



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 41 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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SECP

1. This order is in appeal No. 41 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") observed that the Directors' Report was not annexed therewith to the Accounts.
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 236 read with section 244 of the Companies Ordinance, 1984 (the "Ordinance") with regard to non-filing of the Directors' Report along with the Accounts. The reply of the Company was found unsatisfactory.
4. Show Cause Notice dated 06/03/14 was issued to the Appellants under section 244 read with section 476 of the Ordinance. Hearing on the matter was held on 31/03/14 at the SECP Head Office, Islamabad via video-conferencing facility. On the date of hearing, Mr. Maqsood Raza (the "Authorised Representative") appeared on behalf of the Appellants through video-conferencing facility at the Companies Registration Office, Karachi. 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.
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 failing to submit the Directors' Report while filing the Accounts with the Registrar under section 242 of the Ordinance. In view of this, the provisions of section 244 of the Ordinance were not complied with and a penalty of Rs.2,000 was imposed on each of the Appellants with the total amount aggregating to Rs.10,000.



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6. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' representative argued that the Company is a public unlisted limited company and all paid up shares are owned by the family members. The Impugned Order pertains to the violation of section 244 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. 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 236 read with section 244 of the Ordinance was a significant one and it was not the default of 'rules' but mandatory provisions of section 244 of the Ordinance. The subsequent filing of the Directors report does not absolve the Appellants of their responsibility to fully comply with the requirements of the Ordinance. The Company is a public listed company and it is their responsibility to ensure compliance.
8. We have heard the arguments. Section 244 of the Ordinance is reproduced for ease of reference:

*244. Penalty for improper issue, circulation or publication of balance sheet or profit and loss account. - If any copy of a balance-sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account or income and expenditure account, (ii) any accounts, reports, notes or statements referred therein, (iii) the auditor's report, and (iv) the directors report, the company, and every officer of the*



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company who is knowingly and wilfully in default shall be punishable with 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. The Respondent has argued that this was a significant violation of section 236 read with section 244 of the Ordinance and subsequent compliance to the Commission's notice cannot be a substitute of statutory filing. We are of the view that the Company being a public limited unlisted company has a responsibility to ensure full compliance of the provisions of the Ordinance, therefore, the violation of not circulating Directors Report with the accounts cannot be excused and the penalty was rightly imposed on the Appellants.

(Fida Hussain Samoo)  
Commissioner (Insurance)

(Zafar Abdullah)  
Commissioner (SMD)

Announced on: 19 FEB 2015