



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (CSD)

In the matter of

Mr. Mahmood Akhtar, Audit Engagement Partner of M. Akhtar & Co., Chartered Accountants - Auditor of Dadabhoy Cement Industries Limited

Review sought for: Order dated June 27, 2016 of Executive Director (CSD) under sections 260, read with sections 255 and 476 of the Companies Ordinance, 1984
Date of Hearing: September 28, 2016
Present: Mr. Mahmood Akhtar Haroon

ORDER

Review Application under Section 484 of the Companies Ordinance, 1984

This Order shall dispose of the application dated August 26, 2016 filed by Mr. Mahmood Akhtar (the "Applicant"), who was the audit engagement partner of M. Akhtar & Co., Chartered Accountants, the Auditor of Dadabhoy Cement Industries Limited (the "Company"). The application has been filed under section 484 of the Companies Ordinance, 1984 (the "Ordinance") for review of the order dated June 27, 2016 ("impugned order") passed by the Executive Director (Corporate Supervisions Department) under section 260 read with sections 255 and 476 of the Ordinance.

2. In terms of the order, after carrying out proceedings and providing opportunity of hearing, the impugned order was passed. In respect of audit of the Company's financial statements for the years ended June 30, 2010 to June 30, 2015, the Applicant in his respective audit reports to members failed to appropriately modify the opinions to highlight the going concern issue being faced by the Company, contravention with International Financial Reporting Standards ("IFRS") and the incorrect accounting treatment adopted by the Company that resulted in material misstatements, as has been disclosed in the impugned order. It was held that the Applicant in his capacity as engagement partner of the Auditor failed to discharge his duties as per requirements of section 255 of the Ordinance, the Companies (General Provisions and Forms) Rules, 1985 and International Standards on Auditing. Hence, the Applicant failed to discharge his duties under the law and a penalty of Rs. 50,000/- (Rupees fifty thousand only) was imposed under section 260 of the Ordinance. Moreover, it was also highlighted in the impugned order that the Auditor was ineligible to perform audit of Company's financial statements in terms of the



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Code of Corporate Governance, as he did not have a satisfactory rating from the Quality Control Review Committee of the Institute of Chartered Accountants of Pakistan.

3. The Applicant has filed the application for review citing somewhat similar grounds, though very briefly, as were stated during the proceedings under section 260 of the Ordinance, which resulted in the impugned order. Arguments put forth by the Applicant are produced below in summarized form:

- Having audited the financial statements, the audit reports were issued keeping in view the Company's status as a going concern. The reports were issued under the prevalent circumstance of the Company and utmost effort was made to give maximum disclosures.
- A number of omissions were accepted during proceedings and response was provided in respect of other observations of the Commission. However, omission of disclosures in financial statements and audit reports did not benefit the management, members or the Auditor of the Company.

The Applicant cited reasons of financial hardship and requested to reduce the amount of penalty to Rs. 10,000/-. Subsequently, a hearing in the matter was held before the undersigned on September 28, 2016 and the Applicant while admitting the default in complying with the law, repeated his request for reducing the amount of fine due to his financial constraints.

4. Relevant provisions of section 484 of the Ordinance are quoted below:

Sub-section (2): The Commission or the registrar may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision under sub-section (1), or if its own motion, review such order; and such order in review shall be final.

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the Executive Director (CSD) has the power to review the order originally passed by him in pursuance of the delegated powers.

5. Before proceeding further it is necessary to elaborate upon the scope of a review in the light of judgments of higher courts. The honorable Supreme Court of Pakistan in the case of Haji Muhammad Boota and Others Versus Member (Revenue) BOR and Others (2010 SCMR 1049), referring to numerous previous judgments of the apex court, has held as under:

"The principles upon which a review can be granted are well-settled, i.e. there must be some new point based upon discovery of new evidence which could not with diligence, have been found out on



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the previous occasion. A review petition is not competent where neither any new and important matter or evidence has been discovered nor is any mistake or error apparent on the face of the record. Such error may be an error of fact or of law but it must be self-evident and floating on surface and not requiring any elaborate discussion or process of ratiocination. Orders based on erroneous assumption of material facts, or without adverting to a provision of law, or a departure from undisputed construction of law and Constitution, may, amount to error apparent on face of the record. Error, on the other hand, must not only be apparent but must also have a material bearing on fate of case and be not of inconsequential import. If judgment or finding, although suffering from an erroneous assumption of facts, is sustainable on other grounds available on record, review is not justifiable notwithstanding error being apparent on the face of the record. Where order under review did not appear to have been vitiated by any error on face of the record nor any other good and sufficient reason was given for review of order. Petition for review was dismissed."

6. I have examined the subject application considering the scope of review in the light of judgments of the apex court and the submissions made by the Applicant as mentioned hereinabove which appear to be devoid of merit. The Applicant has repeated somewhat similar submissions that were made by him during the original proceedings that resulted in the impugned order whereof fine has been imposed on him. I have observed that the Applicant has neither brought up any new and important matter or evidence nor has he been able to highlight any mistake or error of facts or law apparent on the face of the record. Moreover, the audit is among restricted services for which the auditors are paid; therefore, the plea of financial hardship is untenable and irrelevant. The amount of penalty, which in my view commensurate with the level of the default, cannot be reduced on the basis of financial hardship. Therefore, in the light of the facts on record, the limited scope of review and failure of the Applicant to highlight any material error or mistake in record of the case, the review application is hereby dismissed.

Abid Hussain
Executive Director (CSD)

Announced:
October 6, 2016
Islamabad