



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 16 of 2009

Hameed Khan & Co. Chartered Accountants Appellant

Versus

Director (Enforcement) Respondent

ORDER

Date of hearing 11/12/13

Present:

Appellant:

Mr. Abdul Hameed Khan, Chartered Accountant

For the Appellant:

Mr. Atta Muhammad Khan, Advocate

Department representatives (through video conference):

Mr. Tariq Hussain, Director (Insurance)

Muhammad Nasir Khan Yusufzai, Deputy Director (Insurance)



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1. This order shall dispose of appeal No. 16 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 01/04/09 (the "Impugned Order") passed by the Respondent.

2. An inspection of books of accounts and records of Credit Insurance Company Limited ("CICL") was carried out under section 231 of the Companies Ordinance, 1984 (the "Ordinance") and it transpired that Mr. Abdul Hameed Khan of the Appellant (the "Auditor"), who was appointed as auditor of CICL for the year ended 31/12/07, had failed to bring out material facts about the affairs of CICL and failed to make a report in accordance with the requirements of the Ordinance. The Auditor issued a qualified report dated 30/04/08 (the "Report") on following issues:
 - *"As stated in Note 11 to the financial statements, the company has paid a total amount of Rs. 13,828,289 on account of leased vehicles. These vehicles are used by various employees. The title of these vehicles will be transferred in the name of the company after completion of lease period."*

 - *"As stated in Note 11 to the financial statements, the company has advanced a total amount of Rs. 18,400,000 for purchase of land. The company is in the process of transferring the title of the land in its name."*

 - *"As stated in Note 11 the company has advanced Rs. 24,114,300 on account of construction of office building. The construction work of the office building is due to start shortly."*



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- *“As disclosed in note 12 to the financial statements the company has purchased a piece of land amounting to Rs. 10,000,000 during the year. We have not seen the original document for the purchase of this land.”*
3. The Auditor was issued a show cause notice dated 05/01/09 (“SCN”) under section 260(1) read with section 255 and section 476 of the Ordinance. The Auditor filed reply to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and imposed a penalty of Rs. 100,000 on the Auditor.
 4. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant’s counsel argued that:
 - a) the primary condition for penalizing under section 260 of the Ordinance is to establish willful default, which was neither alleged nor established by the Respondent in the Impugned Order. The penalty imposed by the Respondent in the Impugned Order is harsh and may be set aside; and
 - b) no loss nor injury has been caused to any person due to the Report, hence, the penalty is unjustified and may be set aside.
 5. The department representatives argued that:
 - a) the Auditor admits knowing the International Standards on Auditing (“ISA”) and claims to have followed them in his Report when in



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reality he has failed to do so. The Appellant counsel's argument that the default was not willful is baseless and without merit; and

- b) the Appellant has failed to discharge its duties of making a honest report to the members of CICL and has been grossly negligent in conducting his professional duties. Whether or not loss has been caused by the Report is irrelevant in the instant case and the penalty has been rightly imposed on the Auditor.

6. We have heard the parties. Our para-wise findings on the issues are as under:

- a) the argument of the Appellant's counsel that the default was not "willful" holds little merit as the act of the Appellant was reckless. The Auditor did not exercise the due skill and care required of him as Auditor of CICL. Moreover, the word "willful default" has been defined in *Oxford Dictionary of Law, Fifth Edition* as "*The failure of the person to do what he should do, either intentionally or through recklessness.*" We would also rely on case titled *City Equitable Fire Insurance Co Ltd Re, 1925 Ch 407*, referred to in *2005 CLD 333*:

"that a default, in case of breach of duty, will be considered 'wilful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent."

- b) loss is not an ingredient for application of section 260 of the Ordinance. The penalty provided under section 260(1) of the Ordinance is imposed when auditor's report is made, or any document of the company is signed or authenticated which is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to



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which it purports to relate. The penalty provided under section 260(1) of the Ordinance is not dependent on whether or not loss is caused to any person. A separate remedy is provided under section 260(2) of the Ordinance where loss has been caused. Section 260(2) is reproduced for ease of reference:

260 (2) If the auditor's report to which sub-section (1) applies is made with the intent to profit such auditor or any other person or to put another person to a disadvantage or loss or for a material consideration, the auditor shall, in addition to the penalty provided by that sub-section, be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one hundred thousand rupees.

[Emphasis added]

In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

(**Mohammed Asif Arif**)
Commissioner (Insurance)

(**Imtiaz Haider**)
Commissioner (SCD)

Announced on: 30/1/14