



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 07 of 2021

Pakistan Railway Advisory & Consultancy Services Limited

..... Appellant

Versus

Executive Director, Adjudication Division, Adjudication – II, SECP

..... Respondent

Date of Hearing:

March 20, 2025

Present:

For the Appellant:

Nemo

For the Respondent:

Mr. Hammad Javed, Additional Director/HOD, Adjudication-II SECP

ORDER

1. This Order shall dispose of Appeal No. 07 of 2021 (the Appeal) filed by Pakistan Railway Advisory & Consultancy Services Limited (the Appellant), against the order dated November 02, 2020 (the Impugned Order), passed by the Executive Director, Adjudication Division, Adjudication- II (the Respondent), under Section 508(2) of the Companies Act, 2017 (the Act), read with Rules 3(2), 22 and 25 of Public Sector Companies (Corporate Governance) Rules, 2013 (PSC Rules).
2. Brief facts of the case are that the Appellant, a public sector company as defined under the PSC Rules, submitted its 'Statement of Compliance' for the financial year ending June 30, 2018, wherein the Appellant self-reported instances of non-compliance with various provisions of the PSC Rules. Upon scrutiny, the Appellant was found to be in violation of



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Rules 3(2), 12(1), 21(1), and 22 of the PSC Rules. Specifically, the Appellant failed to ensure the appointment of the requisite one-third independent directors on its Board, did not constitute the committees required under the PSC Rules, including the Audit Committee, and did not establish an internal audit function under a duly approved Audit Charter. Taking cognizance of these regulatory deficiencies, the Respondent issued a Show-Cause Notice (the SCN) to the Appellant on April 24, 2019, calling upon it to explain why appropriate enforcement action should not be taken for the said violations. In response to the SCN, the Appellant, through its letter dated May 13, 2019, submitted that the appointment of independent directors was underway while the formation of the necessary committees had already been completed. Regarding the establishment of an internal audit function, the Appellant stated that the matter was under active consideration, as the Audit Committee had only recently been constituted. During the course of proceedings before the Respondent, the Appellant took the position that, since it was wholly-owned by the Federal Government (the Government), the requirement for the appointment of independent directors was not applicable. Nonetheless, the Appellant submitted that it had formally requested the Government to appoint independent directors and was also considering to seek relaxation from the applicability of the PSC Rules. The Appellant further submitted that the requisite committees i.e. Audit Committee, Human Resource Committee and the Procurement Committee, had already been constituted, while the process for the appointment of independent directors had been approved internally but was awaiting final approval from the Government. However, in a subsequent hearing held on October 19, 2020, the Appellant departed from its earlier stance and submitted that the appointment of independent directors would be included as an agenda item in the forthcoming Annual General Meeting (AGM) scheduled for October, 2020.

3. The final hearing was conducted by the Respondent on October 19, 2020, wherein the Respondent observed that, while the Appellant had rectified its non-compliance concerning the constitution of various Board Committees in accordance with Rules 12(1) and 21(1), no substantive progress had been made with respect to the appointment of independent directors, despite the passage of over eighteen months since the initial reporting of non-compliance. The Respondent further noted that the Appellant had failed to make any tangible progress in establishing an internal audit function, despite its previous written commitments. Concluding the proceedings, the Respondent found that the Appellant remained non-compliant with



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Rules 3(2) and 22 of the PSC Rules, thereby attracting the penal provisions of Rule 25 of the PSC Rules read with Section 508(2) of the Act. Consequently, the Respondent imposed a fine of Rs. 200,000 on the Appellant and directed its Board of Directors (the Board), in terms of Section 475 of the Act, to complete the process for appointing independent directors and to establish an internal audit function no later than January 31, 2021.

4. The Appellant preferred the instant Appeal on the grounds, *inter alia*, that it was not afforded a proper opportunity of hearing thereby infringing upon its fundamental right to the due process of law. The Appellant submitted that the Respondent failed to duly consider the submissions made by the Appellant, which demonstrates a lack of procedural fairness. The Appellant alleges that the Respondent acted with bias and predetermined intent, and that the Impugned Order was rendered without due regard to the merits of the case and did not approach the matter with the requisite impartiality. The Appellant avers that the Respondent disregarded the critical fact that the Appellant is wholly owned by the Government, with its entire shareholding vested in the Ministry of Railways. The Appellant further asserted that any profits or dividends generated by the Appellant are duly remitted to the Ministry of Railways, thereby, which reinforces its status as a public sector entity.

5. In response to the submissions advanced by the Appellant, the Respondent, *inter alia*, categorically denied the allegation that the Appellant was not afforded a proper opportunity of hearing. The Respondent submitted that the Appellant's contention in this regard is factually incorrect and devoid of merit. It was asserted that the Appellant was duly provided with the opportunity to present its case and make representations, in accordance with the principles of natural justice and the applicable legal framework as the Appellant was provided with five separate hearing opportunities, which were duly attended by its authorized representatives and legal advisor on various dates, i.e. May 14, 2019, June 20, 2019, February 19, 2020, July 27, 2020, and October 19, 2020. The Respondent further submitted that the submissions made by the Appellant, both in writing and during the hearings before the Respondent, were duly considered, as evidenced by the fact that the Respondent accepted the Appellant's contention regarding rectification of non-compliance with Rules 12(1) and 21(1) of the PSC Rules, resulting in no penalty being imposed for those violations. The Respondent further stated that despite being afforded multiple opportunities to provide documentary evidence demonstrating steps taken towards compliance with Rules 3(2) and 22 of the PSC



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Rules i.e. appointment of independent directors and setting up of an internal audit function, the Appellant failed to substantiate its claims, leading to the establishment of the violations. The Respondent further contended that the Appellant repeatedly shifted its stance regarding the appointment of independent directors, initially stating in its letter dated May 13, 2019, that the process was underway and awaiting the Board's approval, then arguing during the hearing held on February 19, 2020, that the requirement was inapplicable due to its status as a wholly-owned government entity, while also acknowledging that multiple requests had been made to the Government for the appointment of independent directors. The Respondent further submitted that, also in the course of subsequent correspondence and hearings, the Appellant advanced inconsistent positions. At various stages, the Appellant claimed, on the one hand, that compliance with the relevant requirements had already been ensured, and on the other, that approval from the Government was still pending. However, during the final hearing held on October 19, 2020, the Appellant stated that the matter had since been included in the agenda for the forthcoming AGM. The Respondent contended that these shifting assertions undermine the credibility of the Appellant's stance and reflect a lack of clarity and finality in its submissions. The Respondent contended that the PSC Rules, by their very definition, are applicable solely to public sector companies i.e., entities that are directly or indirectly controlled by the Government, its instrumentalities or agencies or any statutory body, either through ownership of at least fifty percent of the voting securities or voting power or by virtue of having the authority to appoint the majority of directors. The Respondent further submitted that the Appellant's assertion regarding its status as a government-owned entity does not absolve it from the obligation to comply with the PSC Rules. The Respondent further argued that the said regulatory framework has been specifically enacted to enhance governance standards, transparency, and accountability within public sector companies. The applicability of the PSC Rules, therefore, remains unaffected by the financial arrangements, if any, between the Appellant and the Ministry of Railways.

6. Hearing in the instant Appeal was initially scheduled for March 30, 2023. However, a day prior to the hearing, the Appellant's newly engaged counsel, Mr. Faisal Latif, sought an adjournment, citing the need for additional time to prepare for the proceedings due to his recent engagement. Accepting the request, the Appeal was accordingly adjourned. The matter was then fixed for hearing on May 18, 2023, but once again, the Appellant's counsel sought



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an adjournment just one day before the scheduled hearing, stating that he would be traveling for Umrah and would not be available. The Appeal was again adjourned at the Appellant's request. Subsequently, the Appeal was fixed for hearing on December 26, 2024, with explicit directions to the Appellant to ensure attendance through an authorized representative or counsel. However, despite clear instructions, the Appellant's counsel once again sought an adjournment. Notwithstanding the Appellant's repeated requests for adjournments, the Appellate Bench (the Bench), in the interest of fairness and to ensure that the principles of natural justice are upheld, exercised its discretion to grant a further adjournment and afforded the Appellant a final opportunity of hearing scheduled for March 20, 2025. However, consistent with its prior conduct, the Appellant once again sought an adjournment a day before the hearing, and notably, after the close of business hours citing that its Deputy Director (Accounts and Finance), Mr. Khaleeq Rasul, was required to attend a meeting with the Honorable Minister for Railways on the same date.

7. The Bench, having afforded the Appellant multiple opportunities of hearing despite its persistent and repeated requests for adjournment, finds that the Appellant's conduct reflects a clear intention to delay the proceedings and obstruct the disposal of the Appeal. The Appellant's actions demonstrate a lack of diligence and seriousness in pursuing the matter, thereby undermining the sanctity of the appellate process. The pattern of seeking adjournments at the eleventh hour specifically, on the day preceding scheduled hearings even after receiving explicit instructions to ensure representation, amounts to a deliberate and calculated abuse of the legal process. In light of the foregoing, the Bench is of the considered view that the Appellant's conduct constitutes procedural impropriety and is not in consonance with the standards expected of a public sector entity. The Bench observes that the imposition of special costs under Rule 13(4) of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003 (the Appellate Bench Rules) would have been warranted under the circumstances, however, the Bench exercising judicial restraint, has refrained from doing so. Nevertheless, the Bench strongly emphasizes that, as a wholly-owned government company, the Appellant is duty-bound to uphold exemplary standards of corporate governance and to ensure strict compliance with the PSC Rules. The Bench also notes with regret that the Appellant has shown no bona fide intent to pursue the Appeal. This is evidenced by the Appellant's continued non-appearance and failure to ensure representation even on the final date of hearing. It is further observed that the individual cited



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as being unavailable on account of attending a meeting with the Honorable Minister for Railways Mr. Khaleeq Rasul, Deputy Director (Accounts and Finance) is neither an authorized representative in the instant Appeal nor a legal counsel for the Appellant. This fact, in itself, highlights the Appellant's disregard for procedural due process and further reinforces the conclusion that the Appellant has wilfully and deliberately avoided participating in the appellate proceedings.

8. In view of the foregoing, the Bench, in the exercise of its powers under Rule 13(1) the Appellate Bench Rules, hereby dismisses the Appeal for non-prosecution due to the Appellant's persistent failure to appear and pursue the Appeal despite multiple opportunities being granted.


(Akif Saeed)
Chairman/Commissioner


(Zeeshan Rehman Khattak)
Commissioner

Announced on: **17 APR 2025**