
Appeals Nos.13, 14, 17, 19, 21, 22 and 25 of 2011, decided on 13th July, 2012.

Date of hearing: 23rd May, 2012

Securities and Exchange Commission of Pakistan

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

Maqbool Hussain Bhutta, Director for Appellant

Shahzad Afzal, Joint Director and Amir Saleem, Deputy Director, Departmental Representatives.

Mian SHAHZAD ASLAM, CHIEF EXECUTIVE/DIRECTOR and 6 others---Appellants,

COMMISSIONEFQ (CLD), SECURKPIES AND EXCHANGE COMMISSION or PAKISTAN--Respondent

[Securities and Exchange Commission of Pakistan Act (XLII of 1997)---Section 33---Companies Ordinance (XLVII of 1984), Ss.245 & 492---Filing false half yearly accounts statement by the company---Half yearly accounts of the company for relevant period filed with the Commission pursuant to the provisions of S.245 of the Companies Ordinance, 1984, were purportedly reviewed by the Auditors who had apparently given clean conclusion of said accounts---Opinion of the Auditors was inconsistent with the opinion expressed by previous Auditors---Auditors had never issued a review report on the accounts of the company, which had raised serious concerns about the authenticity of the Accounts filed with the Commission- Commissioner (CLD) passed impugned order and imposed penalty of Rs.500,000 on the Chief Executive Officer and Rs.50,000 each on the Directors of the company---Default committed by the company, was admitted, but it was contended that penalty imposed was too harsh, which could be set aside---Validity--Under provisions of S.492 of the Companies Ordinance, 1984, a company was strictly prohibited from making false statement or omitting any material fact knowing same to be material--Directors in the case had attempted to circumvent the legal provisions requiring submission of reviewed half yearly accounts---Directors had tried to mislead the Regulator, the shareholders and the creditors by filing un-reviewed half yearly accounts-Negligence of the Directors, could not be accepted as an excuse for such deliberate effort to deceive a vital regulatory compliance -requirement---Directors had in fact demonstrated an unprofessional and irresponsible attitude by submitting false information purporting same to be authentic--Default under S.492 of the Companies Ordinance, 1984 was established to have been committed by the appellants/Directors---Penalty had been imposed on the Chief Executive Officer and the Directors in their personal capacity-- -Lenient view on the penalty could not be taken on ground that the company had poor financial health---Impugned order- was not interfered with.]

ORDER

This order shall dispose of Appeals Nos. 13, 14; 17, 19, 21, 22 and 25 of 2011 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 01-10-2010 (the "Impugned Order") passed by the Respondent.

2. The half yearly reviewed accounts (the "Accounts") of Nazir Cotton Mills Limited (the "Company") for the period ended 31-12-2009 were filed with the Commission pursuant to the provisions of section 245 of the Companies Ordinance, 1984 (the "Ordinance") through letter dated 26-2-2010. The Accounts were purportedly reviewed by Messrs Aslam & Co. (the 'Auditors') who had apparently given clean conclusion on such Accounts. The opinion -of the Auditors was inconsistent with the opinion expressed by previous auditors on the annual accounts of the preceding period. Upon initiating of proceedings for inappropriate audit/review conclusion against the Auditors, it was revealed that the Auditors had never issued a review report on the Accounts of the Company. The aforesaid raised serious concerns about the authenticity of the Accounts filed by the Company with the Commission. The Appellants had apparently attempted to circumvent the legal provisions, requiring submission of reviewed half yearly accounts 'and had thereby attempted to mislead the regulator as well as the shareholders by filing un reviewed Accounts as reviewed.

3. Show cause notice dated 05-07-2010 ('SCN') was issued to the Chief Executive Officer and directors of the Company under section 492 read with section 476 of the Ordinance.

The Appellants failed to file reply to the SCN and hearing in the matter was held after a number of adjournments. Mr. Fazal Mahmood, FCA from. Messrs Fazal Mahmood & Co. appeared on behalf of the Appellants and admitted default. The Respondent passed the Impugned Order and imposed a penalty of Rs.500,000 on the Chief Executive Officer and Rs.50,000 each on the directors of the Company.

4. The Appellants preferred to file the instant appeal against the Impugned Order. The Appellants representative argued that the

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Company has incurred an accumulated loss of Rs. 371.577 million for the year 2009 and its total liabilities exceeded its total assets by Rs.98.580 million as on 30-6-2009. 'The Company is not in operation, for many years; therefore, there is no hope for its revival. Most of the directors are employees of other group companies, receiving no benefit or salary from the Company. The default committed by the Company was admitted; however, it was contented that penalty imposed by the Respondent is too harsh and may be set aside.

5. The department representatives argued that the directors of the Company have intentionally attempted to circumvent the legal provisions requiring submission of reviewed half yearly accounts. The directors have tried to mislead the regulator, the shareholders and the creditors by filing un-reviewed half yearly accounts as reviewed. The justifications provided by the Appellants are not cogent as such the penalty may be upheld.

6. We have heard the parties. Section 492 of the Ordinance has been reproduced for ease of reference:--

492. Penalty for false statement.---Whoever in any return report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanations required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.

Emphasis added

By virtue of the stated provision of law, a company is strictly prohibited from making false statement or omitting any material fact knowing it to be material. The law has prescribed audit requirements for verification of financial accounts of the company it is emphasized that investors should be provided with correct and verified information on all accounts whether they are annual or interim. The directors in the instant case have attempted to circumvent the legal provisions requiring submission of reviewed half yearly accounts. The directors have tried to mislead the regulator, the shareholders and the creditors by filing un-reviewed half yearly accounts as reviewed. The negligence of the directors cannot be accepted, as an excuse for such deliberate effort to deceive a vital regulatory compliance requirement. The observations of the Auditors were inconsistent with the opinion expressed by previous auditors on the annual accounts for the year ended June 30, 2009. It was concluded in the fabricated review report that nothing has come to our attention that causes us to believe that the accompanying interim financial information does not give a true and fair view of the financial position of the Company as at 31, December 2009.' The directors have in fact demonstrated an unprofessional and irresponsible attitude by submitting false information purporting it to be authentic. From the submissions put forward by the Respondents and the information available on record, it is established that default under section 492 of the Ordinance has been committed by the Appellants. The penalty has been imposed on the Chief Executive Officer and the directors in their personal capacity and lenient view on the penalty imposed cannot be taken on ground that the Company has poor financial health. The Chief Executive Officer and the directors are called upon to pay the penalty from their personal resources and not from the coffers of the Company.

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

Appeal dismissed