



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

### Appeal No. 05 of 2009

1. Hyder Ali Bhimji
2. Shaik Mohammad Tanvir
3. Syed Aftab Hameed
4. Shabir Ahmad

(All partners of Gardezi & Co. Chartered Accountants)

..... Appellants

Versus

Director (Enforcement)

.....

Respondent

Date of hearing

16/07/12

### Present:

#### Appellant:

Syed Altaf Hameed, Appellant No. 3

#### For the Appellant:

Kh. Abrar Majal, Advocate

#### For the Respondent Department:

Mr. Bilal Rasool, Director (Enforcement)

Shahzad Afzal Khan, Joint Director (Enforcement)



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1. This order shall dispose of appeal No. 05 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 26/01/09 (the "Impugned Order") passed by the Respondent.
2. The inspection of books of accounts and records of Globe Textile Mills Limited ("GTML") was carried out under section 231 of the Companies Ordinance, 1984 (the "Ordinance") and it transpired that books of account/ underlying record for the years 2006 and 2007 in respect of assets were not maintained. Further, the audit report failed to bring various material violations to the notice of the members and was not modified in accordance with the prescribed procedures and requirements of the Ordinance and International Standards on Auditing ("ISAs"). It was also noticed that the review report issued by the Appellants on the statement of compliance with the Code of Corporate Governance failed to notify the fact that the powers of Board of Directors ("BoD") had not been duly exercised and/or the BoD had acted beyond its powers.
3. Show cause notice dated 20/03/08 ("SCN") was issued to the Appellants under section 260 read with section 255 and 476 of the Ordinance. The Appellants 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 a penalty of Rs. 100,000 on the engagement partner of M/s Gardezi & Co, Chartered Accountants for making reports otherwise than in conformity with the requirements of section 255 of the Ordinance.



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4. The Appellants have preferred to file the instant appeal against the Impugned Order. The Appellants' counsel argued that:
- a) the Appellants duly modified GTML's audit report and reported on all issue that came to their notice:
    - i) in the year ended 30/06/06 the matters reported in the audit report included: a) incorrect use of going concern assumption; b) non confirmation and non-verification of balances from banks, institutions and related parties; c) impairment loss booked in sum of Rs 264.886 million and d) the inventories of raw material and stores and spares remained unverified for want of details;
    - ii) in the year ended 30/06/07 the matter reported included: a) incorrect use of going concern assumption; b) non confirmation and non-verification of balances from banks, institutions and related parties; c) GTML had disposed of its plant and machinery valuing Rs 274.09 million for which manner of disposal was not made available; d) non-confirmation of trade debts amounting to Rs 53.439 million; and e) non-provision of technical evaluation of stores, spares and loose tools having value in sum of Rs 40.039 million.

Based on the above qualifications, the opinion paragraph of the audit report were duly modified to specifically depict the 'except for opinion' and 'adverse opinion' on the accounts of GTML for the year ended 30/06/06 and 30/06/07 respectively.



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b) the observations as included in the audit report kick started the inspection/ investigation into the affairs of the GTML. The observations made by the Appellants were confirmed and became the basis of further proceedings against GTML. The Appellants in doing so fully complied with the requirement of section 255 of the Ordinance read with ISAs

5. The department representative argued that:

a) the audit report prepared by the Appellants was not in accordance with requirements of Ordinance and it failed to report on critical issues including:

i) the Company failure to maintain the fixed asset register. Moreover, the Appellants did not conduct physical verification of the fixed assets despite the fact that they were auditors of the Company for the last five years under the name and style of M/s Hyder Bhimji & Co.

ii) the Company failure to maintain inventory records, providing quantitative as well as valuation for each item of inventory. Moreover, the Appellants failed to report that proper/updated inventory records and their valuations were not maintained.

iii) the Appellants failure to disclose the fact that stock of raw material (Rs 264.886 million) was written off and later sold without requisite approval of the shareholders.



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- iv) the Appellants review report to the members on the statement of compliance with Best Practices of Corporate Governance for the year ended 30/06/06 and 30/06/07 was made and signed otherwise than in confirmatory with the requirements of section 260(1) of the Ordinance.
- b) the Appellants failed to perform their statutory obligations by giving misleading observations. The Appellants did not provide correct state of affairs to the shareholders and requirements of section 255 of the Ordinance were not fully met. The inspection was initiated on the basis of review by the Commission of accounts and audit report.
6. We have heard the parties and have gone through the record. The relevant provisions of section 255 of the Ordinance are reproduced for ease of reference:

**255. Powers and duties of auditors. (1)** .....

(2) .....

(3) *The auditor shall make a report to the members of the company on the accounts and books of accounts of the company and on every balance-sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance-sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, which are laid before the company in general meeting during his tenure of office, and the report shall state—*

- (a) *whether or not they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit;*
- (b) *whether or not in their opinion proper books of accounts as required by this Ordinance have been kept by the company;*
- (c) *whether or not in their opinion the balance-sheet and profit and loss account or in the income and expenditure account have been drawn up in*



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*conformity with this Ordinance and are in agreement with the books of accounts;*

- (d) *whether or not in their opinion and to the best of their information and according to the explanations given to them, the said accounts give the information required by this Ordinance in the manner so required and give a true and fair view—*
- (i) *in the case of the balance-sheet, of the state of the company's affairs as at the end of its financial year;*
- (ii) *in the case of the profit and loss account or the income and expenditure account, of the profit or loss or surplus or deficit, as the case may be, for its financial year; and*
- (iii) *in the case of the statement of changes in financial position or sources and application of funds of a listed company, of the changes in the financial position or the sources and application of funds for its financial year;*
- (e) *whether or not in their opinion-*
- (i) *the expenditure incurred during the year was for the purpose of the company's business; and*
- (ii) *the business conducted, investments made and expenditure incurred during the year were in accordance with the objects of the company ; and*
- (f) *whether or not in their opinion zakat deductible at source under the Zakat and Usher Ordinance, 1980 (XVIII of 1980), was deducted by the company and deposited in the Central Zakat Fund established under section 7 of that Ordinance.*

**Explanation.-** *Where the auditor's report contains a reference to any other report, statement or remarks which they have made on the balance-sheet and profit and loss account or income and expenditure account examined by them, such statement or remarks shall be annexed to the auditor's report and shall be deemed to be a part of the auditor's report.*

- (4) *Where any of the matters referred to in sub-section (3) is answered in the negative or with a qualification, the report shall state the reason for such answer along with the factual position to the best of the auditor's information.*

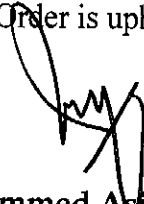
*Emphasis added*

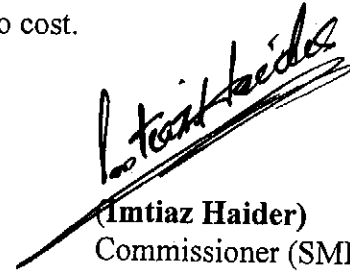


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We do not concur with the view of the Appellants' counsel that the qualifications made by the Appellants resulted into giving 'except for' and 'adverse opinion' in the opinion paragraph of the auditors report for the year ended 30/06/06 and 30/06/07 respectively was sufficient. The audit report did report certain facts to the shareholders stated in para 4 (a) above, however, the Appellants failed to report on material issues cited in para 5 above. The auditor conducting the audit in accordance with the requirements of the Ordinance and ISA ought to assure that the financial statements as a whole are free from material misstatement, whether caused by fraud or an error. The Appellant ought to have adopted the procedures laid down in the ISA-240 to identify the fraud / concealment of facts and should have reported the factual position to the best of the information available to them. Moreover, initiation of inspection by the Commission against GTML on the basis of accounts and the audit report does not in any way absolve the Appellants from the requirements of section 255 of the Ordinance cited above.

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

  
(Mohammed Asif Arif)  
Commissioner (Insurance)

  
(Imtiaz Haider)  
Commissioner (SMD)

Announced on:

16/11/12