



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 48 of 2021

M/s. Service Industries Limited

...Appellant

versus

Executive Director/Head of Department, Adjudication-I, SECP

...Respondent

Date of hearing:

December 06, 2023

Present:

For the Appellant:

1. Mr. Rashid Sadiq
2. Mr. Azeem Rashid

For the Respondents:

1. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
2. Mr. Khurram Hasan, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 48 of 2021 filed by M/s. Service Industries Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated February 17, 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 December 31, 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"). Pursuant to Securities and Exchange Commission of Pakistan (the "Commission") Circular No. 10 of 2020 dated April 01, 2020 in light of the COVID-19 pandemic, the



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Appellant was allowed to convene its overdue AGM by May 29, 2020. The Appellant vide application dated May 20, 2020 sought direction under section 147 of the Act from the Commission to convene the overdue AGM and the same was acceded to by the Commission through its directive dated May 21, 2020 advising the Appellant to hold the overdue AGM by July 17, 2020. The Appellant *prima facie* failed to comply with section 132 of the Act consequently, a Show-Cause Notice dated November 05, 2020 (the "SCN") was issued to the Appellant under section 132 of the Act. The Appellant submitted its response on November 11, 2020 and hearing in the SCN proceedings was held on January 27, 2021. The Respondent in exercise of powers conferred under sub-section (5) of section 132 of the Act imposed a penalty of Rs. 50,000/- on the Appellant through the Impugned Order.

3. The Appellant *inter alia* contended that the Impugned Order is not a speaking order in terms of section 22 of the SECP Act and section 24A of General Clauses Act, 1897. The Appellant further contended that the Respondent has not provided equal treatment to the Appellant which is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The authorized representatives of the Appellant submitted that delay in holding the AGM was caused by COVID-19 pandemic and was absolutely beyond the control of the Appellant Company. The authorized representatives of the Appellant argued that the Commission was apprised at every stage of the developments that led to delay in holding the AGM which shows that there is no willful default on part of the Appellant nor the default was intentional and deliberate. The authorized representatives of the Appellant submitted that the Impugned Order has been passed without authority and the same is not in accordance with the precedents of the Commission and the Superior Courts. In conclusion, the Appellant requested the dismissal of the Impugned Order, noting that the overdue AGM has since been conducted.
4. The Respondent contended that the Appellant has violated section 132 of the Act and failed to convene the AGM on time even after grant of additional time in terms of Circular 10 of 2020. The Respondent further contended that bare reading of section 147 of the Act clearly shows that the said provision of law is invoked only when default of section 132 is established. The Respondent submitted that the Impugned Order has been passed after giving an opportunity of hearing to the Appellant and the same is a speaking order passed as per law. In conclusion, the Respondent prayed for the dismissal of the instant Appeal.



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5. The Appellate Bench (the “Bench”) has heard the parties and perused the record. 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. With regards to the Appellant’s contention that seeking direction from the Commission under section 147 of the Act grants impunity from default committed under section 132 of the Act, the Bench is of the view that under the relevant law i.e. section 147 of the Act, the legislative intent is to bring a company, which has committed default by not holding AGM, within compliance of the regulatory ambit. However, entertaining of Appellant Company’s application under section 147 of the Act does not in any manner suggest that the Appellant Company was given extension in time in terms of section 132 of the Act to hold the AGM. The primary role of regulator is to safeguard the interests of stakeholders, particularly in the case of listed companies where the annual general meeting serves as a key occasion for shareholders to be informed about the company’s affairs. When companies fail to comply with legal requirements, they not only violate the law but they also violate the rights of the shareholders. The regulator is duty bound to take strict actions where the rights of the shareholders are involved.
6. 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: 22 JAN 2024