



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (CSD)

In the matter of

Pakistan Association of Automotive Parts and Accessories Manufacturers

Number and date of notice: CSD/ARN/187/2015-162, dated July 16, 2015
Hearings held on: April 11, 2016
Present: Mr. Busharat Ali, authorized representative

ORDER

UNDER SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against all sixteen directors including the chief executive (the "respondents") of **Pakistan Association of Automotive Parts and Accessories Manufacturers** (the "Company"). The proceedings against the respondents were initiated through show cause notice (the "SCN") dated July 16, 2015 under section 492 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that examination of the annual financial statements (the "Accounts") of the Company for the year ended June 30, 2011 filed under section 242 of the Ordinance revealed that the Accounts were purportedly audited by Rana Saeed & Co., Chartered Accountants and audit report (the "Report") purportedly signed by them was attached with the Accounts. In response to Commission's letter addressed to the aforesaid firm at the given address, audit firm namely Saeed Rana & Co., Chartered Accountants, submitted reply vide their letter dated April 6, 2015 and, inter alia, stated as under:

"We have never been appointed as auditors of this organization nor are we acquainted with anyone in this respect. To the best of our knowledge any firm of chartered accountants in the name and style of 'Rana Saeed & Co.' does not exist in Pakistan. This is a case of forgery, fraud, cheating, misrepresentation and misstatement etc. hence we hope that proper legal action against the concerned person would be taken and we would also be kept aware of the same"

3. The Commission through letter dated May 13, 2015 sent the aforesaid response to the Company to seek clarification in response to which the Company vide letter dated June 29, 2015 submitted its reply. A brief of relevant contents of the reply are produced below:

"It is highly regretted on our part that a document that should have been statutorily filed with the Companies Registration Office and the Commission under the Ordinance i.e. the annual audited

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accounts for the year ended June 30, 2011, was not filed. Rather an information on Company's financial aspects that was prepared for our own internal review and evaluation, being purely as management information, which cannot be claimed as a statutory document was erroneously lodged (not filed as a statutory requirement under section 242 of the Ordinance). We are deeply apologetic for unnecessary inconvenience and disturbance caused to your good self by receiving, reviewing and examining this information leading to the observations very rightly raised by your honor.

In this context we humbly request to very kindly accept our apology, ignore this document considering it as never been furnished by us as a statutory document and we may be allowed to re-appoint Saeed Rana & Co., Chartered Accountants, 38-3-B, Jail Road Lahore, with specific assignment to re-audit the annual accounts for the year ended June 30, 2011 for purpose of section 242 of the Ordinance"

4. Subsequently, the Accounts of the Company for the years ended June 30, 2012 and June 30, 2013 filed under section 242 of the Ordinance were reviewed and it transpired that audit reports signed by Rana Saeed & Co., the non-existent audit firm, were attached to them. Moreover, as per Form 29 dated September 30, 2011 filed by the Company, Rana Saeed & Co. was mentioned to be the Company's auditor. It appeared that the auditors' report on the Accounts of the Company for the years ended June 30, 2011, 2012 and 2013, filed by the Company with the Commission were not genuine and the aforesaid Accounts were, therefore, unaudited. Hence, the respondent, prima facie, made themselves liable under the provisions of section 492 by purporting the aforesaid Accounts to be audited, which tantamount to misstatement. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing, within fourteen days, as to why the penalty as provided for in section 492 of the Ordinance may not be imposed on them.

5. In response to the SCN, the Company submitted reply through letter dated July 28, 2015. A brief of the respondents' response with reference to the contents of the SCN is produced below:

- The Company is an association formed under section 42 of the Ordinance. Its functions and operations are meticulously kept within the regulatory framework and directors are ambitious not to violate the law or any statutory regulations.



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- We are regretful that the Accounts for the years 2011, 2012 and 2013 were not filed in conformity with the law.
- These Accounts were not filed or prepared intentionally or willfully to violate the statutory provisions. Assurance for future compliance is given and an opportunity of hearing is requested.

The case was fixed for hearing on December 15, 2015 and January 20, 2016, however, the respondents requested for adjournment citing unavailability of their concerned officer as the reason, on both occasions. Another hearing was fixed on February 17, 2016, but no one appeared on the due date despite having given confirmation through letter dated February 8, 2016. The case was again fixed for hearing on March 2, 2016 and March 14, 2016 and Mr. Munawar Ismail and Mr. Busharat Ali appeared before the undersigned, but they could not provide power of attorney from the respondents on both occasions. Finally, the hearing was held before the undersigned on April 11, 2016 and Mr. Busharat Ali, appeared on behalf of the respondent along with the requisite power of attorney from them. He mainly reiterated the earlier written submissions and further stated as under:

- Management accounts were mistakenly filed by the Company.
- There were disputes between the Company and the auditor regarding fee; therefore, the auditor disowned the audit report on the Accounts.
- The Company has subsequently changed the auditors for the years ended June 30, 2014 and June 30, 2015.
- Default with regard to filing of unaudited Accounts 2011, 2012 and 2013 is admitted, but it was not intentional or with *malafide*.

6. Before proceeding further, it is necessary to advert to the provisions of section 492 of the Ordinance which state as under:

"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 explanation 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



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material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 492 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

7. I have analyzed the facts of the case and relevant provisions of the Ordinance and my observations are as under:

- In terms of section 233 of the Ordinance the Accounts of a company are required to be audited by the auditor of the company, in the manner provided by the Ordinance and the auditor's report is also required to be attached thereto. Moreover, in terms of section 254 of the Ordinance, only a Chartered Accountant or a firm of Chartered Accountants is qualified to be the auditor of a public company or a private company which is subsidiary of a public company.
- The Company filed the Accounts for the years 2011, 2012 and 2013 purporting those to be audited by a firm namely Rana Saeed & Co., Chartered Accountants, which does not exist, as per list available on the official website of the Institute of Chartered Accountants of Pakistan. The actual name of the firm is Saeed Rana & Co., Chartered Accountants, who have categorically denied being the Company's auditor. When the authorized representative during the hearing was asked to produce consent letter from the audit firm, or any other evidence for appointment of auditor of the Company, he accepted that no such evidence was available.
- It clearly establishes that the auditors' report attached to the Accounts 2011, was fake and the Accounts were not audited in terms of the law. Moreover, subsequent Accounts for the years 2012 and 2013 were also un-audited as those also contained the fake auditor's reports. However, the respondents filed the Accounts purporting those to be audited. Moreover, copy of Form-29 dated September 30, 2011 filed by the Company also mentioned Rana Saeed & Co., a firm that does not exist, as the auditor of the Company. Therefore, the respondents have made misstatements to the Commission in the Accounts as well as in Form 29.



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- The respondents have failed to produce any evidence of appointment of auditor of the Company including auditors' consent, evidence of appointment or payment of audit fee. It appears that the Company does not have any documentary evidence of appointment of auditor for the years 2011, 2012 and 2013. The respondents have tried to justify the default by stating that it mistakenly filed management accounts to the Commission. This plea is not tenable because the management accounts do not contain auditors' report. However, the Accounts filed by the respondents contained the signed and stamped auditors' report, which subsequently proved fake, when the Commission sought clarification from the actual firm of auditors. Moreover, it is respondents' responsibility to ensure that they appoint a duly qualified auditor for audit of Company's Accounts. It transpires that the respondents have deliberately filed the unaudited Accounts purporting those to be audited. Besides, they have made misstatements in the Form-29 by mentioning a nonexistent firm as auditor of the Company. This view is further affirmed by the fact that Accounts for years 2012 and 2013 filed subsequently by the Company also contained fake auditor's report.

8. I deem it necessary to make some observations on the importance of audit of financial statements and accurate disclosures made therein. The financial statements along with annexures are the most important source of reliable information for the shareholders and other stakeholders. Therefore, adequate and correct disclosures in the financial statements and the statement annexed thereto are of utmost importance. The directors are responsible for stewardship of resources entrusted to them by the shareholders of a Company with the trust that they will manage such resources for the shareholders' benefits. There is no such arrangement in place whereby the shareholders can have an independent view as to how the directors have managed the affairs of the company. The law, therefore, recognizing this situation, has provided for the appointment of auditors who shall be responsible to audit the books of account, documents and financial statements required by the law and make out a report on them at the end of each year. Procedure for appointment of auditor has also been prescribed by the law, which must be followed by the Company, considering the fact that it is the only safeguard provided by law to the shareholders to ensure accountability of the management. It is the duty of the directors to see that the procedure for appointment of auditor is meticulously followed and correct disclosure are made in the financial statement and all the statements annexed thereto. In this context the respondents cannot



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absolve themselves of their statutory duties of exercising due care and prudence to ensure that all the legal and regulatory requirements are met while appointing the auditor and disclosures made by them regarding appointment and qualification of auditors are correct.

9. For the foregoing reasons, I am of the view that the respondents have made themselves liable under the provisions of section 492 of the Ordinance. However, I take cognizance of the facts that the Company is a not for profit organization and the respondents have shown willingness to rectify the non-compliances by appointing duly qualified auditor to audit the Accounts for the years ended June 30, 2011, 2012 and 2013. Therefore, instead of imposing maximum prescribed fines, in exercise of the powers conferred by section 492 of the Ordinance, I hereby impose a fine of Rs.10,000/- on each of the sixteen respondents, aggregating to Rs160,000/- (Rupees one hundred sixty thousand only).

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalties are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amounts from personal resources.

Before parting with the order, I hereby invoke provisions of section 473 of the Ordinance and direct the respondents to get the Accounts of the Company for the years ended June 30, 2011, 2012 and 2013 audited by a qualified auditor and to file the duly audited accounts with the Registrar to comply with the provisions of the Ordinance, within ninety days from the date of this order.

Abid Hussain
Executive Director (CSD)

Announced:
May 2, 2016
Islamabad