

**IN THE HIGH COURT OF SINDH AT KARACHI**

**M. A. No. 16 of 2011**

**Mr. Vazir Ali F. Muhammad & others ----- Appellants**

**Versus**

**Appellate Bench, Securities & Exchange  
Commission of Pakistan and another ----- Respondents**

**Date of hearing: 14.09.2018.**

**Date of judgment: 14.09.2018.**

**Appellant: Through Mr. Furkan Ali Advocate.**

**Respondents: Through Mr. M. Salim Mangrio Advocate.**

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** This is an Appeal under Section 34 of the Securities & Exchange Commission of Pakistan Act, 1997 (“SECP Act”) against order of the Appellate Bench of SECP dated 26.5.2011, whereby, the Appeal of the Appellants was dismissed by maintaining the order of Director (Enforcement), Additional Registrar of Companies through which an aggregate amount of Rs.1,75,000/- was imposed as fine, being Rs.25,000/- on each appellant for violation of section 234 of the Companies Ordinance, 1984 (“Ordinance”).

2. Learned Counsel for the Appellant submits that a Show Cause Notice dated 20.04.2010 was issued for alleged violation of Section 237 of the Ordinance, to the extent that the Appellants failed to file consolidated financial statements of the Holding Company and its subsidiaries, whereas, according to the understanding of the

Appellants, the same was applicable only on Public Limited Companies, and therefore, compliance was not made. Per learned Counsel, however, immediately upon issuance of Show Cause Notice, relevant compliance was made, and thereafter, for subsequent years again compliance has been made; hence, the fine imposed is not proper and justified. According to him, at most this was a bonafide mistake and mis-appreciation of law, whereas, the same was not willful as it is the case of the Appellants that reference has been made in Section 237 *ibid*, to the Fourth schedule of the Ordinance, for filing such financial statements, and that applies to Public Limited Companies; therefore, such mistake was committed. He further submits that this was not a willful act; hence a lenient view ought to have been taken by the two forums below and therefore, the Appeal be allowed. In support he has relied upon ***M/s Crescent Bolts & Nuts Manufacturing Co. Ltd. and 6 others V. Registrar Joint Stock Companies (P L D 1959 (W.P.) Karachi 32), Pakistan Paper Corporation Ltd. V. Secretary, Federal Ministry of Finance & Another (1984 C L C 2456) and Muhammad Yakoob Ali Mohammed V. Estate Officer, Government of Pakistan, Karachi (P L D 1967 Karachi 61).***

3. On the other hand, Respondent's Counsel submits that Appeal is time barred as the impugned order was passed on 26.5.2011, and Appeal was to be filed within 60 days, whereas, it was filed on 26.7.2011 hence, barred by one day. He further submits that the default on the part of the Appellants has been admitted, whereas, due to their conduct and subsequent compliance, already a lenient view has been taken by imposing a fine of Rs. 25,000/- instead of the

maximum; therefore, no case for indulgence is made out hence, Appeal be dismissed.

4. I have heard both the learned Counsel and perused the record. Firstly, I would like to attend to the objection regarding limitation. It appears that the impugned order of the Appellate Bench states that it was announced on 26.5.2011 and the Appellant's case is that the same was received on 28.5.2011; hence, the Appeal has been filed within 60 days. It is but natural that if an order has been announced on 26.5.2011 it could not have been supplied on the same date to count limitation as contended by the Respondent's Counsel, therefore, the contention that it was received on 28.5.2011 appears to be correct as nothing contrary to that assertion has been placed on record; hence, the Appeal is held to be within time.

5. Insofar as imposition of fine and contravention of the relevant section is considered, it would be advantageous to refer to the relevant part of Section 237 of the Ordinance which reads as under:-

*237. Consolidated financial statements.* (1) There shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under sub-section (3) of the section 234.

- (2) .....
- (3) .....
- (4) .....
- (5) .....
- (6) .....
- (7) .....
- (8) .....

(9) If a holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable within fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not willful and intentional."

6. Perusal of the aforesaid Section reflects that a holding company having subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, shall attached to its financial statements, the consolidated financial statements of the group companies presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under sub-section (3) of the section 234. Sub-section (9) *ibid* provides that if there is any failure of such compliance, every officer of the holding company shall be punishable within fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements, and that the non-compliance or default on his part was not willful and intentional. Firstly, as to the contention that the Appellants understanding was that this provision only applies to Public Companies having subsidiaries it does not appear to be a correct and justifiable stance. The Section refers to the word holding companies, whereas, under the Ordinance, Company, Public Company and Private Company have been defined separately under section 2(7), (28) & (30) of the Ordinance, and therefore, this argument has no basis. Insofar as the argument that since reference has been made to Fourth Schedule of the Ordinance which applies to Public Companies is concerned, again the same is misconceived as it is only in relation to the Accounting Standards and the manner and format in which the consolidated financial statements are to be prepared and submitted. The Section clearly applies to all holding companies who have

subsidiaries and it is not in dispute that the appellant No.6 is a holding company and has subsidiaries.

7. As to the argument that the act was not intentional and willful, whereas, immediately upon receiving a Show Cause Notice compliance was made is concerned, on perusal of the record and the Memo of Appeal preferred before the Appellate Bench, again, the same also appears to be misconceived and contrary to record. It is an admitted position and as stated in (Para "b & c" of facts) in the Memo of Appeal filed before the Appellate Authority, that before issuance of a Show Cause Notice, the Appellants were issued simply a letter dated 7.12.2009 raising observation on the financial statements of Appellant No.6 to the effect that no consolidated financial accounts of its group subsidiaries have been furnished, which was replied by Appellant No.6 through its letter dated 21.12.2009 which is relevant for the present purposes and reads as under;

(vii) "Consolidated Account as required under Sub-Section (1) of Section 237 of the Companies Ordinance 2001 – In this regard we would like to inform you that M/s Hashoo Holdings (Pvt.) Limited is a private limited company and complying with the disclosure requirement of Fifth Schedule of the Ordinance. The Fourth Schedule and International Accounting Standards notified under Sub-Section (3) of Section 234 of the Companies Ordinance 2001 are not applicable to private limited companies."

After having provided the above clarification to the extent that it was a Private Limited Company and Section 237(1) was not applicable to it as the same was for public companies, there is nothing left for the Appellants to now resile from their stance that immediate compliance was made. The regulator after having been dissatisfied with this reply, issued a Show Cause Notice 20.4.2010, and it is only thereafter, that any compliance as claimed was made. Therefore, this cannot be

considered as a case that the default was not intentional or willful. If that had been the case, then immediately before issuance of the Show Cause Notice, and on the contrary while responding to the letter of observation, and conceding, the Appellants would have complied with such observation. This is not the case. The Appellants waited for issuance of a Show Cause Notice, and then made compliance. Therefore, now at this stage of the proceedings after contesting the matter initially on merits, the Appellants cannot come and say that the non-compliance was not willful. Moreover, as contended by the Respondent's Counsel the Commission has already taken a lenient view by imposing a fine of Rs. 25,000/- each instead of the maximum, therefore, again no case for a lenient view and consideration is made out. Lastly, it may be observed that procedure(s) and various directions, as contained in the Ordinance, are to monitor the management and affairs of companies, be it Public or Private. And the only reason is to safeguard the interest of shareholders / members. Any contravention or non-compliance is to be seen and adjudicated by keeping this spirit of the legislation. Though it is not that all such contravention(s) or default(s) are to be accorded or treated as being willful, and at the same time vice-versa, but is to be appreciated and adjudged on the basis of peculiar facts of each case. It is the onerous responsibility of Director(s) not only to make compliance of regulations, but also to ensure that routine but vitally important tasks are not overlooked. And for this reason, every company is manned by a company secretary, who has to ensure that all regulatory and mandatory documents are prepared and filed in accordance with law, with due diligence fulfilling the statutory requirements. In this matter,

I am of the view that Appellants have not been able to make a case of any exception by their conduct as discussed hereinabove. Accordingly, I am of the view that no case for indulgence is made out and therefore, the Appeal is hereby dismissed.

**J U D G E**

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