



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 45 of 2018

Mr. Wasif M. Khan

..... Appellant

Versus

Executive Director, CSD, SECP

..... Respondent

Date of Hearing:

March 19, 2025

Present:

For the Appellant:

Mr. M. Saqlain Arshad, Authorized Representative

For the Respondent:

1. Mr. Sohail Qadri, Director/HOD, Adjudication-I, SECP
2. Mr. Hammad Ahmed, Management Executive, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 45 of 2018 filed by Mr. Wasif M. Khan (the Appellant), against order dated October 04, 2018 (the Impugned Order), passed by the Executive Director, CSD, SECP (the Respondent), under Section 245 read with 158 and 476 of the Companies Ordinance, 1984 (the Ordinance).
2. Brief facts of the case are that the Appellant was an independent director of M/s. Nirala MSR Foods Limited (the Company). Company was required to hold its Annual General Meeting (AGM) for the financial year ended June 30, 2016, on or before October 31, 2016, in terms of the mandatory requirements prescribed under Section 158(1) of the Ordinance. However, the record revealed that the Company failed to convene the AGM within the stipulated timeframe. Furthermore, the Company also failed to prepare and file its interim financial statements for the quarters ended December 31, 2015, March 31, 2016, and September 30,



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2016, within the time prescribed under sub-section (3) of Section 245 of the Ordinance. These statutory defaults on the part of the Company constituted *prima facie* contraventions attributable to its Chief Executive Officer (CEO) and Directors, who were responsible for ensuring compliance with the provisions of the Ordinance. Accordingly, a Show-cause Notice dated February 24, 2017 (the SCN) was issued to the CEO and Directors, requiring them to explain why penal action should not be taken against them for the said violations. Despite being provided with multiple opportunities, i.e. on March 21, 2017, January 16, 2018, and July 2, 2018, the Appellant and other directors neither submitted any written response nor appeared in person or through an Authorized Representative. The matter was proceeded *ex-parte*, and the Respondent concluded that the Appellant and other directors had failed to discharge their statutory obligations under Sections 158 and 245 of the Ordinance. In view thereof, the Respondent imposed a penalty amounting to Rs. 50,000 per director for non-holding of AGM and Rs. 10,000 per director for failure to file interim accounts, thereby resulting in a cumulative penalty of Rs. 420,000 upon the seven Respondents.

3. The Appellant preferred the instant Appeal on the grounds, *inter alia*, that the Impugned Order had been passed in violation of the principles of natural justice and Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973, as no SCN was served upon the Appellant, nor was any opportunity of hearing afforded to him prior to the passing of the Impugned Order, thereby rendering the same devoid of lawful authority. The Appellant submitted that he had ceased to be a director of the Company with effect from October 11, 2013, and therefore could not have been held liable for the Company's subsequent failure to convene its AGM for the financial year ended June 30, 2016. The Appellant further submitted that no willful default had been established against the Appellant, and the penalty imposed is without legal basis. The Appellant also contended that at the time of the Impugned Order, the Company stood deemed to be wound up by virtue of a winding-up petition filed by the Commission before the Hon'ble Lahore High Court on January 30, 2018 under Section 306 of the Companies Act, 2017 (the Act), thereby rendering the order untenable in law. The Appellant further submitted that he had never subscribed to or been allotted any qualifying shares of the Company, nor had he contested any election of directors, and as such could not lawfully be appointed or treated as a director in terms of Section 187 of the Ordinance. The Appellant also asserted that the filing of Forms 28 and 29 by the Company after his resignation were without lawful authority and of no legal effect, and his name was unlawfully



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included in the record of directors through a grossly negligent act of the Company. The Appellant also contended that he neither had any pecuniary interest in the Company nor drew any compensation during his tenure as independent director, and following his resignation, had no participation in any board meeting or involvement with the affairs of the Company. Consequently, the Appellant prayed for setting aside of the Impugned Order up to the extent of the Appellant.

4. In response to the submissions advanced by the Appellant, the Respondent submitted, *inter alia*, that the appeal was devoid of merit and the Impugned Order was passed in accordance with law after affording ample opportunity of hearing to all directors of the Company including the Appellant. The Respondent contended that hearing dates i.e. March 21, 2017; January 16, 2018; and July 2, 2018, were duly communicated to the Appellant and other directors, but no response or appearance was made by the Appellant, and thus the principles of natural justice were fully adhered to. The Respondent submitted that the Appellant's contention that he had ceased to be a director since October 11, 2013, is misconceived and the Appellant continued to be reflected as a director in the official records of the Commission based on Form 28 filed via e-Services on March 17, 2014, which indicated his appointment as director effective from that date. The Respondent further stated that there was no resignation of the Appellant on record and the Respondent had to proceed based on the data available in its official record, which showed the Appellant as a director during the period of non-compliance. The Respondent further submitted that under the law, a company is deemed to be wound up only when a formal winding-up order is passed and a liquidator is appointed by the Hon'ble High Court, since no such order had been issued at the time of the Impugned Order, the statutory responsibilities of directors remained intact, including holding of AGMs and preparation and filing of accounts. The Respondent also emphasized that the directors of a company are under a fiduciary duty to ensure compliance with legal obligations, and any failure to do so renders them liable under the law. The Respondent further submitted that the Appellant's objections regarding the authenticity and legality of his nomination as a director were without merit, as the Impugned Order was passed strictly on the basis of the official record, which reflected the Appellant as a duly appointed director of the Company.
5. The Appellate Bench (the Bench) has heard both the parties and perused the available record with due care and consideration. The Bench finds that the Appellant was afforded ample



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opportunities of hearing by the Respondent through hearing notices, however, the Appellant failed to appear either in person or through an Authorized Representative, nor did he file any written response to the SCN. The Appellant's name continued to appear as a director of the Company in the official record of the Commission, and no resignation or other documentary evidence was brought on record by the Appellant prior to the passing of the Impugned Order to rebut the presumption arising from the official filings, including Form 28 filed via e-Services on March 17, 2014, which recorded the Appellant's appointment as director. The Appellant also did not challenge or seek rectification of the record until after the passing of the Impugned Order, which implies acquiescence to the directorship during the period of contravention. It is pertinent to mention that this Bench had earlier passed an interim order dated December 30, 2019, whereby proceedings in the instant appeal were stayed pending the disposal of Winding up Petition No. **C.O. 155942 of 2018** titled **Addl. Registrar of Companies vs. M/s Nirala MSR Foods Ltd. & others**, in which the Appellant had filed a Civil Miscellaneous Application seeking deletion of his name from the list of directors. The Bench observes that the said petition was disposed of by the Hon'ble Lahore High Court on November 27, 2024, and the proceedings were adjourned *sine die* in view of the filing of a CPLA by the Company's directors against the winding up order of the Court. As no authoritative finding is presently in field regarding the status of the Appellant as a director of the Company, the Bench upholds the Impugned Order while dismissing the appeal, subject to the outcome of the CPLA filed before the Hon'ble Supreme Court of Pakistan.

6. The appeal is accordingly disposed of without any order as to costs.

(Abdul Rehman Warriach)
Commissioner

(Zeeshan Rehman Khattak)
Commissioner

Announced on:

30 APR 2025