



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO III

In the matter of

Appeal No. 02 of 2012

M/s. Mubarak Textile Mills Limited Appellant

Versus

Director (Enforcement) Respondent

ORDER

Date of hearing

22/07/13

Present:

For the Appellant:

Mr. Faisal Latif, FCA

Mr. Imran Shafiq, Advocate

Department representatives:

Mr. Aqeel Zeeshan, Joint Director (Enforcement)

Mr. Zulfiqar Ali, Assistant Director (Enforcement)



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1. This order is in appeal No. 02 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order dated 31/01/12 (the "Impugned Order") passed by the Respondent.
2. Brief facts of the case are stated as follows:-
 - i) Examination of the annual accounts of Mubarak Textile Mills Limited (the "Appellant") for the years ended 30/06/11, 30/06/10 and 30/06/09 revealed that the auditors in their reports on the respective accounts had given an adverse opinion that the financial statements do not give a true and fair view of the financial position of the Appellant and of its financial performance and of the loss/profit, its cash flows and statement of changes in equity together with notes forming part thereof for the respective financial years.
 - ii) Adverse audit opinion have been expressed on the accounts for the consecutive three years due to the following matters stated in the respective auditors' reports:

Quote

- a) *We did not receive direct balance confirmation from parties, including debtors amounting to Rs11.132 million (2010: Rs15.417 million; 2009: Rs18.442 million), creditors amounting to Rs28.799 million (2010: Rs28.911million; 2009: Rs30.962 million) and advance payments representing credit balances of debtors amounting to Rs1.150 million (2010: Rs9.951 million; 2009: Rs12.919 million). The Company has not performed any age*



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analysis of the debtors. Moreover, the Company has not complied with the requirements of IFRS-7 with respect to debtors past due but not impaired.

- b) *The actuarial valuation of gratuity obligation payables to the employees as on 30/06/11, 10 and 09 was not carried out (refer to note 16 of the financial statement), therefore, we were unable to express our opinion on the adequacy of the said liability as at the respective dates.*
- c) *The financial statements of the Company have been prepared assuming that Appellant will continue as a going concern as explained in note 2.1 to the accounts. The Appellant has suffered a loss of Rs12.301 million (2010: marginal profit of Rs0.751 million; 2009: Loss of Rs6.236 Million) during the year ended 30/06/11, however, as of that date the Company's current liabilities exceed its current assets by Rs48.736 million (2010: Rs68.435 million; 2009: Rs71.783 million). In our opinion these factors raise the doubt that the Company may not be able to continue as a going concern.*

Unquote

- iii) The directors in their report to members on the respective annual accounts failed to give satisfactory and complete information and explanation in regard to the reservations, observations, qualifications or adverse remarks contained in the respective auditor's report.
- iv) The Appellant's financial position deteriorated over the years as is reflected by following comparative figures:



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(Amounts in Rupees)

Financial Indicator/Year	2011	2010	2009	2008	2007	2006
Processing Receipts	10,500,401	20,391,091	51,563,862	83,482,692	92,087,965	76,076,826
Gross Profit	3,940,564	7,196,173	2,906,265	(2,115,875)	12,277,554	7,399,151
Operating Profit / (Loss)	581,846	4,718,466	(735,978)	(10,674,751)	972,712	(482,043)
Net Profit / (Loss)	(12,301,077)	750,652	(6,235,862)	(13,997,203)	194,858,071	(2,880,604)
Shareholders' Equity	(34,330,748)	(30,215,961)	(32,028,605)	(26,965,488)	(14,264,134)	(237,554,989)
Current Ratio (CA/CL)	0.21	0.21	0.24	0.33	0.47	0.33
Audit Opinion	Adverse	Adverse	Adverse	Qualified	Qualified	Qualified

- v) Balances of 'Capital Work in Progress' and 'Stores, Spares and Loose Tools' having been reported as nil and that of 'Directors'/Sponsors' Loans' having been reported to have increased to Rs10.614 million as on 30/06/11 and reconciliations of opening and closing balances have not been provided in the respective accounts. All these balances, especially the balance of Directors'/Sponsors' Loan need verification since inception, in view of the fact that no substantiating evidence has been provided in this regard, despite demand:

Financial Indicator/Year	2011	2010	2009	2008	2007	2006
Capital W.I.P. (Rs)	Nil	6,835,343	6,835,343	4,636,832	3,236,968	1,050,554
Stores, Spares, Loose Tools (Rs)	Nil	Nil	558,704	1,704,333	3,207,196	4,196,755
Directors/Sponsors Loan	10,613,938	4,813,938	4,813,938	4,813,938	4,813,938	6,520,305

- vi) During the period from April to 30/06/11, the Appellant sold its fixed assets having cost of Rs108.425 million and books value of Rs23.720

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million for sale proceeds of Rs13.836 million resulting in loss of Rs.9.884 million, through negotiation. In respect of this transaction, record shows that the Appellant passed a resolution in the Annual General Meeting (“AGM”) held on 31/10/09 under Section 196(3) of the Companies Ordinance, 1984 (the “Ordinance”) to seek shareholders authorization to negotiate, lease, sell/dispose of the surplus and obsolete/idle assets comprising of dyeing and finishing machinery and other related assets for such consideration and upon such terms and conditions as may be agreed upon with prospective buyers and proceeds from such sale were to be utilized for repayment of bank loans, trade creditors and other liabilities. The details provided in the statement of material facts annexed to the notice of the AGM in terms of SRO 1227/2005 dated 12/12/05 were as under:

(Amounts in Rs. millions)

Sr.	Description	Cost	Revalued Amount	Book Value	Approx. MV	
					(From	To)
1	Dyeing / Finishing Plant	20.918	15.500	6.986	8.00	10.00
2	Stiching Section of 237 machines	10.088	8.074	2.885	2.00	2.5
Total		31.006	23.574	9.871	10.00	12.500

- vii) Details of assets disposed of show that the Appellant has disposed of the entire plant and machinery having book value of Rs100.290 million which is beyond the aforesaid authorization obtained from the shareholders in the AGM. Moreover, it appears that the Appellant disposed of assets after one year of passing of the resolution in violation of the direction of SRO 1227/2005 which, inter alia, states that in case any decision to sell assets of Appellant under authority of a special resolution already passed, is not implemented within one year the resolution would stand lapsed.



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- viii) In view of the materiality of the substantial amounts involved and their potentially pervasive effect on the Appellant and its shareholders there was a need to:
- a) Ascertain the genuineness of the unconfirmed balances of debtors, creditors and advance payments, representing credit balances of debtors, as highlighted in the preceding paragraphs 1 and 2 of this order;
 - b) Verify the reported figures of 'Sale/Processing receipts', 'capital work in progress', 'Stores, Spares and Loose Tools' and 'Directors/Sponsors Loan' in view of adverse opinion and overall deteriorating financial position of the Appellant; and
 - c) To assess the transaction regarding disposal of entire plant and machinery of the Appellant as it has, prima facie, been undertaken in contravention of the relevant provisions of the law.
3. The Respondent in exercise of the power conferred under Section 231(1) of the Ordinance, authorized Mr. Abid Hussain, Director, Mr. Aqeel Ahmad Zeeshan, Deputy Director and Mr. Amir Saleem, Deputy Director to inspect the books of accounts and books and papers of the Appellant.
4. The Appellant preferred the instant appeal against the Impugned Order. The appeal was fixed for hearing on 11/10/12 and 22/10/12, which was adjourned on the request of the Appellant's representative. The Appellant was provided a final opportunity on 22/07/13. The Appellant's representatives appeared and argued that the Appellant was working as a 'Knit unit' and its operations were closed due to electricity related issues. The Appellant has given its building on



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rent and is generating rental income. The Appellant is also in the process of de-listing. The public interest in the Appellant is nearly 20%, whereas, the rest of the shareholding is with the sponsors. The inspectors of the Appellant have been given unlimited scope by the Respondent. The inspection would be a futile exercise and may not be carried on as the entire information has already been provided by the Appellant.

5. The department representative argued that the order of inspection was passed after detail scrutiny of the accounts and has been made in order to ascertain the genuineness of the unconfirmed balances of debtors, creditors and advance payments representing credit balances of debtors, sale proceeds, receipts etc. and to assess the transaction regarding disposal of entire plant and machinery of the Appellant. The order of inspection is an administrative order and is not appealable under section 33 of the SECP Act.
6. We have heard the parties. Section 231(1) and (2) of the Ordinance and section 33 of SECP Act, 1997 are reproduced for ease of reference:

231. Inspection of books of account by registrar, etc.-

- (1) *The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorised by the Commission in this behalf if, for reasons to be recorded in writing, the registrar or the Commission considers it necessary so to do.*
- (2) *It shall be the duty of every director, officer or other employee of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of*



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the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such time and at such place as he may specify.

33. Appeal to the Appellate Bench of the Commission. - (1) *Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2) Provided that no appeal shall lie against ---*

(a) an administrative direction given by a Commissioner or an officer of the Commission;

(b) an order passed in exercise of the powers of revision or review;

(c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and

(d) an interim order which does not dispose of the entire matter.

Emphasis Added

- a) we have perused the inspection order passed by the Respondent to inspect the books and records of the Appellant which has been passed in accordance with the law. Section 33(1)(a) of the SECP Act states that no appeal shall lie against, "an administrative direction given by a Commissioner or an officer of the Commission." Reliance is placed on judgment of Sindh High Court, Karachi in the matter of *Ofspace (Private) Limited vs. Federation of the Islamic Republic of Pakistan* and 3 others cited at 2012 CLD 923, wherein, it was held that, "...*Exercise of powers*



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under section 231 of the Ordinance is administrative in nature and limited to conducting inspection and preliminary inquiries into the affairs and books of accounts and papers of a company...” In view of the judgment and section 33(1)(a) of the SECP Act, no appeal shall lie against an *administrative order* and, therefore, appeal No.2 of 2012 is not maintainable.

It is important to emphasize that it is the prime responsibility of the Commission as regulator to collect information for effective enforcement of the laws being administered by it. In the absence of such information, the Commission cannot be expected to make fair and impartial decisions. It is, therefore, extremely important for the regulatees/concerned persons to fully cooperate for provision of such information. The legislature being fully cognizant of the critical importance of the provision of information to the Commission prescribes and ascribes not only special status to the inspectors but also recommends severe consequences for non-provision of information including punishment for a term which may extend to one year under section 232(1) of the Ordinance.

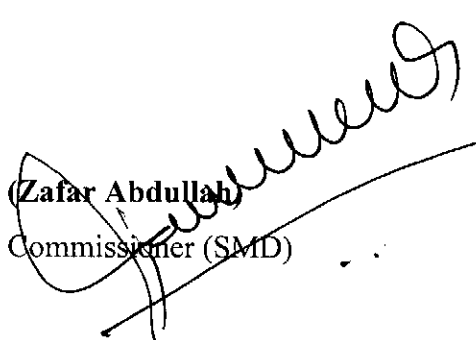
Before parting with the order, we would like to observe that the appeal was filed on 17/02/12 and the matter was fixed for hearing on 11/10/12, 22/10/12 and finally on 22/07/13. The Appellant sought adjournments time and again to delay the inspection. The delay in cases where order of inspection has been made may adversely affect the company and the purpose of inspection may entirely be lost due to the pendency of appeals before the Appellate Bench. The legislature in its wisdom has provided that no appeal shall lie against an *administrative order* and the Sindh High Court in the judgment of *Ofspace (Private) Limited vs. Federation of the Islamic Republic of Pakistan and 3 others* cited at 2012 CLD 923 has

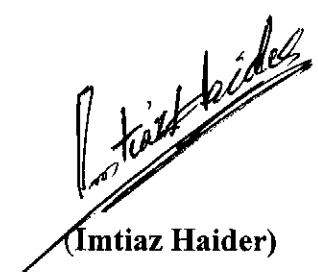


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declared the order of inspection as administrative order. The Registrar, Appellate Bench is directed to return the appeals filed against the order of the inspection as not maintainable and not to fix such cases before the Appellate Bench in order to avoid the unnecessary delay in holding inspections.

In view of the foregoing, we see no reasons to interfere with the Impugned Orders. The appeal is dismissed with no order as to costs.


(Zafar Abdullah)
Commissioner (SMD)


(Imtiaz Haider)
Commissioner (SCD)

Announced on 11/09/13