



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 24 of 2014

- | | |
|----------------------------------|---------------------|
| 1. Mr. Sikander Mustafa Khan | ...Appellant No.1 |
| 2. Mr. Latif Khalid Hashmi | ...Appellant No.2 |
| 3. Mr. Sohail Bashir Rana | ...Appellant No.3 |
| 4. Mr. Laeeq Uddin Ansari | ... Appellant No. 4 |
| 5. Mr. Mian Muhammad Saleem | ...Appellant No. 5 |
| 6. Mr. Syed Muhammad Irfan Aqeel | ...Appellant No.6 |
| 7. Mr. Rana Muhammad Siddique | ...Appellant No.7 |

Versus

Head of Department (Enforcement),
SECP, Islamabad

...Respondent

Date of Hearing 06/02/15

Present:

For the Appellants:

1. Mr. Muhammad Ilyas, Advocate
2. Mr. Imran Ilyas, FCA

For the Respondent:

1. Mr. Shahzad Afzal, Joint Director (Enforcement)
2. Mr. M. Anwar Hashmi, Deputy Director (Enforcement)

Page 1 of 7



Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 24 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 29/04/14 passed by the Respondent.
2. The brief facts of the case are that examination of annual audited accounts for the year ended 30/06/13 and 30/06/12 of Millat Tractors Limited (the "Company") and subsequent correspondence vide Commission's letters dated 07/10/13 and 01/01/14 and Company's replies dated 31/10/13 and 13/01/14 revealed that the Company entered into transactions with associated companies having five common directors (the "interested directors"), as follows:

Transactions with Associated Companies		
Nature of Transaction	2012-2013	2011-2012
Total Sales	Rs.86.418 million	Rs.69.929 million
Total Purchases	Rs. 4,098.571 million	Rs.3,485.389 million

Common Directors and their Shareholding in Associated Companies			
Names of Common Directors	Percentage Shareholding of common directors in associated companies		
	Millat Equipment Ltd.	Millat Industrial Products Ltd	Bolan Casting Ltd
Mr. Sikandar Mustafa Khan	1,625,001 (6.25%)	543,760 (6.07%)	151,241 (1.45%)
Mr. Latif Khalid Hashmi	1,625,001 (6.25%)	362,510 (4.05%)	302,064 (2.90%)
Mr. Sohail Bashir Rana	1,693,951 (6.52%)	362,510 (4.05%)	131,326 (1.26%)
Mr. Laeeq Uddin	1,874,001 (7.21%)	362,510 (4.05%)	666,474 (6.39%)



Securities and Exchange Commission of Pakistan

Ansari			
Mian Muhammad Saleem	600001 (2.31%)	200,010 (2.23%)	61,961 (0.59%)
Total % Shareholding	28.27%	20.45%	12.59%

3. Analysis of information provided by the Company in response to Commission's queries revealed that sale and purchase transactions with the associated companies are made by the Company against purchase orders, which are agreements between the parties and all these transactions are approved by the board of directors of the Company on a quarterly basis. The companies namely Millat Equipment Limited, Millat Industrial Products Limited and Bolan Casting Limited are associated companies of the Company and five of the Appellants, being common directors and being beneficial owners of shares in the associated companies, as mentioned above, have interest in transactions with associated companies. It also transpired that the Appellants in their capacity as directors of the company approved the transactions with the associated companies in various meetings held during each quarter of the financial years ended 30/06/12 and 30/06/13 and such meetings were attended by all the Appellants including the interested directors. Perusal of relevant extracts of the minutes of the meetings of directors and related attendance sheets revealed that the interested directors, despite being interested owing to their common directorship and beneficial shareholding in the associated companies, not only failed to give a notice of their interest in the transactions with related parties which were to be approved, but also participated in the proceedings of directors and voting to approve such transactions, and the same has also been admitted by the Company vide its letter dated 13/01/14.
4. Show Cause Notice dated 11/03/14 ("SCN") under sections 193, 196, 214 and 216 read with section 476 of the Companies Ordinance ("Ordinance") was issued to the Appellants. Mr. Mian Muhammad Saleem, director and Company Secretary, on behalf of the Appellants excluding Mr. Saad Iqbal submitted reply dated 03/04/14. Hearing on the



Securities and Exchange Commission of Pakistan

matter was held on 21/04/14. On the date of hearing, Mian Muhammad Saleem on behalf of Appellants appeared before the Respondent. Mr. Saad Iqbal along with Mr. M. Yousuf of A.K. Brohi & Co. appeared before the Respondent through video link facility. Both Mian M. Saleem and Mr. Saad Iqbal mainly reiterated the earlier stance and requested for a lenient view in the matter.

5. The Respondent dissatisfied with the response of the Appellants held that the Appellants are advised to be careful with respect to compliance of section 193, section 214 and 216 of the Ordinance in future. In respect of violation of 196(1) by the Appellants, a fine of Rs.10,000 was imposed on each of the Appellants with the total fine aggregating to Rs. 70,000. Furthermore, it also transpired that Mr. Saad Iqbal as an independent director and Mr. Manzoor Ahmed as the nominee director of the National Investment Trust do not have any known interest in the transactions with the associated companies. Therefore, keeping in view these facts, the Respondent warned them with regard to contraventions with the aforesaid provisions of the Ordinance.
6. The Appellants have preferred the instant appeal against the Impugned Order. The Appellant's counsel argued all matters of sale and purchases etc., with the associated companies result in 'related party transactions' which are required to be disclosed in the annual audited financial statements under the International Accounting Standard 24 which IAS has, inter alia, been notified for compliance under section 234(3) of the Ordinance by the Commission. All 'related party transactions' are required to be quarterly approved under clause (x) (a) of the Code of Corporate Governance, 2012 (the "Code") by the Board of Directors on the recommendation of the Audit Committee of the company. In view of the company's published policy pertaining to 'Pricing for related party transactions', the directors of the Company including the Appellants neither had any interest nor declared any interest while approving the 'related party transactions'. The Appellants have complied with the directions of the Commission by passing a special resolution. Moreover, even if there had been five interested directors the quorum



Securities and Exchange Commission of Pakistan

would still have been achieved as out of a total of nine directors, four of them were not interested directors.

7. The department's representatives argued that mere disclosure of 'pricing for related party transactions' in the financial statements does not absolve the directors of their mandatory duty of disclosure of interest. The Code requires approval of related party transactions by the BoD of a company but in the instant case due to operation of section 216 of the Ordinance which prohibits participation and voting by interested directors, the quorum for directors was not competent to approve the transactions with three associated companies namely Millat Equipment Limited, Millat Industrial Products Limited and Bolan Casting Limited. The directors, therefore, instead of approving the transactions with the associated companies should have taken the matter for consideration and approval by the shareholders in general meeting of the Company. Approval by members in a general meeting would be considered as surpassing the minimum requirements of the Code instead of breaching it. The requirements of the law always take precedence over the requirements of the Code. Moreover, the record reveals that annual audited accounts for the year ended 30/06/12 reflects nine directors wherein quorum can be formed excluding interested directors. However, subsequent to the Election of board of director held in EOGM on 1/11/12 there were only eight directors (seven elected plus one nominee of NIT), therefore, quorum in subsequent meetings cannot be formed in accordance with the requirements of section 193 and Company's articles of association.
8. We have heard the arguments. Sections 214 and 216 of the Ordinance are reproduced for ease of reference:

214. Disclosure of interest by director. - (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors:

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.

(2) *The disclosure required to be made by a director under sub-section (1) shall be made,—*



Securities and Exchange Commission of Pakistan

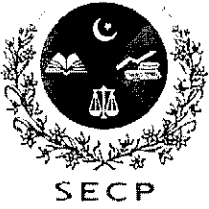
- (a) in the case of a contract or arrangement to be entered into, at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration or, if the director was not, on the date of that meeting, concerned or interested in the contract or arrangement, at the first meeting of the directors held after he becomes so concerned or interested; and
- (b) in the case of any other contract or arrangement, at the first meeting of the directors held after the director becomes concerned or interested in the contract or arrangement.
- (3) For the purposes of sub-sections (1) and (2), a general notice given to the directors to the effect that a director is a director or a member of a specified body corporate or a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.
- (4) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.
- (5) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the directors, or the director concerned takes reasonable steps to ensure that it is brought up and read at the first meeting of the directors after it is given.
- (6) A director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.
- (7) Nothing in this section shall be taken to prejudice the operation of any law restricting a director of a company from having any concern or interest in any contract or arrangement with the company.

216. Interested director not to participate or vote in proceedings of directors. - (1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

(2) Sub-section (1) shall not apply to—

- (a) a private company which is neither a subsidiary nor a holding company of a public company;
- (b) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;
- (c) any contract or arrangement entered into or to be entered into with a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than such shares therein as are requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1).
- (3) Every director who knowingly contravenes any of the provisions of sub-section (1), or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.

Emphasis Added



Securities and Exchange Commission of Pakistan

SECP

The aforementioned provisions of the law are clear and explicit. The Appellants have argued that in view of the company's published policy pertaining to 'Pricing for related party transactions', the directors of the Company including the Appellants neither had any interest nor declared any interest while approving the 'related party transactions'. The Respondents have argued that mere disclosure of 'pricing for related party transactions' in the financial statements does not absolve the directors of their mandatory duty of disclosure of interest. The Code requires approval of related party transactions by the board of directors of a company but in the instant case due to operation of section 216 of the Ordinance which prohibits participation and voting by interested directors, the quorum for directors was not competent to approve the transactions. We are of the view that the Appellants have violated section 216 of the Ordinance by participating in meetings and approving transactions in which they were an interested party. It is a settled principle of Law that primary legislation prevails over secondary legislation in cases there occurs a conflict between the two. The Code is part of the listing regulations of the Stock Exchanges and is subordinate legislation while the provisions of the Ordinance are primary law. In the instant case, the board of directors could not approve related party transactions as the quorum was not complete.

In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SMD)

Announced on: **30 MAR 2015**