



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

228

Adjudication Department-I *SAY NO TO CORRUPTION* Adjudication Division

Before

Ali Azeem Ikram – Executive Director/Head of Department

In the matter of

M/s Ghalib & Company, Chartered Accountants
(Auditor of Tri Star Polyester Limited)

Show Cause Notice No. & Date	CSD/ARN/159/2015-560 dated August 29, 2018
Dates of Hearings:	December 23, 2019 & January 9, 2020
Represented by:	Mr. Mohammad Tariq FCA (Authorized Representative)

ORDER

Under section 253 read with section 479 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated through Show Cause Notice ("SCN") No. CSD/ARN/159/2015-560 dated August 29, 2018, under section 253 read with section 479 of the Companies Act, 2017 (the "Act"), against M/s Ghalib & Company, Chartered Accountants (the "Auditor"), in the matter of Tri-Star Polyester Limited (the "Company").

2. Brief facts of the case are that the Company through its letter dated October 5, 2017 disseminated information about decision of its board of directors made in their meeting held on October 5, 2017 which recommended (i) the issuance of 10% bonus and (ii) issuance of right shares at the rate of 1:1, at par. Notice of 27th annual general meeting ("AGM") of the Company, which was held on October 31, 2017 also included the ordinary business of issuance of 10% bonus shares as dividend. As per the requirements of Rule 6(iii) of the Companies (Issue of Capital) Rules, 1996 (the "Rules"), the Company submitted with the Commission its Auditor's Certificate (the "Certificate") on residual free reserves for issuance of bonus shares. Review of Certificate revealed that Company's residual reserves as at June 30, 2017 after the proposed issue of bonus shares of Rs. 21,465,733, would be higher than fifteen percent of the enhanced paid up capital of Rs. 236,123,063.

3. The Company vide its letter dated November 2, 2017, upon request of the Commission, submitted the Certificate showing computation of free reserves. Review of the said Certificate revealed that while calculating free reserves, the Auditor took into account unrealized gain on investment amounting to Rs. 176.398 million, which was contrary to the provisions of Rule 6 of the Rules notified vide SRO 34(I)/2016 dated January 19, 2016. In case, unrealized gain on investment amounting to Rs. 176.398 million was not accounted for, the Company's free reserves were not with the prescribed percentage of enhanced paid up capital. The Auditor, hence, issued the said certificate, which was prima facie, untrue and was not in conformity to the requirements of rule 6 of the aforementioned Rules.



4. In view of above, the proceedings were initiated in terms of section 253 of the Act, vide SCN dated August 29, 2018 against Auditor of the Company wherein the Auditor was called upon to show cause in writing as to why penalty may not be imposed under the afore-referred provisions of the Act.

5. The Auditor vide reply dated September 28, 2018 submitted in the following manner:

"We would like to inform you that your observation is correct in the light of amendment made by the Securities and Exchange Commission of Pakistan in the Companies (Issue of Capital) Rules, 1996 vide notification SRO 34(I) 2016 dated January 19, 2016, the said amendment was missed by us and inadvertently issued the certificate on the basis of the directive of the circular before amendments made on January 19, 2016 where the unrealized gain was not excluded from the free reserves.

We would further, draw your attention towards the Auditor's report and the financials of the Company for the year ended June 30, 2017, where the unrealized gain shown on the face of the balance sheet by the management and the auditors of the Company made qualification on the same investment. In the light of the facts mentioned it is quite evident that we had no intention to hide the fact and the certificate issued by us was an honest mistake and not done willingly."

6. Considering the reply of the Auditor, hearing in the matter was fixed for December 23, 2019. Mr. Mohammad Tariq FCA, being Authorized Representative of the Auditor, vide his reply dated December 19, 2019 informed that engagement partner of the Auditor would not be able to attend the hearing, so requested for adjournment. The hearing was re-fixed for January 9, 2020, wherein Mr. Mohammad Tariq FCA, authorized representative appeared. During the hearing proceedings, the Authorized Representative submitted that the amount of unrealized gain was disclosed on the face of the balance sheet of the Company and the Auditor made a qualification on the investments on which gain of Rs. 176.398 million was reported. He conceded that the requirements prescribed through SRO 34(I)/2016 dated January 19, 2016, for excluding unrealized gain on investments while calculating free reserves, were missed and the mistake was not knowingly and willfully. He requested that in view of past track record of the Auditor, a lenient view be taken.

7. In terms of notification S.R.O. 1545 (I)/2019 dated December 6, 2019, the power to adjudicate cases under section 253 of the Act has been delegated to the undersigned as Executive Director (Adjudication Department-I).

8. It is pertinent to state here relevant provisions of section 253 of the Act, which provides that:

Section 253: (1) If any auditor's report or review report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 131, section 249 and 251 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm all partners of the firm, shall be liable to a penalty of level 2 on the standard scale.

9. I have gone through the facts of the case, submissions made in writing and relevant arguments made by the Authorized Representative during the hearing proceedings. It is relevant to highlight that requirement of auditor's certificate for calculation of free reserves is for the purpose of independent auditor's verification of free reserves available with the Company after issuance of bonus shares. The Auditor, however, while issuing the Certificate, did not highlight relevant facts and his calculation of free reserves was untrue and the same fact was admitted. In this regard, I would like to point out that I have reviewed the Certificate, which clearly mentioned at the top that the said Certificate was issued



pursuant to the SRO 34(I)/2016 dated January 19, 2016. In view of explicit reference of the SRO 34(I)/2016 dated January 19, 2016 mentioned on the top of Certificate dated October, 5, 2017, the Auditor's viewpoint that he was not aware of the requirements prescribed in the Rules notified vide SRO 34(I)/2016 dated January 19, 2016, is not tenable.

10. In view of above, based on available record and submissions made, the Auditor's Certificate dated October 5, 2017, hence, constitutes document, which was issued by the Auditor, and was not in conformity with the requirements prescribed in SRO 34(I)/2016 dated January 19, 2016. Keeping in view of the cited default the provisions of section 253 of the Act are attracted, for which, I, hereby, impose a penalty of Rs. 175,000/- (Rupee one hundred and seventy five thousand only) on the Auditor.

11. The Auditor is hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and furnish a receipted bank challan to the Commission forthwith.

12. In case of failure to deposit the penalty, the proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as arrears of land revenue.

13. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties on the Auditor in respect of any default, omission, violation of the Act

Ali Azeem Ikram
Executive Director-HOD
Adjudication Department-I

Announced:
January 13, 2020
Islamabad