

Appeal No. 42 of 2012, decided on 13th July, 2012

Securities and Exchange Commission of Pakistan

Before Imtiaz Haider, Commissioner (SMD) and Mohammed Asif Arif Commissioner (Insurance)

KHAWAR ALMAS KHAWAJA, CHIEF EXECUTIVE OFFICER---Appellant

EXECUTIVE DIRECTOR ENFORCEMENT, SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN---Respondent

[Securities and Exchange Commission of Pakistan Act (XLII of 1997)]---Section 33--- Companies Ordinance (XLVII of 1984), Sections 204-A(2) & 498---Company having failed to appoint an independent share Registrar in terms of S.204-A(2) of the Companies Ordinance, 1984, Executive Director (Enforcement) of the Commission vide impugned order imposed penalty of Rs.200,000 on the company, which had filed appeal against impugned order---Share Registrar was appointed for good corporate governance who was responsible for keeping the company's register of share-holders up-to-date, the distribution of share-holder communications and administering the payment of dividends etc.---Contention of the company that default in appointment of independent share Registrar continued from the previous management; and that present management was not aware of the legal requirement, was repelled as ignorance of law was no excuse---One was bound by a law, even if one did not know of it--Management of the company was responsible to be vigilant regarding the applicable laws and it ought to comply with the laws at all times---Chief Executive Officer of the company was responsible for conduct of affairs of the company and it was his responsibility to ensure that all legal requirements were complied with---Executive Director (Enforcement) of the Commission had already taken a lenient view in the impugned order by imposing a penalty of Rs.200,000 only on the company under S.498 of the Companies Ordinance, 1984 instead of the maximum penalty of one million rupees on every Director of the company---Impugned order could not be interfered with in appeal, in circumstances.

ORDER

This order shall dispose of Appeal No.42 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the 'Commission') Act, 1997 against the order dated 20-8-2010 (the 'Impugned Order') passed by the Respondent.

2. The annual accounts for the Hamid Textile Mills Limited (the 'Company') for the year ended 30-6-2009 revealed that the Company did not appoint an independent share registrar in terms of section 204-A(2) of the Companies Ordinance, 1984 (the 'Ordinance').

3. Show -cause notice dated 16-4-2010 ("SCN") was issued to the directors and the Appellant under section 204-A(2) of the Ordinance for failure to appoint an independent share registrar. The directors and the Appellant were provided an opportunity of hearing and their representative admitted the default and requested the Respondent to take a lenient view. The Respondent, passed the Impugned Order and imposed a penalty of Rs. 200,000 on the Appellant.

4. The Appellant has preferred the instant appeal against the Impugned Order. It was argued that the previous management of the Company had made default by not appointing the share registrar. The default was continued from the previous management and present management was not aware of this legal requirement. It was further argued that one director of the previous management of the Company V namely Ch. Abdul Aziz who had actively participated in all matters of the Company was still on board of the Company, however, the Respondent condoned him and only imposed penalty on the Appellant which shows discrimination and personal mala fide intention towards the Appellant. It was prayed that the default occurred purely due to ignorance of the prescribed legal requirement and relief may be granted by condoning the default and waiving off the penalty imposed.

5. The departmental representative argued that the objective of section 204-A(2) of the Ordinance is to bring good corporate governance by ensuring quality share registrar services for the corporate sector it was further argued that the default of Ch. Abdul Aziz was not condoned rather the Respondent taking a lenient view imposed penalty on the CEO of the Company only and the directors were let of.

6. We have heard the parties. Section 204-A(2) of the Ordinance is reproduced for ease of reference:--

204-A Certain companies to have secretaries and share registrars.-

(1) **1**

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(2) Listed companies shall have an independent share registrar possessing such qualifications and performing such functions as may be specified by the Commission.

The aforementioned section clearly requires listed companies to appoint a share registrar. Share registrars are appointed for good corporate governance and are responsible for keeping the company's register of shareholders up to date, the distribution of shareholder communications, and administering the payment of dividends etc. The management of the Company had failed to act in accordance with the legal provision of the Ordinance. Further, it is a settled principle of legal jurisprudence that Ignorantia juris non excusat latin for 'Ignorance of law is no excuse'. The principle in jurisprudence is that one is bound by a law even if one does not know of it. It is the responsibility of the management to be vigilant regarding the applicable laws and they ought to comply with the laws at all times. The CEO is responsible for conduct of affairs of the Company and it is his responsibility as a CEO to assure that all legal requirements are complied with. The Respondent has already taken a lenient view in the Impugned Order by imposing a penalty of Rs.200,000 only on the Appellant under section 498 of the Ordinance instead of the maximum penalty of one million rupees on every director of the Company. The Appellant shall pay the penalty from personal resources and not from the coffers of the Company. The Appellant's argument that one director of the previous management of the Company, namely Ch. Abdul Aziz was actively involved in all matters of the Company, however, the Respondent condoned him and only imposed penalty on the Appellant which shows discrimination and personal mala fide intention towards the Appellant, it is to, state here that the Impugned order is self-explanatory and need not to be explained further.

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 costs.

Appeal dismissed