



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 116 of 2021

Mazhar-ul-Haq Siddiqui

...Appellant

versus

HOD, Adjudication Department – I, SECP

...Respondent

### Date of hearing:

May 25, 2023

### Present:

#### For the Appellants:

1. Mr. Ijaz Ahmed, Advocate
2. Mr. Sarfraz Ahmed, Advocate
3. Mr. Mohsin Naeem, Company Secretary

#### For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
3. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 116 of 2021 filed by Mr. Mazhar-ul-Haq Siddiqui (the "Appellant"), Chairman of Board of Directors of Hum Network Limited (the "Company") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997.
2. The brief facts of the case are that the Company published a notice in the newspaper dated July 27, 2020 (the "Notice") of the extraordinary general meeting scheduled to be held on August 22, 2020 (the "EOGM") to be chaired by the Appellant. The Notice of EOGM contained agenda items which



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included special business about revoking the decision of the Board of Directors (the "Board") of the Company regarding appointment of F.D. Registrar Services (SMC-Private) Limited (the "FD Shares Registrar") as the independent share registrar/transfer agent in place of the Central Depository Company of Pakistan Limited. Three members of the Company (the "Complainants") filed complaints with the Securities and Exchange Commission of Pakistan (the "Commission") wherein it was *inter alia* alleged that the Chairman of the EOGM (Appellant) had not complied with the requirements of the 'Postal Regulations'. After receiving the response of the Appellant on the aforementioned complaints, a show-cause notice dated October 02, 2020 (the "SCN") under sections 134, 143, 144, 145, and 479 of the Companies Act, 2017 (the "Act") read with Companies (Postal Ballot) Regulations, 2018 (the "Regulations") was issued to the Appellant which was responded by the Appellant vide letter dated October 28, 2020. Hearing in the SCN proceedings was held on November 09, 2020 where-after the Respondent, vide order dated October 13, 2021 under section 134 of the Act (the "Impugned Order"), imposed a penalty of Rs. 1,500,000/- on the Appellant.

3. The Appellant submitted that he has neither committed nor ever intended to contravene the provisions of the Act which is also evident from the fact that the Appellant and the Board have exercised their powers to take all necessary measures under the Act and Regulations to conduct the EOGM. He further contended that finding in the Impugned Order regarding alleged breach of section 134 of the Act is completely unjustified and hence, liable to be dismissed. He also contended, that the Impugned Order has not recorded any specific finding or basis to support any conclusion that there was a default or contravention on the part of the Appellant as the purported interpretation of section 134 of the Act in the Impugned Order is contrary to section 145 of the Act, which provides maximum time during which poll is to be held and no minimum time for providing the ballot papers to the members. The Appellant stated that the said section also does not require that the meeting must be adjourned for taking a poll. It was argued that Regulations are a subordinate legislation and it is a settled principle of law that subordinate legislation cannot override the primary law or expand the application of the primary law (*reliance placed on 2015 SCMR 630, PLD 2011 SC 619, PLD 2014 SC 389, PLD 2017 Lahore 289, 1982 SCMR 522*). The Appellant argued that if the aforesaid Complainants had any genuine grievance in respect of the proceedings of the EOGM, they would have availed the remedy available under section 136 of the Act which to the best of the Appellant's knowledge has not been done either by the



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requisitionist of the EOGM or by the Complainants. Summing up the arguments, the Appellant also highlighted that the Commission in relation to the complaint by one of the Complainants, vide letter dated August 12, 2020 directed the Company to first take up the agenda item relating to the appointment of the FD Shares Registrar in the EOGM which was complied and poll pertaining to the said agenda was taken on the same day; and moreover, in response to a complaint the Company categorically stated its willingness to hold another meeting to seek poll through postal ballot in respect of the special resolution relating to agenda item # 3 of the EOGM, despite seeing no reciprocal benefit to the members, however, the Company did not receive any response from the Commission on that account. The Appellants prayed that in view of the afore-stated position, imposing the penalty is completely unwarranted and the Impugned Order is liable to be set aside.

4. Controverting the arguments, the Respondent *inter alia* contended that the matters which are to be taken forthwith in general meetings are specifically mentioned in section 145 of the Act and the same does not include matters such as agenda item # 3 (pertaining to appointment of FD Shares Registrar) and thus under section 134(9) of the Act, the Appellant should have adjourned the meeting to comply with the requirements as provided under the Regulations. The Respondent further contended that the Impugned Order does not suffer from any illegality as the requirements of the Act and that of the Regulations are in harmony and are not in conflict with each other hence both are required to be followed in letter and spirit.
5. The Appellate Bench (the "Bench") has heard the parties and perused the record. At the outset, it is imperative to deal with Appellant's objection with respect to jurisdiction of the Commission to entertain the complaints challenging the proceedings of the EOGM. There is no cavil to this proposition that under section 136 of the Act, the power to declare the proceedings of a general meeting invalid lie with the Court, however, in the instant case the Complainants approached the Commission and as per submission of the Appellant, the proceedings of the EOGM have never been challenged before the Court. Jurisdictional error is always fatal to any legal proceedings and a *coram non judice* order has no sanctity in eyes of the law, however, the instant appeal is preferred against the Impugned Order passed under section 134 of the Act whereunder penalty was imposed on the Appellant for contravening the provisions of section 134 of the Act and Regulations made thereunder. Hence the contention of the



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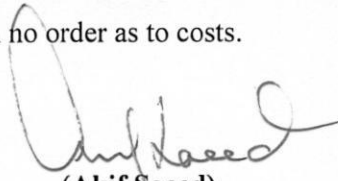
Appellant that the Impugned Order was passed without jurisdiction is not tenable and the Impugned Order does not suffer from any jurisdictional error.


6. On merit, it is the case of the Appellant that section 145 of the Act does not mandate adjournment of the meeting when a poll is demanded as the said provision of law specifies maximum time of fourteen days of holding a poll and not any minimum period to do the same. It has been argued by the authorized representatives of the Appellant that regulation 8 of the Regulations is contradictory to section 145 of the Act as the former does not take into account that no minimum period is prescribed under the latter provision of the Act and as such the same cannot override the primary law in light of the judicial precedents. The admitted facts of the instant appeal are that the Notice was duly issued by the Company to hold the EOGM for voting to be held *inter alia* on agenda item # 3 pertaining to reversal of the decision of the Board whereby FD Shares Registrar was appointed. It is also an admitted fact that on a demand of poll through postal ballot, the Appellant authorized voting to be conducted through postal ballot, however, the same was done on the day of the meeting i.e. August 22, 2020. The outcome of the voting shows that 37.79% votes were cast against the resolution and thus special resolution to reverse the aforementioned decision of the Board was not passed as under clause (66) of section 2 of the Act, a special resolution has to be passed by a majority of three-fourths of such members of the company entitled to vote as are present in person or by proxy or vote through postal ballot at a general meeting.
7. The Appellant has relied upon the attendance sheet of the EOGM and contended that the outcome would have remained the same, had the poll been taken at some other time, due to the fact that the number of members who voted against the resolution on the day of poll were sufficient to defeat the resolution and deferring of the poll would not have made any difference. The Appellant further contended that it is a matter of record that the Company in its response to the Commission dated September 16, 2020 showed its willingness to hold another meeting to seek poll through postal ballot in respect of the special resolution relating to agenda item # 3, but the Commission did not issue any guidance to hold a fresh poll in this matter. This indicated that the Commission had no objection to the poll already held. It was unfair on the part of the Commission to later impose a penalty in this case.



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8. Considering the facts and circumstances of the case, the Bench is convinced that imposition of penalty is not justified as the Company had sought guidance and offered the Commission to hold another meeting in this matter but the Commission did not issue any such instructions. In view of the above, penalty imposed on the Appellant vide Impugned Order is cancelled, and the instant Appeal is **disposed of** with no order as to costs.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Abdul Rehman Warraich)  
Commissioner

Announced on: 16 JAN 2024