



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 68 of 2021

1. Mr. Sohail Maqsood, Chief Executive Officer
2. Mr. Iftikhar Ali, Director
3. Mr. Muhammad Akhtar Mirza, Chairman
4. Mr. Abid Sattar, Director
5. Mr. Muhammad Ashraf Khan, Director
6. Mr. Hussain Ather, Director
7. Mr. Muhammad Maqbool Anjum, Director

...Appellants

versus

Executive Director, Adjudication-I, SECP, Islamabad

...Respondent

Dates of hearing:

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

Present:

For the Appellant:

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

ORDER

1. This Order shall dispose of Appeal No. 68 of 2021 filed by seven directors (the Appellants) of the M/s. Gulshan Spinning Mills Limited (the Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated March 26, 2021 (Impugned

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Order) passed by the Executive Director/HOD, Adjudication-I Department, SECP, Islamabad (the Respondent) under Sections 134, 166 169 and 479 of the Companies Act, 2017 (the Act).

2. The brief facts of the case are that in an extraordinary general meeting (EOGM) held on July 18, 2019, the Company appointed Mr. Muhammad Asif Akram and Mr. Muhammad Junaid as independent directors. The Company was required to appoint independent directors from the data-bank of the Pakistan Institute of Corporate Governance (PICG) in terms of section 166(1) of the Act, however, it failed to do so. Furthermore, the Company did not annexe the 'statement of material facts' with the notice of EOGM in terms of section 134(3) of the Act. In view thereof, the Respondent issued a show-cause notice dated April 23, 2020 (the SCN) to the Appellants. The SCN was replied to by the Company Secretary on July 1, 2020. Subsequent to the reply of the Appellants, a hearing was fixed in the matter on March 18, 2021. The Appellant's representative appeared and stated that due to the adverse financial position of the Appellant, no person could be attracted to work as an independent director of the Company without any fee and remuneration. They further stated that new independent directors will be appointed from PICG's data-bank in the next annual general meeting. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 25,000/- on each of the Appellant (which aggregate of 175,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that independent directors have not been appointed from PICG's data-bank due to financial hardships and an acute shortage of working capital. The Appellants 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.
4. The Respondent rebutted the grounds of Appeal as under;

- a. The requirements of Section 134(3) of the Act are mandatory. Relevant provision of Section 134(3) of the Act states that:

"Where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every

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director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected, shall be specified in the statement.”

The word "shall" in the given provision necessitates and makes it mandatory that statement of material facts shall be annexed with the notice of EOGM. However, the Appellants have failed to ensure compliance by not annexing the same in terms of section 134(3) of the Act.

b. 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 Appellants were responsible to ensure compliance of the requirements of section 166 of the Act, however, they failed in this regard.

5. The Appellate Bench (the Bench) has heard the arguments of both 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. 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.
- ii. The Appellants have admitted the default, however, 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.
- iii. The Appellants' argument, that the penalty may be waived due to adverse financial conditions, is not acceptable.

6. In view of the above discussion, the Bench decides as under:

- i. The decision made in the Impugned Order is maintained.

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- 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 Appellant, 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:

18 APR 2023