



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 39 of 2021

M/s. Sui Southern Gas Company Limited

...Appellant

versus

Executive Director, Adjudication-I, SECP, Islamabad

...Respondent

Date of hearing:

November 02, 2023

Present:

For the Appellant:

1. Mr. Nadeem Ahmad, Advocate
2. Ms. Nida Zafar, Advocate

For the Respondents:

1. Mr. Mehboob Ahmed, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 39 of 2021 filed by M/s. Sui Southern Gas Company Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated January 20, 2021 (the "Impugned Order").
2. The brief facts of the case are that the Appellant failed to convene the annual general meeting (AGM) for the financial year ended June 30, 2019 within a period of one hundred and twenty days following the close of its financial year as required under sub-section (1) of section 132 of the Companies Act, 2017 (the "Act"). The Appellant vide application dated October 04, 2019 requested the Securities and Exchange Commission of Pakistan (the "Commission") for grant of extension of one month to convene



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the overdue AGM. The Application was acceded to by the Commission through its letter dated October 09, 2019 advising the Appellant to hold the overdue AGM by November 27, 2019. On December 10, 2019 the Appellant filed an application with the Commission and sought another extension in response to which the Commission issued a direction under section 147 of the Act to hold its overdue AGM by April 30, 2020, however, the Company failed to hold the AGM. Subsequently, the Commission on July 30, 2020 issued another direction to the Appellant to convene its overdue AGM latest by December 10, 2020, however, the Appellant, yet again, failed to hold the same within the time period given. Consequently, a Show-Cause Notice dated November 25, 2020 (the "SCN") was issued to the Appellant under section 132 of the Act. The Appellant submitted its response on December 04, 2020 and hearing in the SCN proceedings was held on December 09, 2020. The Respondent in exercise of powers conferred under sub-section (5) of section 132 of the Act imposed a penalty of Rs. 175,000/- on the Appellant through Impugned Order.

3. The authorized representative appearing on behalf of the Appellant *inter alia* contended that the Appellant, time and again, approached the Commission for grant of extension in the period for the holding of the AGM and laying therein the financial statements for the year ended June, 2019 which indicates that the Appellant was ready to convene the overdue AGM. The authorized representative further argued that due to the fact that the management and the Board of Directors of the Appellant, under the Oil and Gas Regulatory Authority Ordinance, 2002 (the "OGRA Ordinance"), is required to file a petition before the Oil and Gas Regulatory Authority (OGRA) for determination of final revenue requirement (FRR) on annual basis and only thereafter to finalize their financial statements based on OGRA's determination. The authorized representative further contended that sections 6(2) and 8(2) of the OGRA Ordinance exclusively confer powers upon OGRA for finalizing the Appellant's financial statements, emphasizing the Appellant's obligation to adhere to the primary law. The authorized representatives also asserted that the Appellant was bound by OGRA's order dated March 19, 2004, prohibiting the publication of annual audited accounts before the determination of FRR and prescribed prices by the authority for the respective financial year. They maintained that the Appellant's inability to hold the overdue AGM was beyond its control due to delays from OGRA. Additionally, the authorized representatives argued that the cardinal principle of legal interpretation states that a special law prevails over a general one, citing that the OGRA Ordinance is a special law in this case,



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superseding the general law, which is the Act. In support of the said contention, the Appellant has relied upon section 43 of the of the OGRA Ordinance. In conclusion, the Appellant's authorized representatives requested the dismissal of the Impugned Order, noting that the overdue AGM has since been conducted.

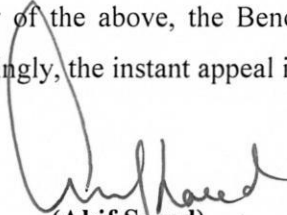
4. The Respondent contended that the Appellant failed to obtain timely approval from the OGRA for the desired financial statements. The Respondent further argued that, since there is no provision in the OGRA Ordinance pertaining to AGMs, hence, section 132 of the Act prevails in the instant case. Moreover, the Respondent contended that determination of FRR from OGRA is a routine matter as the same has to be carried out annually and the record reveals that almost each year there is a delay in seeking determination of FRR from the OGRA. In conclusion, the Respondent prayed for the dismissal of the instant Appeal.
5. The Appellate Bench (the "Bench") has heard the parties and perused the record. The Appellant's argument that a special law prevails over the general is not untenable in this case, given the absence of a corresponding provision in the OGRA Ordinance vis a vis Section 132 of the Act. Furthermore, as the Respondent highlighted section 505(1)(d) of the Act which states that "*The provisions of this Act shall apply— (d) to any other company governed by any special enactment for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special enactments.:*" This implies that Section 132 of the Act is applicable regardless, as there is no conflict between this section and any section of the Ordinance. Moreover, Section 4 of the Act explicitly states that the Act holds an overriding effect. Additionally, it adheres to the well-established legal principle that in the event of inconsistency between two special laws, the one enacted later takes precedence, as is the case with the Act in this matter.
6. As far as the claim of the Appellant that the reason for delay in holding the AGM is due to the fact that OGRA has not approved the FRR on time is concerned, the Bench finds this claim to be baseless, as the record indicates that the Appellant submitted the petition for FRR to OGRA with delay and the said fact has also not been disputed by the Appellant. This delay reflects negligence on the part of the




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Appellant. The Bench is of the view that a listed company is under an obligation *inter alia* to hold the AGM as per the law within 120 days of the close of its financial year which the Appellant has failed to do so.

7. In view of the above, the Bench does not find any reason to interfere with the Impugned Order. Accordingly, the instant appeal is hereby **dismissed** with no order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: 20 JAN 2024