



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 134 of 2020

1. Mr. Muhammad Akhtar Mirza, Chairman
2. Mr. Sohail Maqsood, Chief Executive Officer
3. Mr. Muhammad Maqbool Anjum, Director
4. Mr. Iftikhar Ali, Director
5. Mr. Abid Sattar, Director
6. Mr. Muhammad Ashraf Khan, Director
7. Mr. Hussain Ather, Director

...Appellants

versus

Executive Director, Adjudication-I, SECP

...Respondent

Dates of hearing:

March 10, 2022, March 31, 2022

December 30, 2022

Present:

For the Appellants:

Mr. Muhammad Hamza Khokhar, Advocate High Court

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP
3. Mr. Adnan Naseer, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 134 of 2020 filed by the Chairman, Chief Executive Officer, and Directors (Appellants) of M/s. Gulshan Spinning Mills Limited (the Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against Order dated February 25, 2020

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(Impugned Order) passed by the Executive Director, Adjudication-I SECP, Islamabad (Respondent) under Section 148 read with 479 of the Companies Act, 2017 (the Act).

2. The brief facts of the case are that the Company was issued a direction by the Securities and Exchange Commission of Pakistan (the Commission) vide a letter dated June 20, 2017 to convene its past-due annual general meetings for the financial years ended June 30, 2015 and June 30, 2016 (*the AGMs*) on or before August 31, 2017 and September 30, 2017, respectively [*Direction under Section 170 of the Companies Ordinance, 1984 (corresponding Section 147 of the Act)*]. Subsequently, the Commission vide its letter dated October 11, 2017 reiterated to the Company to update the compliance status of the said direction, however, the Company failed to provide any response. In view of the above violation, the Respondent issued a show-cause notice dated October 15, 2018 (the SCN) to the Appellants. Hearing in the matter was held on February 3, 2020, wherein, the Appellants' representatives admitted that due to weak financial position of the Company and ongoing litigation matters, the AGMs for the financial years ended June 30, 2015 and June 30, 2016 have been convened on January 31, 2018 and July 16, 2018, which is within the time frame as provided in latest directions dated December 28, 2017 and June 20, 2018. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 10,000/- on each Appellant (Aggregate Rs. 70,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that they are well aware of their fiduciary duty towards the Company and its shareholders to hold the AGM within time prescribed in law, however, delay was caused due to the reasons beyond the control of the Appellants. The Appellants further stated that due to a financial crunch and inadequate staff, the Company failed to comply with the direction to convene the AGM. Appellants prayed for a lenient view on account of subsequent compliance, and in support thereof, they relied on the Appellant Bench's orders, cited as 2018 CLD 44 (M/s. Saudi Pak Leasing Company Limited) and 2017 CLD 1704 (M/s. Husein Industries Limited). The Appellants also stated that delay in holding of the AGM had not caused harm to the rights of the stakeholders, therefore, penalties may be waived or be converted into a warning.
4. The Respondent rebutted the grounds of Appeal and put forth the following arguments:



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- i. The compliance history of the Company was not satisfactory. There had been multiple instances of delays and non-compliances and in many cases the compliances were made only after SECP took notice of the matter.
- ii. The Appellants admitted their failure to comply with the direction of the SECP to convene overdue AGM within the stipulated time.
- iii. Holding of the AGM in a timely manner is not only a requirement of law but it also ensure transparency and provide necessary information about company's state of affairs to all stakeholders. In order to foster a culture of compliance, the SECP ought to enforce the relevant legal requirements in an effective manner.
- iv. The facts of case laws mentioned by the Appellants are different from the case in hand, therefore, not applicable in this case.

5. The Appellate Bench (the Bench) has heard the parties and perused the record. In view of the arguments put forth by the parties, the Bench's analysis and findings are as under:

- i. A public listed company has a higher responsibility to disseminate true and accurate state of affairs to all the stakeholders by holding the AGM within the stipulated time so that appropriate and timely decisions are made. Therefore, the Appellants should have conducted the AGM as per applicable legal framework.
- ii. The Appellants have an unsatisfactory compliance history as there have been multiple instances of non-holding of AGMs within the time period provided as per direction to convene the AGM.
- iii. The Appellants have admitted their default, however, despite admitting their default, they have not made any payment on account of penalty so far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- iv. The Appellants' argument, that due to adverse financial conditions of the Company and inadequate staff, preparation of financial statements was delayed, which in turn caused the delay in holding the AGM, is not a plausible reason to exonerate

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them. Hiring of adequate staff is within the Appellants' control and holding of the AGM within due time is the Appellants' responsibility. If such arguments are accepted, all companies will find one reason or another to justify non-compliance with the law.

- v. The Appellants' have argued that, as a rule, the delay in compliance should be condoned and penalty should not be imposed in all cases where compliance is eventually made. They have referred to a few past decisions of the Appellate Bench in which penalties were waived by the Bench by considering subsequent compliance as one of the reasons for the relief. This Bench is of the opinion that such decisions cannot act as binding precedents for the future. Subsequent compliance can neither be the sole reason, nor the rule, for complete waiver of a penalty. The decision, whether or not to reduce or waive a penalty, must be based on full appreciation and consideration of the facts and circumstances and to what extent the reasons of non-compliance were within or outside the control of the person. Any attempt to interpret a past decision of Appellate Bench in this manner needs to be discouraged.

6. In view of the above, the Bench decides as under:

- i. The decision made in the Impugned Order is maintained.
- ii. Although the real value (time value) of the penalty amount has significantly reduced due to high inflation, the amount of the penalty is not enhanced by giving due regard to the admission of default by the Appellants.
- iii. The Appeal is dismissed without any order as to cost.



(Mujtaba Ahmad Lodhi)
Commissioner



(Abdul Rehman Warraich)
Commissioner

Announced on:

17 APR 2023