

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad

Before Rashid Sadiq, Executive Director

In the matter of
MR. ABDUL GHAFOOR, FCA

Number and date of show cause notice	19 (166) CF /ISS/2001 dated November 23, 2001
Date of hearing	February 21, 2002
Present	Mr. Abdul Ghafoor, FCA

ORDER UNDER SUB-SECTION (1) OF SECTION 260 OF THE COMPANIES
ORDINANCE, 1984 AND RULE 35 OF THE COMPANIES (GENERAL
PROVISIONS AND FORMS) RULES, 1985 READ WITH SECTION 476 OF
THE COMPANIES ORDINANCE, 1984

This Order will dispose of the show cause proceedings initiated against Mr. Abdul Ghafoor, FCA under Section 255 of the Companies Ordinance, 1984 (the “Ordinance”) and Rule 17 of the Companies (General Provisions and Forms) Rules, 1985.

2. Mr. Abdul Ghafoor is a Fellow Member of the Institute of Chartered Accountants of Pakistan (the “ICAP”). He was registered with ICAP on April 23, 1990 under Registration Number 1818. He is a practicing Chartered Accountant and is conducting his business under the name and style of ‘*Ghafoor & Co.*’ at opposite G. P. O. Shahnawaz Building, Rehmat Lane, Saddar Road, Peshawar Cantt., Peshawar.

3. The relevant facts of this case, briefly stated, are that M/S Ghafoor & Co., Chartered Accountant were appointed as auditor of M/S Khyber Tobacco Company Limited, a listed company (hereinafter referred to as the “Company”) for the year ended June 30, 2000 in its Annual General Meeting held on

December 31, 1999 to hold office from the conclusion of the said meeting until the conclusion of next Annual General Meeting.

4. The Audited Accounts of the Company for the year ended June 30, 2000 (the 'Accounts') were examined and it was noticed that the Audit Report on the Accounts signed by Mr. Abdul Ghafoor, sole proprietor of M/S Ghafoor & Co., was not on the prescribed Form 35-A as amended vide SRO No. 594 (1)/2000 dated August 25, 2000.

5. The following irregularities in the observance of the requirements of the International Accounting Standards (IAS) and Fourth Schedule to the Ordinance in regard to the accounts and preparation of the Balance Sheet and Profit and Loss Account for the year ended June 30, 2000 were also noticed:

- Non-disclosure of the basis on which the financial statements were prepared and reasons why the enterprise was considered to be a going concern despite the fact that the accumulated losses of the Company as of June 30, 2000 were to the tune of Rs. 76.741 million against the share capital and reserves of 15.33 million and current liabilities exceeded its current assets by Rs. 47.074 million. The Company has not made adequate disclosure and the auditor has not modified his opinion.
- Non-disclosure of Financial Instruments as required under IAS 32 (Financial instruments: Disclosure and Presentation).
- Statement of changes in equity and Cash Flow Statement have not been prepared and annexed to the accounts.
- Non-disclosure of the number of employees contrary to requirements of Para 102(d) of IAS 1 (Presentation of Financial Statements).
- Non-disclosure of Earnings per Share in the accounts contrary to requirements of IAS 33 (Earnings Per Share).
- Non-disclosure of shortfall in production contrary to the requirement of Para (2) of Part I of Fourth Schedule to the Ordinance.

6. Mr. Abdul Ghafoor, the Auditor of the Company, however, has not drawn attention of the members in his Audit Report towards the aforesaid contraventions/non-disclosures in the Accounts and instead has given a clean report to the members of the Company as is evident from the following paragraphs of his Audit Report:

QUOTE

“The balance sheet and profit and loss account together with the notes thereon have been drawn up in conformity with the Companies Ordinance, 1984.”

“In our opinion and to the best of our information and according to the explanations given to us, the balance sheet, profit and loss account and statement of changes in financial position together with the notes forming part thereof give the information required by the Companies Ordinance, 1984 in the manner so required and respectively give a true and fair view of the state of the company’s affairs as at June 30, 2000 and profit and the changes in financial position for the year then ended.”

UNQUOTE

7. In view of the aforesaid grave violations, the Commission felt concerned about the quality of the Audit of Accounts of the Company conducted by the auditors and it was decided to investigate this matter further.

8. Consequently, a Show Cause Notice bearing No.19 (166) CF/ISS/2001 dated November 23, 2001 was issued to the auditor to show cause, in writing, within ten days to explain as to why fine may not be imposed on him as provided under Rule 35 of the Companies (General Provisions and Forms) Rules, 1985 and Sub-section (1) of Section 260 of the Ordinance for the aforesaid violations. In response to the aforesaid show cause notice, Mr. Abdul Ghafoor stated that the accounts have been presented in the same pattern and manner as of last year. He also stated that shortcomings and omissions were not willful and intentional. He also requested for a lenient view of the default. In order to provide an opportunity, a hearing in this case was fixed on December 06, 2001. However, the same was adjourned at the request of Mr. Abdul Ghafoor and re-fixed on February 13, 2002. However, on the date of hearing no one appeared. To afford another hearing, the case was fixed on February 01, 2002.

9. On the date of hearing, Mr. Abdul Ghafoor appeared before the undersigned and admitted the default. He however, requested for a lenient view as his firm was located in a backward area, Peshawar and there were no chances for the Chartered Accountants to update and refresh their knowledge. He also stated that the shareholders have never raised any query regarding audited accounts. These arguments do not carry any force and also do not justify the non-observance of the mandatory provisions of law.

10. The reply shows a clear admission and acknowledgement of the failure of the Auditor to report contraventions and non-compliances to the members of the Company. It also indicates that the Accounts of the Company do not conform to all approved accounting standards and also do not give all the information required by the Ordinance in the manner so required. It appeared that the Auditor has not performed his duties with reasonable degree of care and skill.

11. Before proceeding further, I consider it essential to discuss the relevant provisions of law and their violation by the Auditor of the Company. The provisions of Sub-section (3) of Section 255 of the Ordinance requires that:

“ the auditor shall make a report to the members of the company on the accounts and books of accounts of the company and on every balance sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, which are laid before the company in general meeting during his tenure of office.”

12. Rule 17-A of the Companies (General Provisions and Forms) Rules, 1985 provides that:

“the auditor’ report on the accounts and books of accounts and balance sheet and profit and loss accounts of a company required by Section 255 SHALL be in Form 35 A.”

13. As the Auditor has not given Audit Report on the Accounts on the prescribed format, therefore, he has violated the mandatory provisions of Section 255 of the Ordinance and Rule 17-A of the Companies (General Provisions and Forms) Rule, 1985. He has, thus, made himself liable for punishment under Sub-section (1) of Section 260 and Rule 35 of the aforesaid Rules.

14. The provisions of Clause (i) of Sub-section (2) of Section 234 of the Companies Ordinance, 1984 requires that Balance Sheet and Profit and Loss Account or Income and Expenditure Account SHALL:

“ in the case of a listed company comply with the requirements of Fourth Schedule so far as applicable thereto.”

15. The provisions of Clause (i) of Sub-section (3) of Section 234 of the Ordinance requires that in the case of a listed company:

“such International Accounting Standards and other Standards SHALL be followed in regard to the accounts and preparation of the balance sheet and profit and loss account as are notified for the purpose”

16. Sub-section (3) of Section 255 requires that the Auditor SHALL make a report to the members of the company stating, among others, as to whether the Balance Sheet and Profit and Loss Account together with notes thereon have been drawn up *in conformity with the Companies Ordinance, 1984* and as to whether the Balance Sheet, Profit and Loss Account, Cash Flow Statement, Statement of Changes in

Equity together with notes forming part thereof *conform with the approved accounting standards as applicable in Pakistan* and, *give information required by the Companies Ordinance, 1984 in the manner so required.*

17. The above stated provisions of the Ordinance are mandatory and it is the responsibility of the Auditor to ensure that the Audit is conducted in the manner provided in the Ordinance and to report non-compliances/contraventions of the mandatory requirements of the Ordinance to the members of the Company I impress upon Mr. Abdul Ghafoor to establish standards and quality control policies and procedures as required under the Auditing Standards.

18. The Accounts of the Company do not comply with the provisions of the Ordinance as is apparent from the above discussion. It was, therefore, incumbent on the Auditor to have drawn attention of the members of the Company towards the major non-compliances/contraventions in his Audit Report. The statement in the Audit Report that the accounts give the information required by the Ordinance in the manner so required is false and misleading. The Audit Report, therefore, is made than otherwise in conformity with the provisions of Section 255 of the Ordinance.

19. The Ordinance laid down provisions regarding several matters to be followed by the company in regard to the preparation of the accounts. The International Accounting Standards have been adopted to improve the quality of the financial statements and to improve increased degree of comparability. It is the responsibility of Directors to ensure that these provisions of law are followed. At the same time, it is the duty of the Auditor to bring to the notice of the members the major breaches observed in the financial statements. The International Accounting Standards and Auditing Standards are required to be followed by the Auditors to ensure that financial statements are prepared in accordance with the Generally Accepted Accounting Principles and that the auditors carry out his responsibilities in accordance with the Generally Accepted Auditing Standards.

20. In view of the foregoing, it is established that Auditors Report on the Accounts is made otherwise than in conformity of the requirements of Section 255 of the Ordinance and also the Audit Report has failed to bring material fact, as stated above, about the affairs of the Company. As the Auditor has admitted his negligence in the performance of his duties, therefore, I consider it a willful act on the part of Mr. Abdul Ghafoor who was under legal obligation to perform his duties, in the course of audit of Accounts of the Company and reporting thereon, in accordance with the provisions of the Ordinance, International Accounting Standards and Auditing Standards. Mr. Abdul Ghafoor has, therefore, made himself liable for punishment under Sub-section (1) of Section 260 of the Ordinance.

21. In view of the aforesaid discussion, and after considering all the relevant facts and circumstances of this case, it is clearly established that Mr. Abdul Ghafoor has deliberately contravened the provisions of Section 255 of the Ordinance and Rule 17-A of the Companies (General Provisions and Forms) Rules, 1985. The Audit Report has failed to bring out material facts and non-compliances, as stated above. I, therefore, impose a fine of **Rs 4,000** (Rupees four thousand only) on Mr. Abdul Ghafoor, Rs. 2,000 under Sub-section (1) of Section 260 of the Ordinance and Rs. 2,000 under Rule 35 of the Companies (General Provisions and Forms) Rules, 1985 read with Section 476 of the Ordinance.

22. Mr. Abdul Ghafoor is directed to deposit the above stated fine in the following Bank Account of Securities and Exchange Commission of Pakistan within 30 days of the date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan.

Account NO. 10464-6
Habib Bank Limited
Habib Bank Plaza, Shahrāh-e-Quaid-e-Azam
Karachi.

RASHID SADIQ

Executive Director (Enforcement & Monitoring)

Announced
April 11, 2002
ISLAMABAD