



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 10 of 2021

1. Khawaja Mohammad Nadeem
 2. Ms. Alia Khanum
 3. Khawaja Mohammad Jawed
 4. Khawaja Mohammad Kaleem
 5. Khawaja Mohammad Naveed
 6. Khawaja Shahzad Younus
 7. Mr. Muhammad Tariq Sufi
 8. Ms. Nargis Sultana
- (Directors of Yousaf Weaving Mills Limited)

..... Appellants

Versus

Executive Director, Adjudication – I, Adjudication Division, SECP

..... Respondent

Date of Hearing:

April 17, 2025

Present:

For the Appellants:

Mr. Nadeem Anwar, Authorized Representative

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
2. Mr. Rizwan ul Haq, Additional Joint Director, Adjudication-I, SECP
3. Mr. Ehtesham ud Din, Deputy Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 10 of 2021 filed by Khawaja Muhammad Nadeem and other Directors of Yousaf Weaving Mills Limited (the Appellants), against order dated December 03, 2020 (the Impugned Order), passed by the Executive Director, Adjudication – I, Adjudication Division, SECP (the Respondent), under Section 196(4) of the Companies



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Ordinance, 1984 (the Ordinance) read with SRO 1227(I)/2005 dated December 12, 2015 (the SRO).

2. Brief facts of the case are that upon examination of the annual audited accounts of Yousaf Weaving Mills Limited (the Company) for the year ended June 30, 2017, and in view of the Company's response dated April 11, 2017 to the queries raised by the Securities and Exchange Commission of Pakistan (the Commission), it was revealed that the management of the Company had, with the approval of its shareholders through a special resolution passed in an Extra-Ordinary General Meeting (EOGM) held on April 20, 2012, decided to sell its dairy farm (the Undertaking). Carrying amount of the unit, as per 2012 accounts, was Rs. 148.764 million, which later increased to Rs. 220.197 million as per 2015-16 accounts. However, the unit remained unsold for several years and continued to be shown as "assets held for disposal" in the Company's accounts from 2012 till 2015. The Undertaking was eventually sold out in 2016 at a loss of Rs. 175 million. At the time of the sale of the Undertaking, the shareholders' approval had lapsed, as under the applicable legal provisions, specifically as per the relevant SRO, such approval remains valid for a period of one year, if not implemented. In the absence of a renewed approval obtained prior to the execution of the transaction, the disposal of the Undertaking was, *prima facie*, in contravention of Section 196(3) of the Ordinance.
3. The Respondent took cognizance of the matter and issued a Show-cause Notice (the SCN) dated April 15, 2019, to the Appellants. The Appellants, in their reply, contended that the transaction remained under ongoing implementation and, therefore, the original shareholder approval had neither lapsed nor necessitated renewal. Multiple opportunities of hearing were afforded to the Appellants, including through virtual means in light of the COVID-19 pandemic, however, the Appellants repeatedly sought adjournments and ultimately failed to appear. Based on the material available on record, the Respondent concluded that the disposal of the Undertaking was not effectuated within one year of the shareholders' resolution dated April 20, 2012. Accordingly, in terms of the applicable SRO, the said resolution stood lapsed on April 19, 2013. The failure to obtain fresh shareholders' approval prior to the execution of the sale in 2016 constituted a violation of Section 196(3) of the Ordinance, read with the applicable SRO. Consequently, the proceedings were concluded *ex-parte*, and a cumulative penalty of Rs. 240,000 (i.e., Rs. 30,000 per director) was imposed upon the Appellants.



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4. The Appellants preferred the instant appeal on the grounds, *inter alia*, that the Impugned Order was passed in violation of the principles of natural justice, as no opportunity of personal hearing was afforded prior to the passing of the *ex-parte* order. The Appellants contended that the conduct of the Respondent was arbitrary and devoid of legal justification, as the Appellants remained present through its duly Authorized Representative on every date of hearing, however, on each occasion, the Authorized Representative was informed by an officer of the Commission that the Respondent was either preoccupied or absent. The Appellants submitted that their stance is corroborated by the fact that on the very same dates, the Appellant's Authorized Representative appeared before the Commission in another matter, confirming his availability. The Appellant further submitted that the disposal of the assets was a continuation of the plan duly approved through a special resolution passed by the shareholders, and at no point between 2012 and 2016 did the management deviate from its stated intent. The Appellant contended that the said assets continued to be reflected in the accounts of the Company under the head "assets held for sale," and the operating results were disclosed separately, evidencing the Company's ongoing commitment to the approved course of action. The Appellant further argued that the special resolution had not been abandoned or superseded and remained in the process of implementation, having been consistently and transparently disclosed in the accounts of the Company. The Appellant further submitted that the imposition of penalty was unjustified and liable to be set aside.
5. In response to the submissions of the Appellants, the Respondent submitted, *inter alia*, that the Impugned Order was passed strictly in accordance with law and after providing multiple opportunities of hearing to the Appellants. The Respondents asserted that the Company had disclosed the Undertaking as "assets held for disposal" from 2012 to 2015, but the disposal was recorded in 2016, as reflected in Note 25 to the accounts for the year ended June 30, 2016. The Respondent contended that the earlier shareholders' approval obtained through a special resolution passed in the EOGM held on April 20, 2012, had lapsed after one year in terms of the applicable SRO, and thus, the Company was required to seek fresh approval of shareholders before effecting the sale. The Respondent further submitted that the requirement to obtain fresh shareholders' approval is rooted in the principle that members must be adequately informed of the cost implications and prevailing market value of such significant undertakings, thereby enabling them to make an informed decision in the best interest of the Company. The Respondent argued that the disposal of assets in 2016, without obtaining a fresh shareholder



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authorization, contravened the provisions of Section 196(3) of the Ordinance and the relevant SRO. The Respondent further submitted that multiple opportunities of hearing were afforded to the Appellants, i.e on May 5, 2020, July 3, 2020, September 1, 2020, September 23, 2020, and November 16, 2020, however, no one appeared on behalf of the Appellants on any of the scheduled dates. On the final date fixed for hearing, an email seeking adjournment was received after the scheduled time of the hearing, which was not entertained in view of the Appellants' consistent failure to appear. The Respondent submitted that the matter was therefore rightly concluded *ex-parte*, and the penalty of Rs. 240,000/- was imposed in accordance with the law, with the reasons for default explicitly stated in the Impugned Order. The Respondent further contended that the Appellants' reliance on the continued disclosure of "assets held for disposal" did not exempt them from the statutory obligation to obtain a fresh shareholders' approval under the Ordinance and the applicable SRO, and their stance was clearly negated by both the legal provisions and the facts on record.

6. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. It has been established that the Company, through a special resolution passed in the EOGM held on April 20, 2012, obtained approval from its shareholders for the disposal of the Undertaking. However, in terms of the applicable legal framework, specifically Section 196(3) of the Ordinance read with the SRO the said resolution was valid for a period of one year and stood lapsed on April 19, 2013, if not implemented. The record clearly demonstrates that the actual disposal of the Undertaking was carried out during the financial year 2016, without seeking fresh authorization from the shareholders, thereby rendering the transaction in violation of the mandatory statutory requirements. The Appellants' contention that continued disclosure of the relevant assets under the head "assets held for disposal" in the Company's accounts from 2012 to 2015 amounted to ongoing implementation of the resolution is misconceived and contrary to the express language of the law, which obligates the company to obtain renewed approval upon the lapse of one year. The purpose of this statutory safeguard is to ensure that shareholders are provided with updated and accurate information regarding the market value and current status of material undertakings, thereby enabling them to exercise their rights in an informed and meaningful manner. This is evident from the fact that the Undertaking, which had a carrying value of Rs. 148.764 million in 2012 and increased to Rs. 220.197 million as per the 2015-16 accounts, was eventually sold for only Rs. 45.310 million, resulting in a significant loss of approximately Rs. 175 million.



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7. The Bench is of the view that the said requirement is not a mere procedural formality but a substantive obligation rooted in the principles of transparency, accountability, and protection of shareholders' interests. The Bench is of the considered view that the failure to obtain fresh shareholders' approval prior to the disposal of a sizeable undertaking not only contravenes Section 196(3) of the Ordinance, read with the applicable SRO, but also undermines the corporate governance framework envisioned under the law. Such non-compliance compromises the integrity of decision-making processes in corporate affairs and cannot be condoned. Accordingly, the Impugned Order is found to be legally justified, proportionate to the violation, and fully aligned with the letter and spirit of the applicable legal framework.
8. In view of the foregoing, the instant appeal is dismissed being devoid of merit, with no order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Zeeshan Rehman Khattak)
Commissioner

Announced on:

20 MAY 2025