



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 55 of 2022

M/s. Hum Network Limited

...Appellants

versus

Director/HOD, 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. 55 of 2022 filed by M/s. Hum Network Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997.
2. The brief facts of the case are that the Appellant failed to convene its annual general meeting (AGM) for the financial year ended June 30, 2020 within a period of one hundred and twenty days following the close of its financial year, pursuant to sub-section (1) of section 132 of the Companies Act, 2017



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(the “Act”). The Respondent, while taking cognizance thereof issued a show-cause notice dated February 25, 2021 (the “SCN”) under section 132 Act to the Appellant which was responded by the Appellant vide written response dated April 07, 2021. Hearing in the SCN proceedings was held on July 08, 2021 where-after the Respondent, vide order dated June 30, 2022 passed under section 132 of the Act (the “Impugned Order”), imposed a penalty of Rs. 100,000/- on the Appellant.

3. The authorized representative of the Appellant *inter alia* submitted that the Appellant neither committed nor ever intended to commit any breach of section 132 of the Act which is also evident from the fact that the Appellant 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 matter being sub judice before the Hon’ble High Court of Sindh at Karachi and the uncertain circumstances beyond control of the Appellant. The authorized representative of the Appellant 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 Appellant was not in a position to decide as to which Board should approve the content of the financial statements. The authorized representative of the Appellant argued that despite all the aforementioned pending litigation, injunctive orders in field and the risk of contempt, the Appellant 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 Appellant was diligent in fulfilling its duties by holding the required board meeting for approval of the financial statements and calling the AGM. The Appellant 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 Appellant’s proactiveness and willingness to comply with their statutory requirements.
4. Controverting the arguments, the Respondent *inter alia* contended that holding of AGM within the stipulated period is a statutory requirement under section 132 of the Act *inter alia* for laying and approving annual audited financial statements. The Respondent while defending the Impugned Order argued that section 158 of the Act allows the retiring directors to continue their functions until their successors are elected and that there was no explicit injunctive order from any court whereby the Appellant was restrained to convene the AGM for the financial year ended June 30, 2020. It was further



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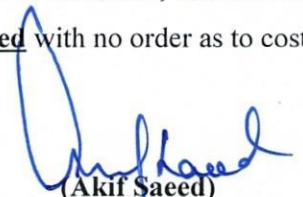
contended by the Respondent that the Appellant held the said AGM on July 16, 2021 i.e. with an inordinate delay of more than eight months, and thus was rightly penalised vide Impugned Order.


5. The Appellate Bench (the “Bench”) has heard the parties and perused the record. It is a matter of record that the multiple suits and applications pertaining to election of directors and hold of 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.”*

Later, while adjudicating in Suit No. 1001 of 2020, the Hon’ble High Court of Sindh vide its order dated June 28, 2021, restrained the Appellant from holding AGM scheduled to be held on July 16, 2021.

6. It is the case of the Appellant that AGM for the financial year ended June 30, 2020 could not be held within the stipulated period of one hundred and twenty days due to litigation pending before the Hon’ble High Court of Sindh and injunctive orders passed by the Hon’ble Court and the same was convened on July 16, 2021 upon express permission of the Hon’ble Court vide order dated July 15, 2021 in Suit No. 1001 of 2020. The above contention of the Appellant is supported by certified true copies of the order sheets of the Hon’ble High Court of Sindh and the same have not been refuted by the Respondent.
7. In view of the above, the SCN and the Impugned Order are hereby *set aside*, and the instant Appeal is **accepted** with no order as to cost.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Abdul Rehman Warraich)  
Commissioner

Announced on: **23 AUG 2023**