



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

5

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 70 of 2009

Athar and Co, Chartered Accountants Appellant

Versus

Director (Enforcement)
Securities and Exchange Commission of Pakistan Respondent

Date of hearing 28/06/12

ORDER

Present:

For the Appellant:

Mian Abdul Bari, Advocate High Court
Rana Muhammad Ather, FCA

Department representatives:

Zohra Sarwar Khan, Deputy Director
M. Anwar Hashmi, Deputy Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 70 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 20/11/09 (the "Impugned Order") passed by the Respondent.
2. Ather & Co., Chartered Accountants (the "Auditor") audited the accounts and books of accounts of Shahrish Textile Mills Limited (the "Company") and made an audit report of the financial statements of the Company for the year ended 30/06/07 (the "Accounts") on 25/03/08. The Accounts were presented before the shareholders in the Annual General Meeting (the "AGM") held on 14/04/08.
3. The Accounts of the Company were examined in order to determine: whether audit report had been made in conformity with the requirements of section 255 of the Companies Ordinance, 1984 (the "Ordinance"); the Accounts of the Company are true and the Accounts contain no such statement which is materially false and there is no omission of material facts about the affairs of the Company. The examination revealed that the Auditor had failed to appropriately modify his opinion on the Accounts in spite of following serious going concern uncertainties confronted by the Company as on the date of the audit report.
 - a) On May 2007 the Company had to suspend its operations due to unfavorable market conditions;
 - b) the Company defaulted in payments of its liabilities towards IDBP and NBP that could have led to revival of liabilities amounting to Rs. 83.591 million and Rs. 102.743 million respectively;
 - c) all employees were laid off and later only two were re-employed;
 - d) power supply and other utilities were disconnected;



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

- e) the Company presented its aforesaid Accounts before the shareholders in April 2008 when already almost a year had lapsed since suspension of operations; and
- f) the CDS eligibility of the Company was cancelled by the Central Depository Company of Pakistan Limited due to various reasons including non-payment of CDC dues.
4. Show cause notice dated 01/09/09 (the "SCN") was issued to the Auditor pointing out their responsibilities under the Ordinance, International Accounting and Auditing Standards and non-compliance observed in the Accounts. 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 taking a lenient view imposed a penalty of Rs 70,000/- on Mr. Rana Muhammad Ather, FCA, as the sole proprietor of the Auditor, under section 260(1) of the Ordinance.
5. The Appellant preferred appeal against the Impugned Order. It was argued that during the show cause proceedings the Appellant had explained the circumstances for its conclusion as to appropriateness of going concern assumption and there was no reason to reject the grounds on account of temporary suspension of operations of the Company which were subsequently restored and the plant restarted in June 2008. The Appellant had taken into view the countrywide crises and temporary closure of many spinning mills. Further, before issuance of audit report the management of the Company had started taking practical steps to restart the operations including applying for restoration of electricity by making down payment of Rs. 1,108,000 on 07/03/08 and security deposit of Rs. 1,092,000 and RCO fee of Rs. 10,000 on 22/03/08. It was further argued that uncertainties confronting the going concern assumptions were duly disclosed by the Company and emphasized by the Appellants in the audit report. In view of the stated facts,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

no default could be established and circumstances were in accordance with para 32 and 33 of the International Standards on Auditing (“ISA”) 570.

6. The department representatives argued that the going concern uncertainty confronted by the Company at the time of audit report was a matter significant enough to have affected the audit opinion. The Appellant failed to take into account the factors discussed in para 3(a) to 3(f) above. Moreover there was lack of interest of Company’s’ directors to restore operations; and suspension of business for a whole year could have attracted winding up provisions of the Ordinance. The Company presented the Accounts for the year ended 30/06/07 before the shareholders in April 2008 when almost a year had lapsed since suspension of operations. The auditor did not comply with the guidance available in ISA 570 Going Concern which specifies that when there is significant delay in the signature or approval of financial statements by the management after the balance sheet date and delay could be related to events related to going concern assessment then the auditor should consider performing certain additional audit procedures. It was argued that the penalty was rightly imposed. The Respondent had already taken a lenient view in the Impugned Order and instead of imposing maximum fine under section 260(1) of the Ordinance, Rs. 70,000 only was imposed on Mr. Rana Muhammad Ather, FCA.

7. We have heard the parties and have gone through the facts of the case. The relevant para of ISA 570 (Going Concern) are reproduced for ease of reference:

Para 9 of ISA 570 (Going Concern) states: *“The auditor’s responsibility is to consider the appropriateness of management’s use of the going concern assumption in the preparation of the financial statements, and consider whether there are material uncertainties about the entity’s ability to continue as a going concern that need to be disclosed in the financial statements.”*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Para 11 of ISA 570 (Going Concern) states: *"In obtaining an understanding of the entity, the auditor should consider whether there are events or conditions and related business risks which may cast significant doubt on the entity's ability to continue as a going concern."*

Para 34 of ISA 57 (Going Concern) states: *"If adequate disclosure is not made in the financial statements, the auditor should express a qualified or adverse opinion, as appropriate (ISA 700, "The auditor's Report on Financial Statements"). The report should include specific reference to the fact that there is a material uncertainty that may cast significant doubt about the entity's ability to continue as a going concern."*

Para 26 of ISA 570 (Going Concern) states: *"When events or conditions have been identified which may cast significant doubt on the entity's ability to continue as a going concern, the auditor should:*

- a- Review management's plan for future actions based on its going concern assessment;*
- b- Gather sufficient appropriate audit evidence to confirm or dispel whether or not a material uncertainty exists through carrying out audit procedures considered necessary, including considering the effect of any plans of management and other mitigating factors; and*
- c- Seek written representations from management regarding its plans for future action*

Para 27 of ISA 570 (Going Concern) states: *"Events or conditions which may cast significant doubt on the entity's ability to continue as a going concern may be identified in performing risk assessment procedures or in the course of performing further audit procedures. The process of considering events or conditions continues as the audit progresses. When the auditor believes such conditions may cast significant doubt on the entity's ability to continue as a*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

going concern, certain audit procedures may take on added significance. The auditor inquires of management as to its plans for future action, including its plans to liquidate assets, borrow money or restructure debt, reduce or delay expenditures, or increase capital. The auditor also considers whether any additional facts or information are available since the date on which management made its assessment. The auditor obtains sufficient appropriate audit evidence that management's plans are feasible and that the outcome of these plans will improve the situation."

In terms of IAS 570 Going Concern where there is significant delay in the signature or approval of financial statements by the management after the balance sheet date and the delay could be related to going concern assessment then the auditor should consider performing certain additional audit procedures. The additional audit procedures in para 26 of IAS 570 Going Concern reproduced above were not undertaken. The auditor failed to comply with the guidance provided in ISA 570 Going Concern which raises concerns about the audit quality.

Further, the auditors' submission that the operations were subsequently restored in June 2008 cannot be substantiated as no result of operations was evident in the half yearly accounts for the period ended 31/12/08. Mere submission of electricity bill for the month of July 2008 does not support Auditors' stance that the Company re-commenced its operations. Intentions and fruitless attempts by management of the Company to commence operations cannot justify the use of going concern as the basis for preparing accounts.

The factors discussed in para 3(a) to 3(f) were clear indications of inappropriate use of going concern assumption by the Company's management in the preparation of the Accounts. The going concern uncertainty confronted by the Company at the time of audit report was significant enough to affect the audit report and its intensity cannot be ignored by the Auditors while expressing their opinion in their report.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

On the basis of above findings, we do not see any reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to cost.

(Mohammed Asif Arif)
Commissioner (Insurance)

(Intiaz Haider)
Commissioner (SMD)

Announced on: 17th October 2012