

# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. II**

In the matter of

### **Appeal No. 54 of 2016**

Muhammad Tariq Masood, CEO  
Saudi Pak Leasing Company Limited

Appellant

Versus

Commissioner (Specialized Companies Division), SECP.

Respondent

**Date of hearing:**

09/03/17

**Present:**

For Appellant:

1. Sardar Muhammad Ghazi, Sr.ASC.
2. Ms.Ruqia Samee,ASC.

For Respondent:

1. Ms.Saima Ahrar, Joint Director (SCD)
2. Mr. Muhammad Jahangir, Joint Director (SCD)

### **ORDER**

1. This Order shall dispose of Appeal No. 54 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the Order dated 14/06/16 (the Impugned Order) passed by the Respondent under section 158 read with section 476 of Companies Ordinance 1984 (the Ordinance).
2. Brief facts of the case are that Saudi Pak Leasing Company Limited (the Company) failed to convene its Annual General Meeting (the AGM) for the year ended 30/06/15 on 31/10/15 as required under subsection (1) of section 158 of the Ordinance. The Company was initially granted one month extension to conduct the AGM by 30/11/15 however, the Company failed to conduct the AGM within this period and requested for another



## Securities and Exchange Commission of Pakistan

extension which was granted with direction under section 170 of the Ordinance to convene the delayed AGM latest by 31/12/15. Despite the extended time line, the Company still failed to hold the AGM. Therefore, a Show Cause Notice (the SCN) dated 16/03/16 was issued to Mr. Muhammad Tariq Masood (the Appellant) and other directors.

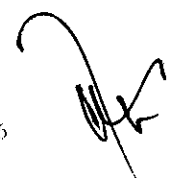
3. The Appellant replied to the SCN on 21/03/16 and hearings before the Respondent were held on 11/04/16 and 25/05/16. The Respondent being dissatisfied with the response of the Appellant, passed the Impugned Order whereby a fine was imposed on the Appellant and other directors in the following manner;

S.No.	Name of Respondents	Amount(Rs.)
1.	Mr. Niaz Ahmad Khan	50,000
2.	Ms. Parveen A Malik	50,000
3.	Mr. Arsalan Iftikbar Khan	50,000
4.	Mr. HazratWali Rs.	50,000
5.	Mr. Muhammad Tariq Masud(CEO)	100,000
<b>Total</b>		<b>300,000/-</b>

4. The Appellant preferred this Appeal against the Impugned Order before the Appellate Bench (the Bench) on the following grounds;

- The delay in holding the AGM was caused due to the casual and non-serious attitude of the directors and the Appellant time and again advised them to adhere timeline with respect to AGM, but they have not considered it.
- The directors were responsible to hold the AGM, therefore the Respondent had hardly any reason left to lay the blame on the Appellant/CEO without there being any contributory negligence on his part in holding the AGM. The Appellant being the CEO was responsible to implement the policies evolved by the BOD and he was not able to bypass the decisions made by the directors on statutory matters.
- The Respondent has made a sweeping observation with regard to statutory role of the CEO but failed to point out any lapse or illegality committed by the CEO contributing to the delay.

  
Appellate Bench No. 11

  
Appeal No. 54 of 2016



## Securities and Exchange Commission of Pakistan

- iv. The Impugned Order is perverse, suffers from mis-reading and non-reading of the record and has been passed without application of judicial mind. The Impugned Order has resulted in grave miscarriage of justice and stigmatizing the career and record of Appellant spread over a period of 38 years.
5. The Respondent has rebutted the grounds of appeal in the following manner;
- The submissions made by the CEO & Directors clearly indicates the presence of rift amongst the management of the company in fulfilment of their legal and fiduciary responsibility in the best interest of the company and its stakeholders.
  - Section 200(2) of the Ordinance states that the CEO shall if not already a director of the company, be deemed to be its director and be entitled to all the rights and privileges, and subject to all the liabilities of that office. As per the definition given in the Ordinance, CEO is an individual who subject to control and directions of the directors, is entrusted with whole, or substantially the whole, of the powers of the management of the affairs of the company. Further, the CEO / Directors of a listed company while filing their consents to act as CEO / directors, inter alia, give an undertaking that they are aware of their duties under the Ordinance. The management of the company was responsible for maintaining the financial health of the company, timely finalization of the financial statements and to adopt all possible measures to obtain clean report from auditors.
  - The law on non-holding of AGM is explicit and sets out definite time limits, however, same has not been followed.
  - The Non-compliance of section 158 (1) of the Ordinance is considered as omission on part of the Company *viz a viz* its directors which will be liable to fine as enshrined in section 158 (4) of the Ordinance.
6. We have heard the parties (Appellant and Respondent) and perused the record of the Appeal. The Appellant's Counsel (the Counsel) argument that the Appellant was not responsible for the delayed AGM, cannot be acceded to. The Appellant being a CEO was responsible to ensure timely preparation of accounts and removal of the objections of the BOD in an appropriate manner, however, he failed to perform the required role.

Appellate Bench No. II

Appeal No. 54 of 2016

Page 3 of 4



## Securities and Exchange Commission of Pakistan

The Counsel has categorically argued that delay in holding the AGM was caused due to the other directors and their unnecessary objections on the accounts of the Company. The Bench has noted that certain objections on the accounts were raised by the other directors and their objections were based on the observations of the Audit Committee and External Auditor. The Appellant failed to convince the other directors about the accuracy of the accounts, therefore, they refused to approve the accounts, which resulted in violation of Section 158 of the Ordinance. The Bench believes that the preparation of accounts is the responsibility of the management and ultimately the management is accountable before the shareholders during the AGM, therefore, the AGM should not be delayed in any case. The other directors should not be instrumental to violate the mandatory requirements of the law and in case of any objection on the accounts they should act in accordance with law.

7. In view of the above discussion, the default under section 158 of the Ordinance has been established, however, by considering the facts of the case and subsequent compliance, we are inclined to take a lenient view in the case. Therefore, we hereby convert the penalty of fine imposed on the Appellant into a warning and direct the Appellant to ensure strict compliance of the relevant provisions of law in future.
8. The appeal is disposed of accordingly and parties are directed to bear their own cost.

( Fida Hussain Samoo )  
Commissioner (Insurance)

( Tahir Mahmood )  
Commissioner (C&CD-CLD)

Announced on: **03 MAY 2017**