



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 29 of 2018

1. Mr. Zakaria Usman
  2. Mr. Muhammad Iqbal Usman
  3. Mr. Asim Ghani
  4. Ms. Asma Aves Cochinwala
  5. Ms. Darkshan Ghani
- (All directors of Al-Abbas Sugar Mills Limited)

Appellants

Versus

The Executive Director, (CSD), SECP, Islamabad.

Respondent

Date of hearing:

4/11/19

Present:

For Appellants:

- i. Mr. Muhammad Jawwad Shekha
- ii. Mr. Zuhair Abbas

For Respondent:

- i. Mr. Tariq Ahmed, Additional Director (CSD), SECP
- ii. Ms. Zohra Sarwar Khan, Additional Joint Director (CSD), SECP

## ORDER

1. This Order shall dispose of Appeal No. 29 of 2018 filed by Mr. Zakaria Usman and four others (Appellants) against the Order dated July 9, 2018 (Impugned Order) passed by the Executive Director, CSD (Respondent) under Section 169 read with Section 166 and 479 of the Companies Act, 2017 (the Act).
2. Brief facts of the case are that the Securities and Exchange Commission of Pakistan (Commission) received a complaint dated April 17, 2018 from Mr. Suleman Lalani director of Al-Abbas Sugar Mills





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Limited (the Complainant) that, in violation of the Section 166 of the Act, Mr. Zakaria Usman (Appellant No.1) had been appointed as independent director of Al-Abbas Sugar Mills Limited (Company) on January 26, 2018. Section 166 of the Act prohibits appointment of a person as an independent director in a company if he has been the chief executive officer of an associated company in the last three years. The Complainant alleged that Appellant No.1 was chief executive of ACME Mills (Private) Limited (ACME) till May 15, 2015 and had 525,000 shares (30% of equity). The Complainant informed the Commission that as per Form-A of ACME (made up to October 31, 2014), its Board comprised of two directors i.e. M. Iqbal Usman (Appellant No.2) and Appellant No.1. As per Form-A, Appellant No.2 held 875,000 shares of ACME (50% of equity) and he was also Chairman and director of the Company. Therefore, because of common directorship of Appellant No.2 in the Company and in ACME, both companies become associated companies. In view of violation of Section 166(2)(b) of the Act, a Show Cause Notice (SCN) dated May 25, 2018 was issued to the Appellants. The Appellants' representative submitted reply of the SCN and hearing in the matter was held on June 28, 2018. The Respondent, being dissatisfied with the response of the Appellants, imposed a fine of Rs. 25,000/- on each of the Appellants (Aggregate Rs. 125,000/-).

3. The Appellants have challenged the Impugned Order *Inter alia* on the grounds that without exhausting the cooling-off period of 3 years, appointment of Appellant No.1 as an independent director of the Company, was an unintentional oversight / error. The Appellants further stated that their request to condone short fall in cooling-off period was not accepted by the Respondent. The Appellants contended that the short fall of four months in calculation of cooling off period of 3 years was completed on May 15, 2018 and there was no *mala fide* intention and willful default by the Appellants.
4. The Respondent had rebutted the grounds of Appeal through written comments dated February 22, 2019 and stated that the Appellants had admitted that the non-compliance was committed. The law does not provide any relaxation in completion of three-year cooling off period. The Appellant No.1 resigned from ACME on May 15, 2015 therefore, the three-year cooling off period was to be completed on May 15, 2018, however, in contravention of Section 166(2) (b) of the Act he was appointed as independent director of the Company, on January 26, 2018. The Respondent lastly, stated that the Impugned Order is a speaking order, therefore, Appeal may be dismissed.



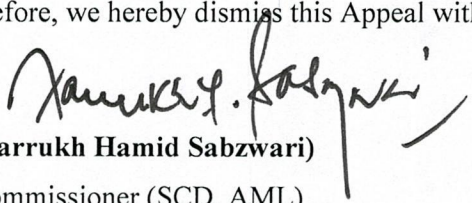


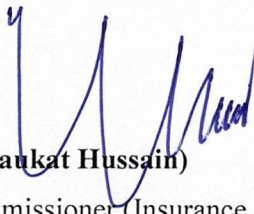
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5. The Appellate Bench (Bench) has heard the parties and perused the record. The Appellants' representatives had reiterated the grounds of Appeal and requested for leniency whereas, the Respondent's representative argued that default of Section 166(2) (b) of the Act is admitted by the Appellants, therefore, the Appeal may be dismissed. The Bench is of the view that the Respondent had already taken lenient view while passing the Impugned Order, because only penalty of fine was imposed and Appellants were not be debarred from becoming or continuing as directors of the Company for three years. The Bench has observed that Section 169 of the Act requires imposition of level 2 penalty on Appellants, however, the Respondent had imposed Level 1 penalty, therefore, to meet the requirement of law, we hereby impose Level 2 penalty on the Appellants in the following manner;

S.No.	Appellants	Penalty (Rupees)
1.	Mr. Zakaria Usman	30,000/-
2.	Mr. Muhammad Iqbal Usman	30,000/-
3.	Mr. Asim Ghani	30,000/-
4.	Ms. Asma Aves Cochinwala	30,000/-
5.	Ms. Darkshan Ghani	30,000/-
	Total	150,000/-

6. In view of the above circumstances, there is no reason to interfere with the merits of the Impugned Order therefore, we hereby dismiss this Appeal without any order as to cost.

  
(Farrukh Hamid Sabzwari)  
Commissioner (SCD, AML)

  
(Shaikat Hussain)  
Commissioner (Insurance, C&CD)

Announced on: **10 DEC 2019**