



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 61 of 2012

Asral-ul-Majeed Khan C/o Arman & Company

(Chartered Accountants)

...Appellant

Versus

Head of Department (Enforcement)

...Respondent

Date of hearing

05/09/13

ORDER

Present:

Appellant:

Mr. Asrarul Majeed Khan, FCA

For the Respondent: (through video link)

Mr. Shahid Javed, Deputy Director (Enforcement)

Mr. Haroon Abdullah, Deputy Director (Enforcement)



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1. This order is in appeal No. 61 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 (the “Act”) against the order dated 06/11/12 (the “Impugned Order”) passed by the Respondent.

2. The facts leading to the case are that M/s Arman & Co, Chartered Accountants (the “Auditor”) audited accounts of the Company for the year ended 30/06/11 and issued an unqualified report (the “Report”). The Enforcement Department (“the department”) of the Commission examined the Accounts of the Company to determine whether the Report pertaining to the aforesaid financial year has been made in conformity with the requirements of section 255 of the Companies Ordinance, 1984 (the “ Ordinance”). A detailed scrutiny of the Accounts in the light of the provisions of the Ordinance, Accounting and Financial Reporting Standards for Medium and Small Sized Entities (the “AFRS for MSEs”) issued by the Institute of Chartered Accountants of Pakistan (the “ICAP”) and applicable International Standards on Auditing (the “ISAs”) revealed the following irregularities:
 - a) The Company has not annexed the cash flow statement and statement of changes in equity with the Accounts.

 - b) No disclosures have been provided regarding the statement of compliance under which accounts have been prepared as required by AFRS for MSEs.



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c) The Accounts have been stamped and signed and are also printed on Auditor firm's letter head.

d) Further revealed that the Company has not followed the disclosure requirements of AFRS for MSEs issued by ICAP and the Ordinance, as follows:

(i) Para 1.36 of Section 1 (Presentation of Financial Statements) of AFRS states that an entity shall disclose the following, if the information is not disclosed elsewhere in information published with the financial statements:

- the domicile and legal form of the entity, its place of incorporation and the address of the registered office (or principal place of business, if different from the registered office);
- a description of the nature of the entity's operations and its principal activities; and
- the name of the parent and the ultimate parent of the group.

(ii) Para 1.31 of Section 1 (Presentation of Financial Statements) of AFRS states that the notes to the financial statements of an entity shall:

- Present information about the basis of preparation of the financial statements and the specific accounting policies



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selected and applied for significant transactions and events;

- Disclose the information required by the standard that is not presented elsewhere in the financial statements, and
- Provide additional information that is not presented on the face of the financial statements but that is necessary for a fair presentation.

(iii) Para 1.33 of Section 1 (Presentation of Financial Statements) of AFRS states that the accounting policies section of the notes to the financial statements shall describe the following:

- The measurement basis (or bases) used in preparing the financial statements;
- Each specific accounting policy that is necessary for a proper understanding of financial statements.

(iv) Para 14.10 of Section 14 (Events After the Balance Sheet Date) of AFRS states that an entity shall disclose the date when the financial statements were approved and who has approved the financial statements.

3. Show cause notice dated 06/07/12 (the “SCN”) under section 255 read with Section 260 and Section 476 of the Ordinance was issued to the Auditor. The Auditor vide letter dated 13/07/12 submitted its reply to the SCN and the case



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was re-fixed for hearing on 17/10/12 after being adjourned on Appellant's request on 24/09/12. On the date of hearing, the Appellant appeared and conceded the default of failing to observe the non-disclosures of relevant information, basis and specific accounting policies and requested for taking a lenient view. The Respondent, after carefully considering the submissions and all facts and circumstances of the case, held that the provisions of section 255 of the Ordinance had been violated and in exercise of powers under section 260 (1) read with section 476 of the Ordinance, imposed a fine of Rs.10,000 on the Appellant.

4. The Appellant preferred the instant appeal against the Impugned Order. The Appellant argued that no willful default was committed by the Appellant and the interest of any party has not been adversely affected by issuance of the unqualified Report. In case of professional like lawyers, accountants, doctors, etc. the law is more lenient. At best the Appellant could have been reprimanded on the issues highlighted in the Report. Reliance was placed on an article published in *The In-house lawyer, February, 2006*, page 73 and it was argued that the liability of auditors have been curtailed over a period of time as firms such as *Ernst & Young* have won legal battles against claimants. Finally, the Appellant argued that the revised report was submitted on 02/10/11 and due to clerical error the revised audit report and statement of cash flow, changes in equity/accounting policies were not supplied to the Commission.
5. The department representatives argued that there was a willful default by the Appellant. The Appellant not only failed to submit cash flow statement and statement of changes in equity along with the Accounts but also failed to comply with substantial requirements stated in Para 2(d) above. The Appellant has already taken a lenient view by imposing penalty of Rs 10,000, when the





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maximum penalty of Rs 100,000 could have been imposed under section 260 of the Ordinance. Further, the revised report has not been submitted till date with the Commission.

6. We have heard the parties and have gone through the record. The auditor has already conceded the default of failure to file the cash flow statement and statement of changes in equity with the Accounts and has pleaded that the act was unintentional, as such, the penalty be set aside. We would like to emphasize that the role of auditor is critical in order to ensure that the financial accounts present true and fair view. The duties of the auditors have been stipulated in section 255 of the Ordinance and the relevant IAS's. The auditors have to act in a professional manner and their duty towards the shareholders and stakeholders should be that of a skilled professional and not a lay man. The argument of the Appellant that the act was not *willful* has been examined in light of judgment in *Jalaluddin F.C.A vs. Commissioner SEC, 2005 CLD 333*, where the meaning of *willful* has been discussed and it was held that:

“whereas intent is a necessary ingredient of willfulness, impropriety is not (1960) 30 Com cases 523. It is therefore not necessary to prove that the default committed by the Appellant was mala fide.”

It was sufficient to show that the act of the Appellant was done stubbornly and in an unseemliness manner despite the express provision in the law. Reliance is also placed on *City Equitable Fire Insurance Co Ltd Re, 1925 Ch 407*, referred to in *2005 CLD 333*:



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“that a default, in case of breach of duty, will be considered ‘wilful’ even if it arises out of being recklessly careless, even though there may not be knowledge or intent.”

We are not in agreement with the contention of the Appellant that the liability of auditors have been curtailed over period of time. The case relied upon by the Appellant is not relevant, as it is a claim against the auditor arising out of breach of contract, whereas, in the instant case Appellant has been charged of breach of statutory provision of law. Moreover, the failure to submit the revised report to the Commission shows that the act of the Appellant was *willful*.

The Respondent has already taken a lenient view in the matter by imposing a penalty of Rs. 10,000, whereas, the maximum penalty could have been Rs. 100,000 under section 260(1) of the Ordinance. We see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

(Mohammad Asif Arif)
Commissioner (Insurance)

(Imtiaz Haider)
Commissioner (SCD)

Announced on: 01/10/13