



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 54 of 2022

1. Duraid Qureshi
2. Muhammad Abbas Hussain

...Appellants

versus

Additional Director/HOW, Adjudication Department – I, SECP

...Respondent

Date of hearing:

May 25, 2023

Present:

For the Appellants:

1. Mr. Ijaz Ahmed, Advocate
2. Mr. Sarfraz Ahmed, Advocate
3. Mr. Mohsin Naeem, Company Secretary

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
3. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 54 of 2022 filed by Mr. Duraid Qureshi (Chief Executive), and Mr. Muhammad Abbas Hussain (Chief Financial Officer) (collectively the “Appellants”) of Hum Network Limited (the “Company”) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997.

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Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that the Company failed to electronically transmit its interim financial statements for three quarters i.e. September 30, 2020 (filing due on October 30, 2020); December 31, 2020 (filing due on March 01, 2021); and March 31, 2021 (filing due on April 30, 2021) (the “Default Periods”). The Additional Director/HOW (Adjudication-I), SECP (the “Respondent”) vide order dated June 29, 2022 (the “Impugned Order”) under section 237 read with section 479 of the Companies Act, 2017 (the “Act”) concluded that the provisions of the statute have been violated which render the Appellants liable to penal action in terms of section 237 of the Act as a result of failing to electronically transmit the Company’s interim financial statements for the Default Periods within the statutory timeframes; and, thus, vide Impugned Order, imposed a fine of Rs. 30,000/- (Rs. 15,000/- each Appellant).

3. The authorized representative of the Appellants *inter alia* submitted that the Appellants neither committed nor ever intended to commit any breach of section 237 of the Act which is also evident from the fact that the Company and its Board of Directors exercised their powers to take all necessary measures under the Act in a diligent and prudent manner in view of matters being sub judice before the Hon’ble High Court of Sindh at Karachi and the uncertain circumstances beyond control of the Company. The authorized representative of the Appellants further contended that the Respondent, while passing the Impugned Order, failed to appreciate the fact that the matters relating to election of directors were sub judice before the Hon’ble High Court of Sindh and injunctive orders were passed thereof, hence, the Company was not in a position to decide as to which Board should approve the content of the financial statements. The authorized representative of the Appellants argued that despite all the aforementioned pending litigation, injunctive orders in field and the risk of contempt, the Company and its Board were proactive in seeking clarifications from the Securities and Exchange Commission of Pakistan (the “Commission”) and when the same were received, the Company was diligent in fulfilling its duties by holding the required Board meeting for approval of the financial statements. The Appellants further submitted that the application filed before the Hon’ble High Court of Sindh for recalling of the injunctive order is also evidence of the Company’s proactiveness and willingness to comply with their statutory requirements. While summing the arguments, the authorized representative of the Appellants stated that due to the aforementioned pending litigation and injunctive orders, the Company was unable to hold the quarterly Board meetings for the Default Periods and as soon as



Securities and Exchange Commission of Pakistan

clarification was received, proceeded to call the Board meetings on September 23, 2021 for approval of quarterly financial statements pertaining to Default Periods and thereafter transmitted the same to the Commission.

4. Controverting the arguments, the Respondent submitted that the Appellants did not place on record any injunctive order from any authority restraining the Company to electronically transmit its quarterly accounts for the Default Periods in pursuance of section 237 of the Act. The Respondent further contended that timing of interim financial statements is of essence and for this reason disclosure requirements of these accounts have been kept to a bare minimum. It was argued that under section 158 of the Act, directors of a company so retiring shall continue to perform their function until their successors are elected, hence, it was the responsibility of the directors of the Company to manage its affairs in the best interest of the shareholders of the Company and to ensure statutory compliance. The Respondent further argued that the Impugned Order is based upon admitted default, as the Company failed to transmit its interim financial statements for the Default Periods within the stipulated time, and the same was done with an inordinate delay on September 24, 2021, which renders the Appellants liable to penal action under section 237 of the Act.
5. The Appellate Bench (the "Bench") has heard the parties and perused the record. It is a matter of record that multiple suits and applications pertaining to election of directors and holding of annual general meeting (AGM) for the financial year ended June 30, 2020 were pending before the Hon'ble High Court of Sindh. The division bench of the Hon'ble High Court of Sindh while disposing of HCA No. 155 of 2020 vide its order dated August 21, 2020 *inter alia* held that,

"The elections of M/s. Hum Network Limited scheduled to be held on 22.8.2020 will be postponed and rescheduled subject to the final decision by the learned single Judge of CMA No. 6787 of 2020 in Suit No. 968/2020."

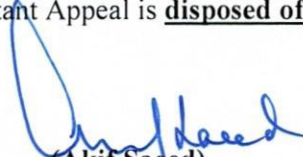
Subsequently, while adjudicating in Suit No. 1001 of 2020, the Hon'ble High Court of Sindh vide its order dated June 28, 2021, restrained the Company from holding the AGM for the financial year ended June 30, 2020 scheduled to be held on July 16, 2021, however, the same was convened on July 16,



Securities and Exchange Commission of Pakistan

2021 upon express permission of the Hon'ble Court vide order dated July 15, 2021 in Suit No. 1001 of 2020.

6. It is the case of the Appellants that quarterly financial statements for the Default Periods were not timely transmitted in pursuance of section 237 of the Act as Board meetings of the Company for approval of the said financial statements could not be held due to uncertainty with respect to legal status of the Board of Directors coupled with litigation pending before the Hon'ble High Court of Sindh and injunctive orders passed by the Hon'ble Court. The above contention of the Appellants appears to be reasonable in the context that quarterly accounts for the Default Periods were transmitted within a reasonable time after vacation of the restraining order by the Hon'ble High Court of Sindh, allowing the Company to hold its AGM for the financial year ended June 30, 2020. Moreover, it is also pertinent to mention here that the Respondent vide Impugned Order, with the exception of the Appellants, issued a warning to the remaining respondents in the SCN proceedings. The aforesaid admitted facts can be regarded as a mitigating factor and thus the Bench is inclined to take a lenient view in the instant matter.
7. In view of the above, the penalty imposed on the Appellants vide Impugned Order is hereby converted into a warning with a direction to strictly ensure compliance of the statutory requirements in future. The instant Appeal is **disposed of** with no order as to costs.


(Akil Saeed)
Chairman/Commissioner


(Abdul Rehman Warrach)
Commissioner

Announced on: **25 AUG 2023**