



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 38 of 2021

Haji Mohammad Ismail Mills Limited

...Appellant

versus

Executive Director/ HOD, Adjudication-I SECP, Islamabad

...Respondent

Date of hearing:

January 18, 2024

Present:

For the Appellant:

Mr. Muhammad Sarfaraz, Company Secretary (Authorized Representative)

For the Respondent:

1. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
3. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 38 of 2021 filed by M/s. Haji Mohammad Ismail Mills Limited (the "Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated February 02, 2021 (the "Impugned Order") passed by the Executive Director/HOD Adjudication-I SECP, Islamabad (the "Respondent") under Section 512 of the Companies Act, 2017 (the Act) read with regulation 7 and regulation 37 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the "Regulations").



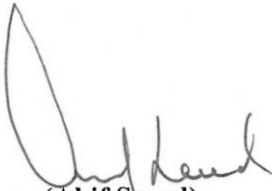
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2. The brief facts of the case are that a review of the notice of extra-ordinary general meeting of the Appellant held on March 31, 2020 (the "EOGM"), with respect to election of directors, revealed that the Appellant failed to appoint a female director in violation of the mandatory requirements of regulation 7 of the Regulations. Hence, a show- cause notice dated November 04, 2020 (the "SCN") under Section 512 the Act read with regulation 7 and regulation 37 of the Regulations was issued to the Appellant. Hearing in the matter was fixed on January 20, 2021 wherein authorized representatives of the Appellant while referring to the Appellant's letter to the Securities and Exchange Commission of Pakistan (the "Commission") stated that no female is willing to work as a director in the Appellant as the company is not operational and a winding up petition is also pending before the Hon'ble High Court of Sindh. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 50,000/- on the Appellant.
3. The Appellant has preferred this appeal *inter alia* on the grounds that the Appellant did seek guidance from the Corporate Supervision Department of the Commission vide its letter dated July 7, 2020 which was never responded to by the Commission. The Appellant further contended that the Pakistan Stock Exchange has suspended its trading of shares since 2017 and there is also a restriction on transfer of shares. The Appellant further argued that the Commission has already filed a winding-up petition before the Hon'ble High Court of Sindh. The Appellant further contended that it has followed all the procedures laid in section 159 of the Act, however, no one is willing to join the Company due to the reason mentioned above. The authorized representative of the Appellant stated that the Respondent has not cited any single violation which has been knowingly or willfully made by the Appellant. He argued that it is beyond the control of the Appellant, if no one is willing to join the board of directors of the Appellant. The Appellant prayed for a lenient view to be taken while penalty imposed on the Appellant may be waived off.
4. The Respondent contested the grounds of Appeals and contended that the election of directors was held on March 31, 2020, however, at the time of the election the Appellant failed to appoint a female director. Hence, the Appellant violated the provisions of Regulation 7 of the Regulations at the time of election. Furthermore, it is contended by the Respondent that the Appellant is still an existing legal entity so it has to follow the legal framework.



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5. The Appellate Bench (the "Bench") has heard the arguments of the parties and perused the record. In view of the submissions put forth by the parties, the Bench considers that a public listed company has higher responsibility towards its stakeholders and is obligated to act in the best financial interest of the shareholders of the Company to safeguard it. The law has made some provisions mandatory in nature to be followed. Violation of mandatory provision merely on the basis that no one is willing to join has no justification. The Bench further considers that the Appellant is still an existing legal entity and it has to comply with the legal requirements. However, in this particular case the Bench considers that despite concerted efforts, the Appellant finds itself unable to appoint a female director on its board, due to the reasons that qualified female candidates are reluctant to engage with a company grappling with multifaceted challenges including the Appellant's dysfunctionality, restriction of share transfers and above all, winding up petition against the Appellant.
6. In the view of the above discussion, the Bench while considering the mitigating factors converts the penalty into *warning* and directs the Appellant to be careful in future. **Disposed of.**


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: 27 FEB 2024