



Corporate Supervision Department
Company Law Division
Before Amina Aziz – Director

In the matter of

Laiba Industries (Pvt.) Limited

Number and date of notice: CSD/ARN/314/2016-206-207, dated July 26, 2016
Date of reply: None
Hearing fixed for: September 7, 2016, October 25, 2016 and November 1, 2016
Hearing held & presented by the respondents: None

ORDER

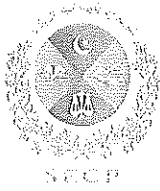
Under Sections 254 and 259 read with Section 476 Of The Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against the following directors including the chief executive officer (together referred to as “respondents”) of Laiba Industries (Pvt.) Limited (the “Company”):

1. Mr. Muhammad Nadir, Chief Executive
2. Mr. Khurram Mandwawala, Director

The proceedings were initiated through show cause notice (“SCN”) dated July 26, 2016 under the provisions of sections 254 and 259 read with section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that examination of annual audited financial statements (“Accounts”) of the Company for the year ended June 30, 2015 (“Accounts”) filed under section 242 of the Ordinance revealed that the Company’s paid up capital is Rs8.00 million. The Accounts were audited by H.M. Hanif Adamjee Shekha & Co., (the “Firm”) and audit report were signed by Mr. H.M. Hanif Shekha on November 27, 2015. As per record, the Firm is not registered with Institute of Chartered Accounts of Pakistan as a Chartered Accountant firm. Only a qualified chartered accountant can be appointed as statutory auditor of a private company with paid up capital of Rs3 million and above in terms of section 254 of the Ordinance. The Company, prima facie, contravened the provisions of section 254 of the Ordinance by appointing its unqualified firm of auditor for the aforementioned period. Consequently, SCN dated July 26, 2016 under sections 254 and 259 read with section 476 of the Ordinance was served to the respondents calling upon to show cause in writing within fourteen days from the date of the notice as to why penalty may not be imposed on them for contravention of the afore-referred provisions of the Ordinance. The respondents failed to submit response to the aforesaid SCN.



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3. In order to provide an opportunity of hearing to the respondents, the matter was fixed for September 7, 2016 but no one appeared before the undersigned. However, hearings were again fixed for October 25, 2016 and November 1, 2016 but the respondents neither appeared before me nor submitted any reply and also have not made request for adjournment. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance.

Sub-section (1) of section 254 of the Ordinance provides that A person shall not be qualified for appointment as an auditor-

- (i) *in the case of a public company or a private company which is subsidiary of a public company unless he is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961); and*
- (ii) *in the case of a private company having paid up capital of three million rupees or more unless he is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961) and*

Sub-section (2) of section 254 of the Ordinance provides that A firm whereof all the partners practising in Pakistan are Chartered Accountants may be appointed by its firm name as auditors of a company referred to in sub-section (1) and may act in its firm name.

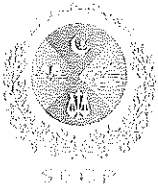
Section 259 of the Ordinance provides that if default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to fifty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues.

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 259 have been delegated to the Director (Corporate Supervision Department).

4. I have analyzed the facts of the case, the relevant provisions of the Ordinance, and submissions made by the respondents. My observation in this regard are as under:

- a) Section 254 of the Ordinance explicitly specifies the qualification of auditor of a public company, a private company which is subsidiary of a public company and a private company, having paid up capital of three million rupees or above. Only a Chartered Accountant or firm of Chartered Accountants is eligible to be the auditor of such companies. The respondents having paid up capital of Rs8 million have appointed the above unqualified firm as its auditor for the aforementioned period in violation of the provisions of section 254 *ibid*.

5. It is clear that audit is amongst restricted services that can only be performed by the person who qualify the criteria specified by the law. Therefore, in case, any person who does not meet the criteria for the appointment of auditor specified by law is appointed is liable to penalty prescribed under the law. Any leniency while deciding such



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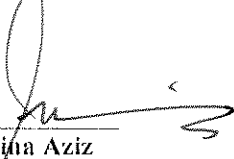
cases of appointing unqualified persons as auditor of the company would undermine the law which aims to provide a credible safeguard by prescribing the specific qualification of auditor.

6. For the foregoing reasons, I am of the view that the respondents have violated the provisions of section 254 of the Ordinance by appointing an unqualified firm as auditor of the Company for the year ended June 30, 2015. This make the respondents liable to fine under section 259 of the Ordinance. Therefore, in exercise of the powers conferred under section 259 read with section 476 ibid, I hereby impose fine on the respondents in the following manner:

S. No.	Name and Designation	For the year ended June 30, 2015
1.	Mr. Muhammad Nadir, Chief Executive Officer	20,000
2.	Mr. Khurram Mandwawala, Director	20,000
Total:		40,000

The respondents are directed to deposit the aforesaid fine 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. The respondents must furnish receipted bank vouchers to the Commission for its information and record. In case of non-deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid fines are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

The respondents are further directed under section 473 of the Ordinance to appoint auditor afresh in compliance with provisions of section 254 ibid and get audited the annual accounts for the year ended June 30, 2015 within forty-five days from the date of this order and file the audited accounts afresh with the Registrar and inform the Commission accordingly.


Amina Aziz
Director (CSD)

Announced:
December 13, 2016
Islamabad