



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH IV

In the matter of

Appeal No. 17 of 2015

Hameed Khan and Co., Chartered Accountant

...Appellant

Versus

Head of Department (Enforcement), Securities and Exchange Commission
of Pakistan

...Respondent

Date of hearing:

03/08/15

Present:

For Appellant:

- i. Mr. Atta Muhammad Khan, Advocate
- ii. Mr. Abdul Hameed Khan

For Respondent:

- i. Mr. Imran Iqbal Panjwani, Executive Director (CSD)
- ii. Ms. Ayesha Riaz, Joint Director (CSD)

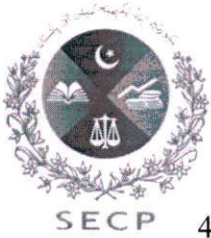
ORDER

1. This order shall dispose of appeal No. 17 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the order dated 16/02/15 (the Impugned Order) passed by the Respondent.



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2. The facts leading to this case are that Appellant had audited the annual accounts of Punjab Cotton Mills Limited (the Company) for the year ended 30/06/11 and 30/06/12 and had given a positive review report to the members on statement of compliance prepared by the Board of Directors of the Company. The Appellant authenticated the statement of compliance and the annual accounts which were to be laid before the members in the general meeting. The statement of compliance contained the information that the Appellant has satisfactory rating under the quality control review (QCR) programme of the Institute of Chartered Accountants of Pakistan (the ICAP). However, it has been observed from the record that the Quality Assurance Board of ICAP has removed the name of the Appellant from the list of practicing firms having satisfactory QCR on 27/09/10. The Appellants not only authenticated the statement of compliance containing false information but they also accepted their reappointment as auditor of the Company in the AGM held on 30/10/10 and 30/10/11. The Appellant, while in possession of this material information regarding QCR rating has provided wrong confirmation to the Board of Directors of the Company and had given a positive review report to the members on the Statement of Compliance which carries a misstatement.
3. In the above circumstance the Respondent issued a Show Cause Notice (the SCN) dated 31/01/14 under the provision of section 260 read with section 476 of the Companies Ordinance, 1984 (the Ordinance) to the Appellant. The Appellant replied to the SCN through letter dated 03/03/14 and hearing in the matter was conducted on 27/06/14. The Respondent being dissatisfied with the response of the Appellant imposed a fine of Rs.50,000 (Rupees fifty thousand only) for contravening Section 260 of the Ordinance.



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4. The Appellants, being aggrieved by the Impugned Order filed an appeal before the Appellate Bench on the following grounds:

- i. The Impugned Order is not a speaking order, therefore is liable to be set aside.
- ii. Section 260 of the Ordinance is not applicable in the instant case since no default has been committed under this section.
- iii. The matter of QCR is quite distinct and falls outside the scope of the Ordinance.
- iv. The observation of the Respondent is merely based on his personal thinking which does not have any backing of the law.
- v. The Respondent has badly failed to evaluate the issue within the legal framework of the relevant law/rules/regulations. Further the Respondent has not discussed in the Impugned Order, the issues raised by Appellant's legal representative on the validity of the QCR and its application.
- vi. The Respondent has not provided proper opportunity at the time of hearing and decision of penalty was announced without providing the copy of reply of legal department.
- vii. The matter relating to deletion of Appellant name from list of firms having satisfactory QCR is pending in the Lahore High Court, Lahore, which is expected to be decided in Appellants favour.
- viii. The penalty imposed of Rs.50,000 is quite excessive, harsh and unjustified, therefore, liable to be deleted.

5. The Respondent rebutted the ground of appeal in the following manner:

- i. All relevant facts and circumstances were duly considered and arguments of the Appellant were acceded through a well-reasoned order.
- ii. Section 260 of the Ordinance is applicable in this case and arguments of non-application of said section are contrary to the law. The Respondent has also explained the application of Section 260 in para 6 to 8 of the Impugned Order.
- iii. All listed companies are required to follow the Ordinance as well as all the additional requirements of listing regulations including Code of Corporate Governance.
- iv. The Impugned Order was passed in consequence of violation of Section 260 of the Ordinance.
- v. All the arguments of the Appellant with regard to QCR were addressed. It is admitted fact that the Appellant with the knowledge of removal from the QCR rated auditors has authenticated statement of compliance, wherein

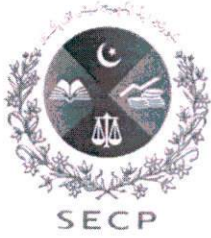


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the Appellant was mentioned as QCR rated auditor. Therefore, the case of the Appellant falls within the ambit of Section 260 of the Ordinance.

- vi. The Appellant was provided ample hearing opportunities of hearings i.e. on 27/06/14 and 29/01/15. Further copy of internal legal department regarding application of Section 260 of the Ordinance was neither requested nor required to be provided to the Appellant.

6. We have heard and perused the record with the able assistance the parties i.e. Appellant and Respondent. After careful examination of the grounds of appeal and rebuttal submissions by the Respondent, we are of the view that Section 260 of the Ordinance clearly states that in case any document of the company is signed or authenticated by the auditor, which is untrue or auditor fails to bring out material information, the auditor who signs that document shall be liable to a fine. Therefore, the Appellant counsel's argument that Section 260 of the Ordinance is not applicable in the instant case cannot be acceded.
7. The argument of the Appellant that it has challenged the removal from QCR rated status before the Lahore High Court (the Court) is irrelevant. The Appellant was removed from the list of firms having satisfactory QCR rating and they were cognizant of this fact at the time of offering themselves for appointment as Auditors in the AGM. Further, the Appellant has authenticated and signed the statement of compliance wherein it has been mentioned that the Appellant is QCR rated auditor, which was contrary to the facts and amounts to misstatement which liable to be dealt under Section 260 of the Ordinance. The malafide intention of the Appellant is evident from the fact that during the review of the statement of compliance it failed to correct the record with respect to QCR status. Furthermore, the Appellant has also failed to produce any order of the Court which bars the Appellate Bench to proceed with the matter.
8. The Appellant has not come with clean hands to seek the remedy under Section 33 of the Act. We feel it necessary to discuss the history of the Appellant with respect to professional conduct. Previously the Appellant was charged with the same violation



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in appeal titled Hameed Khan and Co. Chartered Accountant Versus Head of Department (Enforcement) (Appeal No. 24 of 2013) and the Appellate Bench while deciding the said appeal uphold the Impugned Order, wherein a penalty of Rs.100,000/- under Section 260(1) of the Ordinance was imposed.

9. In view of the above, we believe that the Impugned Order was passed with due care keeping in view the principle of legal reasoning necessary to establish the guilt and violation on the part of Appellant. Therefore, we find no reason to interfere with the Impugned Order dated 16/02/15 passed by the Respondent. The appeal is dismissed.
10. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **11 AUG 2015**