



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 67 of 2021

1. Mr. Muhammad Arif, Director
2. Mr. Zubair Hussain Akhtar, Director
3. Mr. Waqar Ahmad, Chairman
4. Mian Khalid Nasim, Director
5. Mr. Naseer Ahmad, Chief Executive Officer
6. Mr. Muhammad Arshad, Director
7. Mr. Zafar Iqbal, Director
8. M/s. Gulistan Textile Mills Limited

...Appellants

versus

Executive Director, Adjudication-I SECP, Islamabad

...Respondent

Dates of hearings:

March 10, 2022, March 31,
2022, December 30, 2022

Present:

For the Appellants:

Mr. Muhammad Hamza Khokhar, Advocate High Court

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP
3. Mr. Adnan Naseer, Assistant Director, Adjudication-I, SECP

Handwritten signature and initials:
ML



Securities and Exchange Commission of Pakistan

ORDER

1. This Order shall dispose of Appeal No. 67 of 2022 filed by M/s. Gulistan Textile Mills Limited (Company) and seven directors of the Company (Appellants) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated March 26, 2021 (Impugned Order) passed by the Executive Director Adjudication-I SECP, Islamabad (the Respondent) under Sections 166, 169 and 479 of the Companies Act, 2017 (the Act) and Regulation 7 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations).
2. The brief facts of the case are that the Company in an extraordinary general meeting (EOGM) held on October 31, 2020 appointed Mr. Zubair Hussain Akhtar and Mian Khalid Naseem as independent directors. Appointment of both independent directors were not made from the data-bank maintained by the Pakistan Institute of Corporate Governance (PICG), in terms of section 166(1) of the Act. Moreover, Regulation (7) of the Regulations requires listed Companies to have at least one female director on the Board of Directors. However, the Company failed to appoint a female director in the election. In view thereof, the Respondent issued a show cause-notice dated February 23, 2021 (the SCN) to the Appellants. The SCN was replied by the Chief Executive of the Company through letter dated March 8, 2021. Subsequent to the reply of the Company, a hearing was held on March 18, 2021, the Appellant's representative appeared and stated that no person could be attracted to work as an independent director or female director without any fee and remuneration owing to the financial limitations and conditions of the Company. They further stated that new independent directors from PICG's data-bank, and a female director will be appointed in the next annual general meeting. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 25,000/- on each Appellant (which aggregate to Rs. 200,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that the Company has not appointed a female director and Independent Directors from the PICG data-bank, on the basis of financial hardships and acute shortage of working capital due to blockage of credit lines. It was stated that the operations of the Company were closed and the management was trying to meet overhead expenses. The Appellant's representative also stated that a scheme- of-arrangement has been approved by the High Court of Sindh under Sections 279 to 283 and 285 of the Act with respect to the Company's revival, therefore, this factor may be considered for a lenient view. It is also stated that the Company



Securities and Exchange Commission of Pakistan

has requested the Respondent for relaxation of the condition for appointment of independent and female director under Section 166(6)(b) of the Act.

4. The Respondent rebutted the grounds of Appeal and stated that the requirements of Section 166(1) of the Act are mandatory; the role of independent directors is of significance, to safeguard the interest of minority and institutional shareholders and of creditors. The Respondent also stated that the Company was responsible to ensure compliance of the requirements of section 166 of the Act, however, it failed in this regard.
5. The Respondent further stated that the election of directors was held on October 31, 2020 however, at the time of said election the Company failed to appoint the female director and independent directors from PICG data- bank. Hence, the Appellants and the Company violated the provisions of Regulation 7 of the Regulations and Section 166(1) of the Act at the time of the election. Whereas, the request under Section 166(6)(b) of the Act was made after the SCN was served upon the Appellant. Hence, default was made by the Appellants and the Company.
6. The Appellate Bench (the Bench) has heard the arguments of both the parties and perused the record. In view of the submissions put forth by the parties, the Bench's analysis and findings are as under:
 - i. The request made by the Company under 166(6)(b) was not maintainable as the violation has already been committed. In other terms, the was seeking a retrospective effect which cannot be granted.
 - ii. A Public listed company has a higher and more significant responsibility towards its stakeholders and is obligated to act in the best financial interest of the shareholders of the corporation to safeguard it. The law has made some provisions mandatory in nature which are required to be followed. Violation of the mandatory provisions merely on the basis of financial constraints has no justification.

Handwritten signature
ML



Securities and Exchange Commission of Pakistan

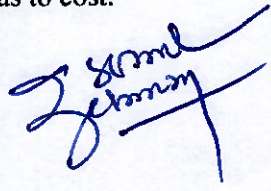
- iii. The Company has admitted the default, however, but has not made any payment on account of the penalty thus far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- iv. The Company and the Appellants' argument, that the penalty may be waived due to adverse financial conditions, is unacceptable

7. In the view of the above discussion, the Bench does not find any justification for interference in the impugned order, therefore decides as under:

- i. The decision made in the Impugned Order is maintained.
- ii. Although the real value (time value) of the penalty amount has significantly reduced due to high inflation, by giving due regard to the admission of default by the Appellants and Company, the amount of the penalty is not enhanced.
- iii. The Appeal is dismissed without any order as to cost.



(Mujtaba Ahmad Lodhi)
Commissioner



(Abdul Rehman Warraich)
Commissioner

Announced on: **20 APR 2023**