



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 Construction Technology Limited

Review sought for: Order of Executive Director (CSD) under Section 260 read with Section 255 and 476 of the Companies Ordinance, 1984 dated June 27, 2016
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 Construction Technology 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. The impugned order was passed after carrying out proceedings and providing opportunity of hearing. The grounds duly elaborated in the impugned order provide that the Applicant, in his audit report to members for the year ended June 30, 2015, failed to appropriately modify the opinions to highlight the going concern issue being faced by the Company, contraventions with International Financial Reporting Standards ("IFRS") and incorrect accounting treatment adopted by the Company that resulted in material misstatements. Moreover, the applicant in his review report to members failed to highlight non-compliance, by Company, with requirements of Code of Corporate Governance. It was held in the impugned order 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 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 Code of Corporate Governance, as he did not have a



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satisfactory rating from the Quality Control Review Committee of the Institute of Chartered Accountants of Pakistan.

3. The Applicant 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:

- The audit report was 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.
- Omissions of non-disclosure in financial statements and audit reports were accepted during proceedings and response was provided in respect of other observations of the Commission. However, the management, members or the Auditor of the Company did not derive any benefit from such omissions.
- Moreover, the Applicant cited reasons of financial hardship and requested to either pardon, withdraw or reduce the amount of penalty to Rs. 5,000- 10,000/-.

4. 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.

5. 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.

6. 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.

7. 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



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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 the previous occasion. A review petition is not competent where neither any new and important matter nor 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."

8. I have examined the subject application, considered the scope of review in the light of judgments of the apex court and submissions made by the Applicant as mentioned hereinabove. The Applicant has predominately repeated similar submissions that were made by him during the original proceedings, which resulted in the impugned order, whereof fine has been imposed on him. I have observed that the Applicant has neither put forth 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 deficiency in law or error in record of the case, the review application is hereby dismissed.

Abid Hussain
Executive Director (CSD)

Announced:
October 06, 2016, Islamabad