/1/14