

# **IN THE HIGH COURT OF SINDH AT KARACHI**

## **M.A No. 11 of 2014**

**Appellant:** Muhammad Waseem Shafi.  
Through Mr. Muhammad Aleem, Advocate.

**Respondent:** Chairman/Commissioner (Company Law  
Division)- Enforcement Department  
Through Mr. Rehman Aziz Malik, Advocate.

### ***For hearing of Main Petition.***

**Date of hearing:** 25.02.2020.

**Date of Judgement:** 25.02.2020.

## **J U D G E M E N T**

**Muhammad Junaid Ghaffar, J.** Through this Appeal, the Appellant has impugned Order dated 17.02.2014 passed under Section 477 of the Companies Ordinance, 1984 (**“Ordinance”**) passed by the Commissioner Company Law Division through which the order dated 23.05.2013 passed under Section 260 read with Section 255 and 476 of the Ordinance by the Enforcement Department has though been maintained; but stands modified.

2. The precise facts appear to be that the Appellant being partner in charge of a Chartered Accountant Company, conducted statutory audit of M/s. Pakistan Telephone Cables Limited (**“Company”**) for the years 2008 and 2009 and some explanation was called by the Enforcement Department of SECP vide its letter dated 30.11.2011 in respect of certain discrepancies in the financial statements of the Company and the procedure adopted by the Appellant for inventory verification and physical stock taking. Such letter was replied; however, a Show Cause Notice was issued, and thereafter order dated 23.05.2013 was passed by imposing a cumulative penalty of Rs.100,000/- on the appellant with

certain further observations, which was then impugned by way of a revision under Section 477 (ibid) and through impugned order though the penalty has been maintained; but the observations against the Appellant have been expunged / set aside.

3. Learned Counsel for the Appellant has argued that the entire fault in misreporting of the value of stocks and inventory was on the part of the company and the Appellant had no bad intentions in conducting audit of such financial statements, whereas, subsequently the discrepancy has been corrected; hence no case for imposition of penalty is made out. He has further contended that once the adverse remarks were expunged, the penalty could not have been sustained in the impugned order. According to him, best auditing practices were adopted by the appellant, whereas, only one of the partners has been penalized and others have been left out; hence this is a discriminatory treatment. He has prayed for setting aside of the impugned order and penalty so imposed.

4. Learned Counsel for the SECP has supported the impugned order and submits that the mistake and irregularity has been admitted by subsequent correction; hence no case is made out. In support he has relied upon the case of ***Mahboob Sheikh & Co. Chartered Accountants*** reported as **2008 CLD 305**.

5. I have heard both the learned Counsel and perused the record. It appears that the Appellant, who is a partner in a Chartered Accountant Company, was confronted with an explanation dated 30.11.2011, which was responded through letter dated 16.12.2011. It further appears that subsequently after having been dissatisfied, a show cause notice dated 24.12.2012 was issued to the Appellant under Section 476 of the

Ordinance in respect of the audit for the years 2008, 2009 and 2010 with the precise allegation that the Appellant had failed to conduct proper audit including reporting incorrect stocktaking figures and the inventory at the closing of the financial year. Such fact was discerned from the annual audited accounts for the year ended on 30.06.2010 from Note 2.6, which reads as under: -

“Included in stock of work in process for the year ended June 30, 2008 and June 30, 2009 were two cables that have during the year been found by the management as erroneously over valued by Rs.73.9 million as of June 30, 2008 and by Rs. 57.3 million of June 30, 2009. The error was traced to labeling of incorrect specifications of diameter/size to these cables. The value of cost components of the cables based on wrong specification of the cable resulted in above stated overstatement. Accordingly, the correction of such error as required has been made in these financial statements by restatement of comparative financial statements by reflecting corrected the value of closing stock of work in process as of June 30, 2008 (loss per share of Rs.5.11) and June 30, 2009 (Earnings per share 0.25) are restated to loss per share of Rs. (7.84) and Rs. (3.27) respectively.”

6. The Enforcement Department of SECP after considering the reply of the Appellant passed an order, whereby, penalty was imposed and certain adverse remarks were also recorded; however, in revision, through the impugned order, though the penalty has been maintained; but the adverse remarks / observations have been expunged/set aside. After going through the record and the response of the Appellant, I have confronted the learned Counsel for the Appellant as to Para-6 of the reply of the Appellant dated 16.12.2011, which reads as under: -

“6. FACTS DISCOVERED AFTER THE FINANCIAL STATEMENTS HAVE BEEN ISSUED

**We were informed by the management about the over valuation of the closing stock of work in process as of June 30, 2008 and 2009 during the audit of financial statements of the company for the year ended June 30, 2010.** At that point of time we considered the option available in ISA-560 “Subsequent Events” to amend the previously issued financial statements but since issuance of subsequent financial statements i.e. for the year ended June 30, 2010 were imminent, this was considered to be meaningless and belated. Therefore, the better option was to re-state the financial statements for the year ended June 30, 2008 and June 30, 2009 in the financial statements of June 30, 2010 as comparatives and the management to disclose in full descriptive note the said

error. This was given by the management in note 2.6 to the financial statements of June 30, 2010.”

7. Learned Counsel was not in position to satisfactorily respond to the query of the Court as to the above reply of the Appellant which is nothing but an admission of being negligent and of committing a wrong while conducting audit for the years 2008 and 2009, inasmuch as reliance has entirely been placed on the information given by the Company and its management about overvaluing the closing stock of work in process as on 30.06.2008 and 30.06.2009. Though, figure(s) are to be given by the Company; but it is the onerous responsibility of the auditor to verify such figures with utmost care and diligence, after examining the opening and closing balance of stock and inventory viz. a viz, the purchases made during the year, and then give its view on the possibility of recording of any inflated figures by the Company. Not only this, the auditor can always give a “*qualified*” report, which is also not the case here. It is needless to mention that such inflated figures can always result in showing inflated profits and distort the actual income of the Company, reflecting badly on the interest of the members / shareholders of the Company. This reflects badly on the very competence of the Appellant who has been assigned the job to safeguard the interest of members of the Company. The Appellant appears to have conducted audit in clear violation of the mandatory provisions of law, including but not limited to Section 255 of the Companies Ordinance, 1984, which requires the auditors to make a report to the members of the company on the accounts including balance-sheet and profit and loss account and such report shall state whether or not they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit; whether or not in their opinion proper books of

accounts as required by this Ordinance have been kept by the company; whether or not in their opinion the balance-sheet and profit and loss account or the income and expenditure account have been drawn up in conformity with this Ordinance and are in agreement with the books of accounts; and finally whether or not in their opinion the said accounts gives the information required by this Ordinance in the manner so required to give a true and fair view of the Company's affairs. Once it is conceded that in the subsequent year 2010, discrepancy has been admitted and corrected; (notwithstanding that it was pointed out by whom), then the same leaves no ground for according any leniency or consideration to the appellant's case. The argument that by doing so neither the Company nor the Appellant gained any financial benefits is also misconceived inasmuch as for the present purposes, it is the case of the Appellant i.e. Chartered Accountant, which is before the Court and the only thing, which is to be seen and examined is that whether the duties and responsibilities were discharged in accordance with the Code of Conduct and the relevant provisions of the Ordinance. Apparently the Appellant has failed to follow the mandatory provisions of law, whereas, nothing has been pointed out from the record so as to take a favorable view towards the case of the Appellant.

8. In view of hereinabove facts and circumstances of this case, I am of the view that already substantial relief has been granted through the impugned order, whereby, adverse findings / observations have been expunged; hence, no case for indulgence is made out; Appeal fails and is hereby dismissed.

**J U D G E**

Ayaz P.s.