



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 40 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. 40 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") observed that the Auditors' Report annexed with the Accounts was 'unsigned' and 'undated' by the statutory Auditors (M/s Maqsood & Co., Chartered Accountants (the "Auditor") of Pak Chromical Ltd (the "Company") which is a contravention of the provisions of section 257 of the Ordinance.
3. In view of the above, the Commission through letter dated 26/08/13 advised the Company to furnish the evidence of compliance with the provisions of section 257 read with section 259 of the Ordinance. The Company in its reply dated 23/09/13 stated that the Auditors Report is properly authenticated by the Auditor but the Company, while filing the Accounts, submitted the Auditors' Report before affixing the date stamp on it. The reply of the Company was found unsatisfactory.
4. Show Cause Notice dated 06/03/14 ("SCN") under section 257 read with sections 259 and 476 of the Ordinance was served on the Appellants. Hearing on the matter was held on 31/03/14. On the date of hearing Mr. Maqsood Raza ("Authorized Representative") appeared before the Respondents through video-conferencing facility at the Companies Registration Office, Karachi. During the course of the hearing, the Authorized Representative conceded to the default and made a request to take a lenient view on the matter.
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 aforesaid provision of the law by filing the 'unsigned' and 'undated' Auditors Report alongwith Accounts with the Registrar under section 242 read with section 257 of the



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Ordinance. In view of this, a penalty of Rs.3000 was imposed on each of the Appellants with the total amount aggregating to Rs.15,000.

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 242 read with section 257 of the Ordinance and the default is accepted. The members of the Company are not experts in complying with the provisions of the Ordinance. It is the duty of the Chartered Accountant to ensure compliance of the law. 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.
7. The department argued that the aforesaid violation of section 242 read with section 257 of the Ordinance was a significant one and it was not the default of 'rules' but mandatory provisions of the Ordinance. The Company is a public limited unlisted company and is required to submit and circulate signed and dated Auditors Report to the Commission and every shareholder. Submission of duly authenticated Auditors Report subsequent to issuance of Commission's notice does not constitute compliance of the aforesaid provisions of law. Further it not default of rules but of mandatory provisions of the Ordinance.
8. We have heard the arguments. Sections 242, 257 and 259 of the Ordinance are reproduced for ease of reference:



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242. Copy of balance-sheet to be forwarded to the registrar. - (1) Without prejudice to the provisions of sub-section (5) of section 233, after the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the annual general meeting, such number of copies thereof alongwith the reports and documents required to be annexed to the same, not being less than [three] in the case of a listed company or [two] in the case of any other company, as may be prescribed, signed by the chief executive, directors, chairman of directors or the auditors of the company, as the case may be, in the manner provided by sections 236, 241 and 257, shall be filed with the registrar within thirty days from the date of such meeting.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet and profit and loss account or the income and expenditure account or defers consideration thereof or is adjourned, a statement of that fact and of the reasons therefor shall be annexed to the said documents and also to the copies thereof required to be filed with the registrar.

(3) Nothing in this section shall apply to a private company [having paid up capital of less than 7.5 million rupees].

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable, -

(a) if the default relates to a listed company, to a fine which may extend to ten thousand rupees and to a further fine which may extend to two hundred rupees for every day after the first during which the default continues; and

(b) if the default relates to any other company, to a fine which may extend to two thousand rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

257. Signature on audit report, etc.- (1) Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of sub-section (2) of section 254, only a partner in the firm practising in Pakistan, shall sign the auditor's report or sign or authenticate any other documents of the company required by law to be signed or authenticated by the auditor.

(2) The report of auditors shall be dated and indicate the place at which it is signed.

259. Penalty for non-compliance with provisions by companies.- If default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and willfully a party to the default shall be punishable with fine which may extend to [fifty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues].

Emphasis Added



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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 242 read with 257 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 under section 259 of the Ordinance.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SMD)

Announced on: 19 FEB 2015