Before Tahir Mahmood – Commissioner (Company Law Division)

In the matter of

Apollo Textile Mills Limited

Application Received on	February 2, 2013
Revision sought for:	Order dated December 18, 2012 of Head of Department (Enforcement) under sections 196 and 492 of the Companies Ordinance, 1984
Dates of Hearings:	April 6, 2015, June 18, 2015, July 1, 2015, September 3, 2015, September 11, 2015, November 4, 2015 and March 7, 2016
Representatives:	Mr. Waqar ud Din, Mr. Hasham Maqsood, Representatives

ORDER

Revision Application under Section 477 (1) (b) of the Companies Ordinance, 1984

This Order shall dispose of the application filed by the following directors (the "applicants") of Apollo Textile Mills Limited (the "Company") under section 477 (1) (b) of the Companies Ordinance, 1984 (the "Ordinance") for revision of the order dated December18, 2012 ("impugned order"), which was passed by the Head of Department (Enforcement, *now Corporate Supervisions Department*) under sections 196 and 492 read with section 476 of the Ordinance:

1. Mr. Ikram Zahur
2. Mr. Abdul Rehman Zahur
3. Mr. Muhammad Tahir Khan
4. Mr. Muhammad Farooq
5. Mr. Riaz Hussain
6. Mr. Shabbir Ahmed
7. Mr. Muhammad Liaquat

In terms of the impugned order, after carrying out proceedings and providing opportunity of hearing, the proceedings were concluded and the applicants were held liable for violating the provisions of sections 196 and 492 of the Ordinance, as under:

Section 492:

The Company did not disclose its relationship with an export customer namely Textile Global Marketing (TGM), a related party. In response to Commission's query regarding its relationship with TGM the Company stated that '*the above mentioned party is* ***not related to the company in any manner whatsoever***. However, the Securities and Exchange Commission, United States of America ("US SEC") and New Jersey Department of Treasury informed that TGM has been incorporated in New Jersey and Mr. Zahur Ahmed, an ex-director of the Company and father of two existing

directors of the Company namely Mr. Ikram Zahur and Mr. Abdul Rehman Zahur, was the registered agent of the TGM. The Company did not make disclosures as required by International Accounting Standards ("IAS") 24 in respect of transactions with a related party TGM. In the year 2008, the Company made a provision for doubtful debts amounting to Rs.25.973 million which were receivable from TGM against the export sales. However, when queries were made by the Commission in this regard, the same was shown as recovered in Company's annual audited accounts for the year ended June 30, 2010. The Company had recorded recovery from TGM of the entire amount of Rs25.973 million in its annual audited accounts for the year ended June 30, 2010. However, as per supporting bank statement provided by the Company, recovery to the tune of Rs18.730 was received between July 2008 to June 2009 and, hence; it should have been recorded in the Annual Accounts for the year ended June 30, 2009.

Section 196: The directors of the Company while conducting business with TGM failed to comply with the provisions of Section 196(2) (g) of the Ordinance. The directors of the Company approved provisions for doubtful debts in respect of amounts receivable from TGM, a related party, in a board's meeting against the requirements of Section 196 (3)(b) of the Ordinance, which requires approval of Company's shareholders in case of related parties.

Resultantly, an aggregate fine of Rs.775,000 (Rupees seven hundred seventy five thousand only) was imposed on the applicants, as per following details:

(Amounts in Rs.)

Name of Applicants	Section 196	Section 492	Total
1. Mr. Ikram Zahur	15,000	100,000	115,000
2. Mr. Abdul Rehman Zahur	15,000	100,000	115,000
3. Mr. Muhammad Tahir Khan	15,000	100,000	115,000
4. Mr. Muhammad Farooq	--	100,000	100,000
5. Mr. Riaz Hussain	15,000	100,000	115,000
6. Mr. Shabbir Ahmed	--	100,000	100,000
7. Mr. Muhammad Liaquat	15,000	100,000	115,000
TOTAL	**75,000**	**700,000**	**775,000**

2. The application for review was originally filed by the applicants through Mr. Zaheer Abbas Chughtai, Advocate, on the grounds which are summarized below:

- TGM has no special relationship with the petitioners and hence IAS-24 does not apply. Information obtained by the Commission from US, SEC has not been provided to the Company to confirm the veracity of the allegations.

- Imposition of penalty under section 492 has failed to prove the standard of false statement. Section 572 of UK Companies Act, defines standard of false statement as "A person who knowingly or recklessly authorizes or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence."
- The offence of section 492 requires that the false statement be made in relation to information that is "material" and as has been already submitted. In the absence of a special relationship between TGM and the petitioners, there has been no infringement of the said provision.
- Based on the above facts the Commission has shown leniency. Reliance is placed on 2009 CLD 1584.
- Without prejudice to the submission that decisions being challenged are unsatisfactory the penalties are excessive.
- Petitioners have been denied a fair hearing.
- *Mens rea* forms the gist of the offence under Section 492 of the Ordinance therefore *mala fides* or *want of good faith* has to be shown and established. However, the SCN does not contain any assertion with regard to *mens rea*. It is further contended that the SCN in itself unable to establish or even allege that the alleged violation (if any) has caused a loss or has impacted the business conducted with the TGM of the profitability of the Company.
- TGM and petitioners are not related parties hence section 196 (2) (g), does not apply.

3. Relevant provisions of section 477 (1) (b) of the Ordinance are quoted below:

(1) Any person aggrieved by any order or sentence passed under sub-section (1) of section 476 may, within sixty days of such order or sentence, prefer a revision application as hereinafter provided :-

(b) where the order, judgment or sentence has been passed or upheld on revision application by the registrar (not being an additional registrar, a joint registrar, a deputy registrar or an assistant registrar) or by an authority or officer authorised by the Commission in this behalf, to the Commission;

and the registrar, the Commission, the authority or officer authorised as aforesaid or the Federal Government, as the case may be, may pass such order in relation to the application as he or it thinks fit:
Provided that no order enhancing the fine shall be passed unless the applicant has been given an opportunity of showing cause against it and, if he so requests, of being heard personally or through such person as may be prescribed in this behalf.

In terms of the Commission's notification SRO 808(I)/2008, the Commissioner (CLD) has the power for revision of the order originally passed by Executive Director / Head of Department in pursuance of the delegated powers.

4. Before proceeding further it is necessary to elaborate upon the scope of a revision in the light of judgments of higher courts. The higher courts in various judgments have held that findings of subordinate courts on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity affecting the merits of the case, are not open to question at the revision stage. Reference is drawn to 2010 SCMR 1630 and 1997 SCMR 1139.

5. It is pertinent to mention here that in respect of the subject application for revision, after providing a number of hearing opportunities to the applicants, the undersigned had previously issued an ex-parte order on January 22, 2015 whereby the application was dismissed for non-appearance. Subsequently, the applicants requested to provide them opportunity of hearing in the subject application, stating that due to serious accident of their legal counsel and non-receipt of the hearing notices, they could not plead their case. Even though, the facts suggested otherwise, as the hearing notices were duly served on the Company and to the legal counsel, the undersigned setting aside the order dated January 22, 2015 under section 477, accepted the request of the applicants to rehear the case. The case was fixed for hearings on April 6, 2015 through letter dated March 30, 2015. On the due date Mr. Waqar Khan, advocate appeared on behalf of the applicants and requested to reschedule the hearing after one month stating that he had met a serious accident that resulted in amputation of his leg. The request for extension was granted. Another hearing was fixed on June 18, 2015 through letter dated June 5, 2015 but again Mr. Waqar ud Din, Advocate, requested for adjournment. The case was again fixed for hearings on July 1, 2015 but Mr. Waqar again requested for adjournment stating his inability to appear due to his accident. Another hearing was fixed on September 3, 2015, as final opportunity and a new counsel, Mr. Hasham Maqsood appeared before the undersigned without any power of attorney from the applicants. The hearing was again fixed on September 11, 2015, however, Mr. Hasham Maqsood again requested for adjournment through letter dated September 9, 2015. The case was fixed for hearing on November 4, 2015, however, another counsel Ms. Kanwal Naz, Advocate, appeared without any power of attorney and through letter dated November 4, 2015 requested to adjourn the hearing. The Commission through letter dated February 18, 2016 again fixed the case for hearing

on March 7, 2016. It was clearly stated that in case of failure of the applicant to appear in person or through authorized representative, the Commission will proceed to issue order based on available record. However, again no one appeared on the date of hearing. Subsequently through letter dated March 4, 2016, Mr. Hasham Maqsood stated that he was no more representative of the applicants and another date may be provided to the applicants. This chronology of events clearly suggests that despite ample opportunities of hearing provided to the applicants, they have failed to appear in person or through authorized representative. It reflects that the applicants have not been serious in availing opportunity of hearing and have been using dilatory tactics to delay the proceedings. Therefore, it appears just to decide the case based on the written submissions of the applicants and facts available on record.

6. I have examined the subject application considering the scope of revision in the light of judgments of the apex court and the written submissions made by the applicants as mentioned hereinabove. The applicants have repeated somewhat similar submissions that were made by them during the original proceedings, which were concluded through the impugned order by imposing fines on them. Having analyzed the arguments put forth by the applicants my observations are as under:

- With respect of violation of section 492 of the Ordinance, it is clear that as per applicable IAS 24 notified by the Commission, the TGM was a related party of the Company and applicants' plea that the TGM has no special relationship with them and hence IAS-24 does not apply is untenable. It has been confirmed from the record that Mr. Zahur Ahmed, an ex-director of the Company and father of two directors of the Company namely Mr. Ikram Zahur and Mr. Abudl Rehman Zahur, is the registered agent of TGM. Moreover, Mr. Zahur Ahmed and Mr. Abdul Rehman Zahur are the president and vice president of the TGM, respectively. Therefore, in terms of criteria set forth by IAS-24, the TGM becomes the related party of the Company. This has been sufficiently established in the impugned order. The information has been obtained by the Commission directly from US, SEC and the New Jersey Department of the United States of America. Since the information was received directly from independent sources, it was not necessary to share it with the applicants. There plea in this regard does not hold any merit, as they have not been able to deny the aforesaid information.

- The applicants have referred to the provisions of section 572 of the UK Companies Act, which is not relevant in the instant matter. In the context of the provisions of section 492 of the Ordinance, it is sufficient to establish that the applicants were aware of the relationship of the Company with the TGM. It was their own responsibility to be aware of their legal obligations regarding disclosures of transactions with related parties under the relevant financial reporting framework comprising the Ordinance and the International Financial Reporting Standards that include IAS 24. Since they omitted the material information from the financial statements, they are liable for the default under section 492 of the Ordinance.
- It is also pertinent to mention that all transactions with related parties are material by nature, given the inherently higher risk of misstatements due to conflict of interest of those who are charged with the responsibility of management of the Company. The applicants have failed to give mandatory disclosures in the financial statements and have been held liable for omission of material facts under section 492 of the Ordinance. Since TGM is a related party of the Company, all transactions of the Company with the TGM were material by nature. Therefore, it's not prudent to take lenient view in cases where there is omission of mandatory disclosures or related parties transactions in the financial statements.
- The quantum of penalties imposed is in commensuration with the level of default. In fact, proportionate penalties have been imposed amounting to Rs100,000 and Rs15,000 against maximum prescribed amounts of Rs500,000 and Rs100,000 for violations of sections 492 and 196 of the Ordinance, respectively.
- Applicants have been given ample opportunities for pleading their case. They, however, resorted to dilatory tactics either by changing their legal counsel or by giving varied excuses every time hearing opportunity was provided to them.
- The applicants' plea that *mens rea* forms the gist of the offence under section 492 of the Ordinance and therefore *mala fides* or *want of good faith* has to be shown and established, is not tenable. Since the violation of section 492 has been sufficiently established, the penalty imposed is justified and is in line with the requirements of section 492 of the Ordinance.
- The applicants have failed to justify their plea that the TGM and petitioners are not related parties and provisions of section 196 were not attracted.

In view of the aforesaid, I have concluded that the applicants have repeated somewhat similar submissions that were made by them during the original proceedings that resulted in imposing of fines on them. Their pleadings appear to be devoid of merit and do not justify the application for revision. It has been noted that the impugned order sufficiently discloses all the relevant contentions of the directors and penalties have been imposed after considering the facts available on record. All the contentions of the directors have been properly accounted for and rebutted in the impugned order. It can be safely concluded that the impugned order is neither based on misreading or non-reading of evidence nor does it suffer from any illegality or material irregularity affecting the merits of the case. The application for revision is accordingly dismissed.

Tahir Mahmood
Commissioner (CLD)

Announced:
March 14, 2016
Islamabad