

2013 C L D 103

**Securities and Exchange Commission of Pakistan
Before Imtiaz Haider, Commissioner (SMD) and
Mohammed Asif Arif Commissioner (Insurance)**

GHULAM AHMED ADAM, CHIEF EXECUTIVE t and 6 others---Appellants

versus

**EXECUTIVE DIRECTOR (ENFORCEMENT), SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Respondent**

Appeal No.68 of 2009, decided on 5th June, 2012.

Muhammad Waseem, FCA and Iqbal, FCA for Appellants.

**Shahzad Afzal, Joint Director. Enforcement and Haris Bin Tippo, Deputy Director, Enforcement,
Departmental representative.**

Date of hearing: 20th April, 2012.

ORDER

Penalty reduced.

[Companies Ordinance (XLVII of 1984)]---Section....492---Making false statement---Executive Director (Enforcement) of the Commission required the company to provide explanation with regard to the recognition of the sale in the accounts not pertaining to the relevant year, in violation of the company's policy---information provided by the company had revealed that as a result of recognition of sales in contravention of the company's policy, the Profit and Loss Account of the company for the year under review, had been misstated---Show-cause notice under S. 492 of the Companies Ordinance, 1984, was issued to the Directors of the company for making misstatement in the accounts---Executive Director (Enforcement) of the Commission, dissatisfied with the response of the

Directors of the company, passed impugned order and imposed a penalty of Rs.500,000 on each Director of the company---Directors were further directed to rectify the misstatement and the default-Legislature in its own wisdom had provided penalty under S. 492 of the Companies Ordinance, 1984 for making false statement in the financial statements/accounts; and it had been established that in fact a misstatement was made in the accounts---No reason existed to interfere with the findings of impugned order on merits-~ Directors of the company had made good the default in the next financial year and had complied with the requirements of law---Keeping in view, the compliance to 'the law and corrective measures, taken by the Directors, penalty imposed on the directors, was reduced to sum of Rs.2,50,000 on each Director.

Messrs Habib Bank Limited v, Messrs Schon Textile Limited 2010 CIJD 1819 rel.

This order shall dispose of Appeal No.68 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 20-10-2009 (the "Impugned Order,") passed by the respondent.

2. The annual audited financial statements of Adam Sugar Mills Limited (the "Company") for the year ended 30-09-2008 (the "Accounts") revealed that auditors namely Haroon Zakria and Company. Chartered Accountants, ("the Auditors") had qualified their auditors report to the members by making the following statement.

- (i) "During the current year (year ended 30-9-2008), sales made to one of the customers are recognized on the basis of contractual arrangement instead of accounting policy as**

stated in note 3.14 to the financial statements. Had the revenue been recognized as per accounting policy, profit after tax would have been reduced by Rs.34. 188 million.

- (ii) Note 3.14 to the Accounts disclosed Company's accounting policy for recognition of revenue from sales as under:

"Revenue from sales of sugar is recognized on dispatch of sugar to customers."

3. The respondent required the Company to provide explanation with regard to the recognizing the sale in the Accounts not pertaining to the relevant year, in violation of the Company's policy. The Chief Executive of the Company informed the respondent that the Company had recognized contractual sales because contracts were made, substantial amount of advances were received before the close of financial year and goods were dispatched and amounts realized subsequent to the financial year end but before the issuance of the Accounts. The information provided by the Company also revealed that as a result of recognition of sales in contravention of the Company's policy stated under note 3.14 to the Accounts, the Profit and Loss Account of the Company for the year under review had been misstated as net profit after tax had been overstated by an amount of Rs.34.188 million. sales overstated by Rs.233.338 million and cost of sales overstated by Rs. 148.967 million.

4. Show cause notice dated 19-08-2009 ("SCN") under section 492 of the Companies Ordinance, 1984 (the "Ordinance") was issued to the appellants for making misstatement in the Accounts 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.500.000 on each appellant. The appellants were further directed to rectify the misstatement and ratify the default.

5. The appellants preferred the instant appeal against the Impugned Order. The appellants' counsel's main arguments presented before us, in writing and during the course of hearing are summarized as under:--

- (a) the appellants inadvertently recognized the contractual sales relating to the year 2009 in the Accounts and the inadvertence was based on the fact that contracts were made, substantial amount of advances were received before the close of financial year and goods were dispatched and amounts realized subsequent to the financial year end but before the issuance of financial statements; and
- (b) the default, if any, was for failure to comply with the requirements of section 2349(l) of the Ordinance, the penalty whereof is provided under section 230(7) of the Ordinance. The respondent should have imposed the penalty under section 230(7) of the Ordinance, instead of invoking the provisions of section 492 of the Ordinance. Reliance was placed on case titled Adil Polypropylene Products Limited (sic) and Messrs Ashfaq Textile Mills Limited (sic) and it was argued that where proper book of accounts are not maintained, provisions of section 234(l) of the Ordinance should be invoked.

6. The arguments made during the hearing by the department representatives, in brief, are as under:-

- (a) the financial statement of the Company for the year ended 30-09-2008 was materially misstated as the Company recognized contractual sales of Rs. 233.338 million in clear violation of the industry practice and Company's policy of recognizing revenue from sale of

sugar on dispatch of the same to the customer. The auditors qualified the report mentioning over statement of net profit after tax; and

- (b) the penalty was rightly imposed under section 492 of the Ordinance, which provides that whoever makes a statement which is false or incorrect in any material particular in the balance sheet, profit and loss account shall be punishable with fine. The appellants made a false statement which was material in nature, as such, the penalty was rightly imposed.

7. We have heard the parties and have gone through the Our findings are as under:-

- (a) the Company in the Accounts recognized the contractual sales of Rs.233.338 million, when the contractual sales ought to have been part of the financial accounts for the year ended 30-09-2009. The appellants failed to exclude the aforementioned sales from the Accounts before the said accounts were published, despite the fact that the auditors had qualified the report, which shows that the misstatement was made knowingly in the Accounts in order to show inflated sales and overstated profit;
- (b) the argument of the appellants representative that the violation was in fact of section 234(1) of the Ordinance and action could only have been taken under section 230(7) of the Ordinance has been reviewed. The legislature in its own wisdom has provided penalty under section 492 of the Ordinance for making false statement in the financial statements/accounts and it has been established that in fact a misstatement Was made in the Accounts. Should we accede to the arguments of the appellants representative, it would make section 492 of the Ordinance redundant. We place our reliance on 2010 CLD 1819 in the case titled Messrs Habib Bank Limited u. Messrs Schon Textile Limited, wherein it was held; it is cardinal principle of interpretation that redundancy must not be attributed unnecessary to the legislature. Further, the Court should not act in a manner of which the object of the statue is defeated and the same is rendered nugatory. The cases referred to by the appellants' representative are for violation of section 234 of the Ordinance, wherein, the cognizance was taken for not keeping proper books of accounts. We, therefore, do not concur with the views of the appellants counsel that action could only have been taken under section 230(7) of the Ordinance.

In view of the above, we do not see any reason to interfere with the findings of the Impugned Order on merit, The appellants have made good the default in the next financial year and have complied with the requirements of law. Keeping in view, the compliance to the law and corrective measures taken by the appellants and without prejudice to the findings of the Impugned Order, we hereby reduce the penalty to sum of Rs. 250,000 on each appellant.