



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 06 of 2010

Habib Ullah, Chief Executive
Mian Muhammad Saleem Omer, Director
Mian Naseem Omer, Director
of DM Textile Mills Limited Appellants
(All directors of DM Textile Mills Limited)

Versus

Executive Director (Enforcement) Respondent

Date of hearing 09/04/13

ORDER

Present:

For the Appellants:

Ms. Rehana Zaman (Advocate)

Ms. Amina Iqbal (Advocate)

For the Respondent:

Mr. Tariq Ahmad, Joint Director (Enforcement)



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1. This order is in appeal No. 06 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 30/12/09 (the "Impugned Order") passed by the Respondent.
2. The annual audited accounts for the year ended 30/06/06 (the "Accounts") of D.M Textile Mills Limited (the "Company") revealed that an amount of Rs. 51.150 million had been advanced for purchase of property. The Company later informed that the amount of Rs. 51.150 million had been advanced to purchase a house in Islamabad, which will be used as a guest house for the officials of the Company. The Company vide letter dated 23/11/07 provided a copy of transfer of possession of the aforesaid property signed by Syed Irshad Hussain Shah, Attorney of Mr. Naeem Ahmed ("Seller") which revealed the complete address of the house as "House # 8, Street 71, F-8/3, Islamabad". The Board of Directors ("BOD") of the Company gave a post facto approval of the above transaction by passing resolution through circulation on 25/08/09. The Commission also received documents including a copy of resolution passed through circulation on 10/03/09 by the BOD of the Company for borrowing Rs. 6.320 million from Mrs. Riffat Habib wife of Mian Habib Ullah, Chairman and Chief Executive of the Company ("CEO"). The correspondence between the Company and the Commission showed that the Company had made a misstatement that the aforesaid house had been purchased as a guest house for its officials, however, the same was in use of the CEO of the Company.
3. The Company representative also informed the Commission through letters dated 08/07/09 and 14/09/09 that the Company's BOD had approved various businesses through circulation, concerning sale of Company assets, borrowing of funds from Famous Securities Limited, ("FSL"), an associated company,



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borrowing of funds from Mrs. Riffat Habib and giving advance to Bilal Fibers Limited (“BFL”), an associated company. Nominee director of the Company, namely, Mr. Shahid Anwar, submitted in response to the Commission’s letter, vide letter dated 18/09/09 that neither had he received the resolutions nor any discussion took place in the subsequent BOD’s meetings. The above acts fell within the ambit of section 492 of the Companies Ordinance, 1984 (“the Ordinance”). The Appellants made a false and incorrect statement in its Accounts sent to its shareholders and general public and misstated facts to the Commission through its various correspondences.

4. Show cause notice dated 12/10/09 (“SCN”) under section 492 read with section 476 of the Ordinance was issued to the directors of the Company in order to explain as to why penalty under the aforesaid section may not be imposed on them. The directors of the Company filed reply to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed penalty of Rs.100,000/- on each of the Appellants. No penalty was imposed on the other directors and nominee director, Mr. Shahid Anwar was strictly warned to be vigilant in playing his role as independent non-executive director of the Company.
5. The Appellants dissatisfied with the Impugned Order have preferred to file the instant appeal. The Appellants’ representative argued that the directors neither made any false or incorrect statement nor omitted any material fact in the annual accounts and in all the correspondence filed with the Commission. The Company had purchased the said property for use as a guest house. Subsequently, however, the Company allowed the CEO to use it as his residence free of rent. The use of the guest house as residence has been



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allowed in accordance with the Company policy to provide free accommodation to all officials of the Company. The CEO has not been paid the advance rent which is paid to other officers of the Company. The fact that the guest house was not in the Company's name was not concealment of facts and did not cause any loss to the Company. Due to legal hurdles, the property could not be transferred in the name of the Company; however, the property would be transferred to the Company in due course. Notice of Board's meetings by circulation was sent to all directors except Mr. Shahid Anwar as he used to be in attendance at only some of the meetings.

6. The department's representative argued that the Appellants could not present any proof in support of the statement that the said guest house was allowed to the CEO as his residence in accordance with the policy of the Company. Moreover, none of the resolutions of BOD meetings were received by Mr. Shahid Anwar, the nominee director of NIT, nor were they discussed in the subsequent BOD meetings. The argument forwarded by the Appellants that the notices of BOD meetings were sent to all the directors except Mr. Shahid Anwar is not cogent. The admittance of the default had already been made during the hearing before the Respondent.
7. 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 the 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



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material fact knowing it to be material, shall be punishable with fine not exceeding one hundred thousand rupees.”

Emphasis Added

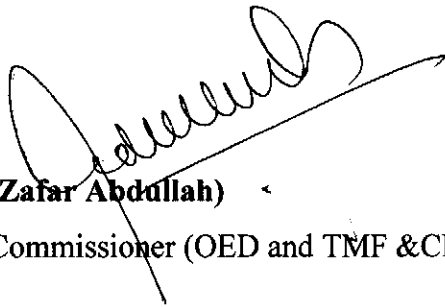
The Accounts revealed that the Company had advanced an amount of Rs. 51.50 million for purchase of property. The Company had informed the Commission that the aforesaid property shall be used as a guest house for the officials of the Company. The board resolution, however, authorizing the payment of advance to the Seller was not passed until 2009 (after 3 years). The perusal of correspondence between the Company and the Commission showed that the CEO was resident at the said property and it was in his personal use. The Company also failed to provide any documents to show that the CEO was allowed to stay in the said property in accordance with Company policy and the said property had also not been transferred in the Company's name. The Appellants have argued that the transfer of property could not take place due to legal hurdles for which no evidence has been provided. The Company's funds have been used to purchase property not for the officials of the Company to be used as a guest house but for the exclusive use of the CEO. The nominee director, Mr. Shahid Anwar did not confirm receiving notices of any of the BOD resolutions passed by the Company. Independent directors play a significant role in monitoring the decision making process of management of the company and Mr. Shahid Anwar as an independent director had a critical role to play in improving the corporate credibility of the Company. The BOD resolutions have, therefore, been approved through circulation without serving notice to all the board members, whereas, it was intimated to the Commission that all board members were served notice of BOD meetings by circulation which was a serious misrepresentation of facts to the Commission. Further, it is critical that the Accounts reflect the true and correct position of the state of affairs of the Company. We agree, therefore, with the

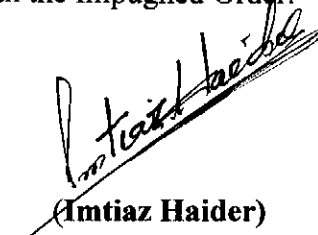


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Respondent that misstatements were made which was in violation of section 492 of the Ordinance.

In view of the above, we see no reason to interfere with the Impugned Order.


(Zafar Abdullah)
Commissioner (OED and TMF &CD)


(Imtiaz Haider)
Commissioner (SMD)

Announced on 22/05/13