



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 138 of 2020

M/s. Livestock and Dairy Development Board

...Appellant

Versus

Executive Director/ HOD, Adjudication-II SECP, Islamabad

...Respondent

Date of hearing:

March 30, 2023

Present:

For the Appellants:

Mr. Muhammad Sohaib Sheikh, Advocate High Court

For the Respondent:

1. Mr. Muhammad Farooq Bhatti, Additional Director, Adjudication-II, SECP
2. Mr. Hassnain Raza, Management Executive, Adjudication-II, SECP

ORDER

1. This Order shall dispose of Appeal No. 138 of 2020 filed by M/s. Livestock Dairy Development Board (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated September 14, 2020 (the Impugned Order) passed by the Executive Director/ HOD Adjudication-II SECP (Respondent) under the Public Sector Companies (Corporate Governance Rules), 2013 (PSC Rules).



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2. The brief facts of the case are that the statement of compliance for the year ended June 30, 2018 (SOC), revealed that the Appellant failed to meet certain requirements of the PSC Rules. Following violations of the PSC Rules were observed;
- i. Rule 3(7) as the Appellant failed to follow the fit and proper criteria while appointing the Directors;
 - ii. Rule 5(2) as the Board of Directors (the Board) of the Appellant failed to evaluate the candidates for the position of chief executive on the basis of fit and proper criteria;
 - iii. Rule 5(4) as the Board of the Appellant failed to set in place adequate systems and controls for the identification and redressal of grievances arising from unethical practices;
 - iv. Rule 5(5) as the Appellant failed to establish a system of sound internal control;
 - v. Rule 6(1) as the Board of the Appellant did not hold meetings of the Board four times within a year;
 - vi. Rule 9 as the approval of related party transaction has not been obtained from the Board;
 - vii. Rule 10 as approval of profit and loss accounts and balance sheet at the end of each quarter and year end was not obtained from the Board;
 - viii. Rule 11 as the orientation of the new Board members has not been arranged;
 - ix. Rule 12 as the Board failed to constitute the required committees;
 - x. Rule 13(2) as the approval of the Chief Financial Officer Chief Internal Auditor, and Company Secretary by the Board has not been obtained;
 - xi. Rule 14(2)(b) as the CFO and CS were not qualified as prescribed.
3. In view of the above violations of the PSC Rules, the Respondent issued a Show Cause Notice dated August 19, 2019 (the SCN) to the Appellant. The four hearings dated September 12, 2019, October 10, 2019, February 19, 2020 and September 01, 2020, were held and were attended by the authorized representative of the Appellant. The authorized representative of the Appellant admitted the non-compliance, however, it was submitted that the Appellant has rectified the non-compliances and is fully compliant with the PSC Rules. The Appellant vide its letter dated July 20, 2020 informed the Respondent that violations of Rules 3(7), 9, 10, 11 and 12 of the PSC Rules have been rectified whereas compliance with Rule 5(4) and 5(5) shall be made in the forthcoming meeting of the Board. The



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Respondent, considering the steps taken by the Appellant to rectify the non-compliances, took a lenient view and thus vide the Impugned Order imposed a penalty of Rs. 840,000/- on the Appellant on seven counts out of eleven alleged violations.

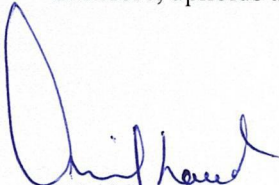
4. The Appellant has preferred this appeal *inter alia* on the grounds that the Appellant is a public sector company wherein the appointing authority of directors is the Federal Government, therefore, in case of violation of both Rule 3(7) and Rule 12 of PSC Rules, the Appellant cannot be held liable. The Appellant also submitted that in pursuance of Rule 5(4), the policy has been developed and subsequently adequate steps have been taken. The Appellant has submitted that in pursuance of Rule 9 of the PSC Rules, the related party transactions were placed before the audit committee. The Appellant admitted that Rule 10 of PSC Rules was violated, however, it was submitted that subsequent compliance has been made. Furthermore, the Appellant reiterated that in pursuance of Rule 11 of the PSC Rules, all the appointed directors were government officials and hold relevant experience and expertise, however, the Appellant conducted orientation after the election of the directors. Lastly, the Appellant stated that there is no subsequent non-compliance and the Appellant is fully compliant with the PSC Rules. The Appellate has prayed that by considering these factors a lenient view may be taken by waiving the penalty.
5. The Respondent rebutted the grounds of Appeals and put forth the arguments that the PSC Rules are mandatory in nature and the Appellant has violated the abovementioned rules as per the SOC. The Respondent argued that the Appellant has admitted the non-compliances and the Appellant's letter dated July 20, 2020 also states that it has rectified the non-compliances at a later stage which is evidence of non-compliance. The Respondent also argued that the Appellant did not submit SOC for any of the subsequent years. The Respondent also submitted that in view of the Appellant's inclination to rectify the non-compliances, minimum penalty has been imposed vide the Impugned Order.
6. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. The Bench is of the view that it is an admitted fact that Public Sector Companies do face hardships while complying with the rules and regulations. However, this reason cannot eliminate the essence of observing the rules and regulations in their true letter and spirit. The PSC Rules are mandatory in nature



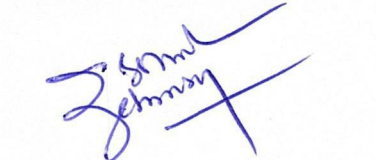
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and binding on all public sector companies. The Appellant has committed non-compliances and apprised the Commission vide letter dated July 20, 2020, that it has subsequently rectified the same. Therefore, the Bench has no doubt that violations of the PSC Rules were committed, however, the Appellant's case is for a lenient view on account of subsequent compliance. The Bench has noted with concern that the Appellant has not submitted a statement of compliance in any of the subsequent years i.e financial years ending after 30 June 2018, which depicts the casual conduct of the Appellants towards the requirements of the PSC Rules. It is evident that the Appellant addressed the non-compliances for the fiscal year ending on 30 June 2018 only after SECP took notice of the matter. The Appellant, however, continued to act irresponsibly and showed no commitment toward legal compliance in subsequent financial years.

7. In view of the above, the Bench does not find any justification to interfere with the Impugned Order, therefore, upholds the same, resultantly the instant appeal is hereby dismissed with no order as to cost.


(Akif Saeed)

Chairman/Commissioner


(Abdul Rehman Warraich)

Commissioner

Announced on: **23 JUN 2023**