



**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 43 of 2010**

1. Hamid Textile Mills Limited
2. Khawar Almas Khawaja, Chief Executive Officer
3. Muhammad Shahzad Sharif, Director
4. Mrs. Nighat Khawar, Director
5. Muhammad Alamgir, Director
6. Abaidullah, Director
7. Abid Hussain, Director

..... APPELLANTS

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

..... RESPONDENT

**ORDER**

Date of hearing

23/05/12

**Present:**

For the Appellants:

Muhammad Aslam Awan, FCA

Department representative:

Amina Aziz, Director (Enforcement)

Rohail Ahmed Abbas, Assistant director (Enforcement)



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1. This order shall dispose of appeal No. 43 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 23/08/10 (the "Impugned Order") passed by the Respondent.
2. In terms of the provisions of section 245 of the Companies Ordinance, 1984 (the "Ordinance"), Hamid Textile Mills Limited (the "Company") was required to prepare and transmit its quarterly accounts for the 3<sup>rd</sup> quarter ended 31/03/10 within one month of close of the quarter i.e. by 30/04/10 to the shareholders, stock exchanges, Registrar and the Commission. The Company did not file the aforementioned accounts within the prescribed time and the aforementioned accounts were received after 20 days of the close of period i.e. on 20/05/10.
3. Show cause notice dated 30/06/10 ("SCN") was issued to the Appellants under section 245(3) read section 476 of the Ordinance for failure to submit quarterly accounts within the stipulated time. The Appellants filed reply to the SCN and hearing in the matter was held. The Respondent after hearing the parties passed the Impugned Order and imposed a penalty of Rs. 25, 000 each on the CEO and directors of the Company under section 245(3) of the Ordinance read with section 476 of the Ordinance.
4. The Appellants have preferred the instant appeal against the Impugned Order. It was argued that the external auditor of the Company resigned on 25/02/10 and due to his resignation the Company's half yearly financial statements for 31/12/09 were finalized late, hence, the quarterly accounts for the quarter ended 31/03/10 were finalized and submitted to the Commission with a delay of 20 days. It was argued that the circumstances were beyond the control of



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the management and it was prayed that a lenient view may be taken by reducing the penalty imposed.

5. The contention of the Appellants that delay in preparation and submission of quarterly accounts for 3<sup>rd</sup> quarter ended 31/03/10 was due to late finalization of half yearly accounts for 31/12/09 as the auditor had resigned is not tenable. The record of the Company maintained with the Commission shows that the Company submitted its half yearly accounts on 01/06/10 and the auditors' report to the members was signed on 29/05/10 by the auditors, whereas the quarterly accounts for 3<sup>rd</sup> quarter ended 31/03/10 had already been submitted on 19/05/10. It was argued that the Appellants' disregard of law is evident from their unsatisfactory track record and they been penalized a number of times in the past for default in compliance with mandatory provisions of the Ordinance.
6. We have heard the parties. Section 245 of the Ordinance is reproduced for ease of reference:

**245. [Quarterly] accounts of listed companies-** (1) Every listed company shall—

(a) within [one month] of the close of [first, second and third quarter] of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that [quarter], whether audited or otherwise; and



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- (b) *simultaneously with the transmission of the [quarterly] profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Commission such number of copies thereof, not being less than three, as may be prescribed.*
- (2) *The provisions of sub-sections (1) and (2) of section 241 shall apply to the half-yearly accounts.*
- (3) *If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues.*

The Appellants filed the quarterly accounts with a delay of 20 days. The Appellants' compliance record has also not been exemplary, which shows that they have no regards to the provisions of the Ordinance. The plea of the Appellants that the quarterly accounts for the year ended 31/03/10 could not be prepared due to delay in completion of half yearly accounts for the period ending 31/12/09 is not tenable on the ground that the quarterly accounts were submitted before the submission of half yearly accounts as explained in para 5 above. The preparation and circulation of quarterly accounts is one of the statutory obligations of the management of



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the Company and they are required to make serious efforts to ensure compliance with the provisions of law. The default of the Appellants stands established in the light of the above facts. The Respondent has already taken a lenient view by imposing penalty of Rs 25,000 each on the CEO and directors of the Company, when the maximum penalty could have been Rs 100,000 each. The Appellants shall pay the penalties from their personal resources and not from the coffers of the Company.

In view of the above, we do not find any grounds to interfere with the Impugned Order. The appeal is dismissed with no order as to cost

  
(Mohammed Asif Arif)  
Commissioner (Insurance)

  
(Imtiaz Haider)  
Commissioner (SMD)

Announced on: 13<sup>th</sup> July 2012