

# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH NO.III

In the matter of

### Appeal No. 12 of 2017

The Chief Executive of State Petroleum,  
Refining & Petrochemical Corporation,  
(Private) Limited (PERAC)

...Appellant

Versus

Commissioner (Corporatization and Compliance Department)  
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 21/03/19

### Present:

#### For the Appellant:

i) Mr. Nadeem Ahmad Khan, Legal Counsel, OrrDignam & Co., Karachi

#### For the Respondent:

i) Mr. Jawed Hussain, Executive Director (CCD)

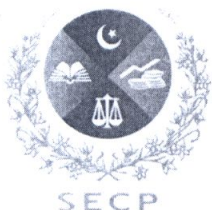
ii) Ms. Sumera Siddiqui, Additional Director (CCD)

iii) Mr. Sidney Custodio Pereira, Additional Registrar (CCD)

iv) Mr. Abdul Qayyum, Joint Director (CCD)

### ORDER

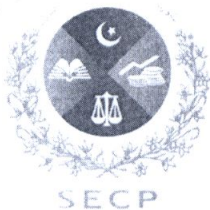
1. This Order is passed in appeal No.12 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 13/01/17 passed by the Respondent.
2. The brief facts of the case are that State Petroleum Refining & Petrochemical Refining Corporation (Private) Limited (Appellant), being a public sector company, was required in terms of rule 24(1) & (2) of the Public Sector Companies (Corporate Governance) Rules 2013 (Rules) read with section 506(2) of the Companies Ordinance, 1984



## Securities and Exchange Commission of Pakistan

(Companies Ordinance) to publish, circulate and file with the Commission, a Statement of Compliance (SOC) and review report from the auditor for the years ended 30/06/14 and 30/06/15 which the Appellant failed to file.

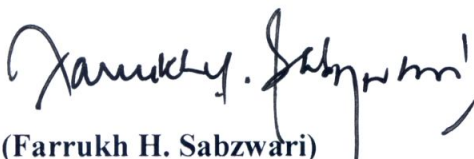
3. Show Cause Notice dated 28/04/16 (SCN) was issued calling upon the Chief Executive of the Appellant to explain in writing and to appear in person or through an authorized representative for hearing on 13/06/16 to clarify the position. In response to the SCN, instead of appearing on the date fixed for hearing, the Company Secretary, vide letter dated 18/05/16 informed that financial statements for the years ended 30/06/14 and 2015 are still under finalization and requested to drop the proceedings. Hearing in the matter was again fixed for 11/11/16 which was attended by the Company Secretary who reiterated the above stated position. The Company Secretary was advised to file overdue SOC's for the years ended 30/06/14 and 2015, however, the SOC's were not filed.
4. The Respondent dissatisfied with the response of the Appellant held that the Appellant and its Directors had violated mandatory requirements of rule 24(1) of the Rules by not filing SOC's for the years 2014 and 2015. Therefore, in exercise of the powers conferred under rule 25 of the Rules read with section 506(2) of the Companies Ordinance, a fine of Rs 50,000 was imposed on the Chief Executive of the Appellant. The Appellant and its Directors including its Chief Executive were also directed to submit the overdue SOC's for the years 2014 and 2015.
5. The Appellant preferred the appeal on the grounds that non-compliance in question was not deliberate but on account of the fact that the Appellant has no management or board and has become inactive. The Appellant further argued that the accounts had previously been filed but since the board and management do not conduct meetings, no further compliances could be made. Furthermore, the Appellant argued that the affairs of the Appellant have been taken over by the Ministry of Petroleum. The Appellant further argued that in view of the very restricted and insignificant role of the Appellant, the delay did not prejudice any member of the public and is not in consonance with past



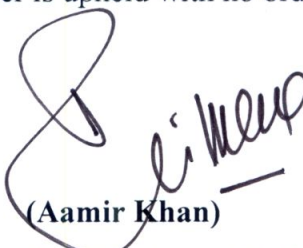
## Securities and Exchange Commission of Pakistan

practice of the Appellant, therefore, imposing a fine on its Chief Executive as would be imposed on a habitual defaulter is not warranted.

6. The Respondent rebutted the arguments of the Appellant on the grounds that the Appellant has violated the mandatory requirements of rule 24 of the Rules by not filing to date the SOCs for years ended 2014 and 2015 and is, therefore, liable to imposition of penalty under 25 of the Rules. The Respondent further argued that the requirement to file SOC is a standalone mandatory requirement under the law separate from filing of annual audited accounts and the Appellant had not filed any application for exemption from the applicability of the Rules.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant argued that the Appellant has become inactive, therefore, the Impugned Order should be set aside. The Respondent has argued that the Appellant has violated mandatory requirements of rule 24 of the Rules by not filing SOCs for the years ended 2014 and 2015 and the default continues to date. We are of the view that as long as the Appellant continues to be a legal entity, it must comply with all the requirements of the law regardless of whether it has become a dormant entity.
8. In view of the foregoing, the Impugned Order is upheld with no order as to costs.

  
(Farrukh H. Sabzwari)

Chairman/Commissioner (AML)

  
(Aamir Khan)

Commissioner (CLD-CSD)

Announced on: **19 APR 2019**