



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 102 of 2022

M/s. A.R. Ghee Mills (Private) Limited

Versus

...Appellant

Director (Adjudication-II)

...Respondent

Date of hearing:

July 9, 2024

Present:

For the Appellant:

Mr. Sandeep Kumar (Authorized Representative)

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication Department-II, Adjudication Division, SECP
2. Mr. Sanaullah Jatoi, Deputy Director, Adjudication Department-II, Adjudication Division, SECP
3. Mr. Hifza Riaz, Management Support, Adjudication Department-II, Adjudication Division, SECP

ORDER

1. This Order shall dispose of Appeal No. 102 of 2022 filed by M/s. A.R. Ghee Mills (Private) Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated August 10, 2022 (the "Impugned Order") passed by the Director, Adjudication Department – II (the "Respondent").



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that the Appellant was required to maintain cost accounting records in terms of section 220(1) of the Companies Act, 2017 (the "Act") read with regulation 3(1) and regulation 6 of the Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020 (the "Regulations"). Moreover, the Appellant was required to appoint a cost auditor within ninety days from the date the Regulations were notified, i.e. 14 December, 2020, to intimate appointment of the cost auditor to the Securities and Exchange Commission of Pakistan (the "Commission") within fourteen days of such appointment, and to get its cost accounting records audited by a cost auditor in terms of section 250(1) of the Act read with regulation 4 and 5 of the Regulations. The examination of the available record of the Appellant with the Commission revealed that no intimation was received by the Commission regarding appointment of the cost auditor for the year ended June 30, 2021 and the Appellant failed to get its cost accounts audited by a cost auditor, as required under the Regulations. Accordingly, on March 04, 2022 a show-cause notice (the "SCN") was issued to the Appellant and an opportunity of hearing was provided. The Appellant neither responded to the SCN nor to the notice of hearing. As a result, a reminder was sent to the CEO and directors on April 18, 2022, along with a copy of the SCN, advising them to submit a reply within seven days which stated that if no response was received, the SCN would be decided based on the available record. Despite this, no reply was received from the Appellant or its CEO/directors. Consequently, the Respondent issued an *ex-parte* decision, imposing a penalty of Rs. 100,000 and directing the Appellant to appoint a cost auditor and have its cost accounts audited.

3. The Appellant filed this appeal before the Appellate Bench (the "Bench") *inter alia*, on the grounds that the Impugned Order violates the fundamental rights enshrined under the Constitution of Pakistan, specifically Articles 10A, 4, and 18. The Authorized Representative for the Appellant (the "Representative") asserted that the principles of natural justice were breached as the penal provisions were invoked without providing a proper hearing. He highlighted that in 2015, the Appellant faced significant financial losses, leading to the closure of its manufacturing unit and since that time, no production activities have taken place, rendering the compliance with the relevant regulations inapplicable. The Representative argued that, hence, as a *de facto* inactive entity since 2015, the regulatory requirements imposed under the Regulations, should not be enforced.



Securities and Exchange Commission of Pakistan

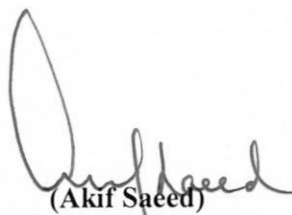
4. Moreover, the Representative also asserted that the Respondent was duly informed via email dated April 22, 2022, about the serious medical condition of Mr. Ramesh Lal i.e. the CEO of the Appellant that he was diagnosed with advanced-stage brain cancer (Glioblastoma Multiforme) and underwent a critical surgery in February 2021 at Agha Khan Hospital, Karachi. He informed that despite the surgery, the CEO faced ongoing health issues requiring frequent chemotherapy treatments which subsequently paralysed the Appellant's operations, making it impossible to comply with regulatory requirements due to the CEO's incapacitation. The Representative emphasized that any non-compliance was not wilful or deliberate but rather a result of circumstances beyond their control and that the health crisis of the CEO, being the founder and principal decision-maker of the Appellant, significantly impacted the Appellant's ability to meet compliance obligations. He further iterated how the passing away of the CEO on May 25, 2022, further exacerbated the Appellant's challenges. The Representative asserted that the issuance of an *ex-parte* order without considering these critical circumstances is contrary to the principle of natural justice and the rule of *audi alteram partem* and in light of these facts, he prayed that the appeal be allowed and the Impugned Order be set aside.

5. The Respondent submitted that due process of law was strictly followed in this matter and the SCN was duly issued to the Appellant, providing clear notice of the alleged non-compliance and the opportunity to respond. The Respondent asserted that while the Appellant claimed that an extension was sought through an email dated April 22, 2022, however, this referenced email was not received or acknowledged by the Respondent according to the records available. He also argued that the Impugned Order was issued on August 10, 2022, well after the expiry of the period for which the Appellant had requested a one-month extension, thus, the claim of infringement of fundamental rights is unfounded, as the due process was adhered to, and ample time was given for compliance. Furthermore, the Respondent highlighted that the Appellant had not filed any financial statements since 2016, which prevented any comments on the current operational status of the Appellant and that the Impugned Order was issued after considering the complete lack of response from the Appellant, including their failure to respond to the reminder. Additionally, he highlighted that the Impugned Order was passed after the death of the CEO on May 25, 2022 hence, the timing of the Impugned Order i.e. August 10, 2022, was within reasonable bounds given the prior communications and deadlines.



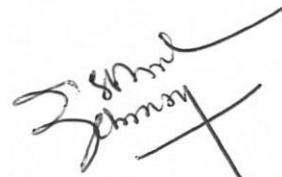
Securities and Exchange Commission of Pakistan

6. The Bench carefully considered the arguments presented by both parties and reviewed the relevant records. To substantiate the claim of the Representative of the Appellant that it had been inactive in terms of production since 2015 and the subsequent compliance with the Regulations was not applicable, the Bench inquired whether the Appellant could provide evidence confirming the non-operation of the company. In response to which, the Representative submitted electricity bills demonstrating a lack of operational activity. The Bench also took into account the Appellant's assertion that severe health issues of its CEO significantly impacted the Appellant's operational and compliance capabilities. The Bench recognized the gravity of the health condition described, which had evidently disrupted the Appellant's management and compliance efforts.
7. Considering the evidence provided, the Bench acknowledged that while the Appellant had defaulted on regulatory compliance, the extraordinary circumstances; including documented health issues and the submission of evidence showing operational inactivity, warranted a reconsideration of the penalty. The Bench concluded that a warning is more appropriate than a penalty in this context, as it aligns with the Appellant's demonstrated readiness to fully comply with regulatory requirements moving forward. The warning serves as an opportunity for the Appellant to rectify its compliance issues without the additional financial burden of a penalty, reflecting a fair response to the exceptional challenges faced by the company.
8. In view thereof, the Bench decided that the Impugned Order would not be set aside but would be converted to a warning. Accordingly, the instant Appeal is disposed of on the above terms with no order as to costs.



(Akif Saeed)

Chairman/Commissioner



(Abdul Rehman Warraich)

Commissioner

Announced on: **04 SEP 2024**