



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 5 of 2017

Peoples Steel Mills Limited

Appellant

Versus

Commissioner, Corporatization and Compliance Department

Respondent

Dates of hearing:

21/02/19 and 21/3/19

Present:

For Appellant:

- i. Muhammad Jawwad Shekha
- ii. Salman Ahmed

For Respondent:

- i. Jawed Hussain, Executive Director (CLD-CCD)
- ii. Sidney Custodio Pereira, Additional Registrar (CLD-CCD)
- iii. Sumaira Siddiqui, Additional Director (CLD-CCD)
- iv. Abdul Qayyum, Joint Director (CLD-CCD)

ORDER

1. This Order shall dispose of Appeal No. 5 of 2017 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated December 14, 2016 (Impugned Order) passed by the Commissioner (CCD) under Rule 25 of the Public Sector Companies (Corporate Governance) Rules 2013 (the Rules) read with Section 508(2) of the Companies Ordinance, 2016.
2. Brief facts of the case are that Peoples Steel Mills Limited (the Appellant) was required to publish, circulate and file with the Securities and Exchange Commission of Pakistan, a Statement of Compliance (the SOC) and Review Report of the auditor (the Report) for the years ended June 30, 2014 and June 30, 2015, under Rule 24 (1)(2) of the Rules. However, it failed to do so, therefore, a Show Cause Notice dated April 28, 2016 (the SCN) was issued to the Appellant and its directors.



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3. The Appellant's authorized representative replied to the SCN vide letter dated November 22, 2016 and stated that the Appellant's case is different from other public sector companies because it manufactures strategic supplies for defence and Dr. A.Q. Khan Research Laboratories (KRL) and is under its administrative and operational control. It was also informed that the Appellant's board members are from KRL, Pakistan Ordnance Factories, DG-COP, Joint Staff Headquarters etc. The Appellant is a sensitive entity, therefore, warrants specialized control environment. The Respondent being dissatisfied with the response of the Appellant, imposed a fine of Rs. 100,000/- on the Appellant due to non-compliance of the Rules. Furthermore, the Appellant and its directors including its chief executive were also directed to submit the SOC for the years 2014 and 2015 without any further delay.
4. The Appellant has preferred this Appeal before the Appellate Bench (the Bench) *inter alia* on the grounds that the SCN and hearing proceedings were carried out under Companies Ordinance 1984 (the Ordinance 1984) however, the Impugned Order had been passed under the Section 508(2) of the Ordinance. The Respondent while passing the Impugned Order has ignored the section 509(1)(f) of Ordinance and section 6(e) of the General Clauses Act, 1897. The Appellant's representative further stated that the Appellant had a unique governance structure, therefore, any deviation from the existing governance structure can be detrimental to the core purpose of keeping a sensitive entity control and supervision. The Appellant claimed that in its case, Rule 25 couldn't be invoked because non-compliance was not committed knowingly and willfully. Lastly, the Appellant's representative contended that the Respondent had failed to established the mandatory condition of *mens rea* to impose a penalty under Rule 25 of the Rules. The Respondent has rebutted the grounds of Appeal and prayed to dismiss the Appeal.
5. The Bench has heard the parties (the Appellant and Respondent) and perused the record of Appeal. It is an admitted fact that the Appellant had not filed the SOC and Report for the year ended 30/06/14 and 30/06/15. The Appellant's representative had rightly argued the legal defect in application of Section 506(2) of the Ordinance 1984 and Section 508(2) of the Ordinance. The Respondent had issued the SCN under Rule 25 of the Rules read with Section 506(2) of the Ordinance 1984, however, the Impugned Order had been passed under Rule 25 of the Rules read with Section 508(2) of the Ordinance. The Bench is of the view that the Respondent was required to proceed in accordance with the provisions mentioned in the SCN because Section 509 of the Ordinance had validated all the



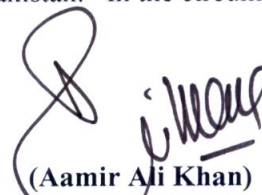
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proceedings initiated under the Ordinance 1984. However, for all practical purposes this legal defect is not prejudice to the rights and liabilities of the parties therefore, it is curable.

6. The Bench has perused the other grounds of Appeal carefully, which shows that the Appellant believes that applicable laws are not suitable for its particular governance and control requirements. The Bench is of the view that the Appellant's assertion may not be entertained because it is mandatory for every public sector company to comply with the Rules. The Appellant could have asked for exemption under Section 24(3) of the Rules, however, no such course was adopted, therefore, "unique governance structure" of the Appellant may not be treated as a tool to avoid legal and statutory requirements. We have no doubt that the Appellant had deliberately avoided compliance of the law because it had been stated in the Appeal that *"the governance model prescribed by the Rules and amount of disclosure required in Statement of Compliance beats the core governance practice enforced on the company by institutions of national interest."* It is important to note here that the Appellant was aware of the consequences of non-compliance of the Rules, therefore, it desired to get exemption under the Rules, however, no step was taken in this regard. Therefore, conduct of the Appellant had made it clear that non-compliance of the Rules was deliberate and intentional.
7. The Respondent has apprised the Bench that as of today the Appellant has not filed the SOC and Report for the years ended 30/06/14 and 30/06/15. The Appellant's representative have requested the Bench to take a lenient view and they assured that if the Impugned Order is set aside or remanded, the Appellant will file the SOC and the Report for the years ended 30/06/14 and 30/06/15. The Appellant's representative stated that this request is highly inappropriate and against the integrity of the Commission. The Appellant is a company under the ambit of the Commission, it has to follow the law, therefore, we hereby issue a stern warning to the Appellant, its directors, the representatives to adhere in a dignified conduct prior to appearing before the Bench or any other adjudication authority of the Securities and Exchange Commission of Pakistan. In the circumstances, we hereby dismiss the Appeal without any order as to cost.


(Farrukh H. Sabzwari)

Chairman/Commissioner (AML)


(Aamir Ali Khan)

Commissioner (CLD-CSD)

Announced on: **19 APR 2019**