



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 74 of 2022

M/s. Gulistan Textile Mills Limited

...Appellants

versus

Director/HOD, Adjudication-I, SECP

...Respondent

Date of hearing:

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. 74 of 2022 filed by M/s. Gulistan Textile Mills Limited (the Appellant) against Order dated June 29, 2022 (the Impugned Order) passed by the Director/HOD, Adjudication-I, SECP (the Respondent) under Section 132 read with Section 479 of the Companies Act, 2017 (the Act).
2. The brief facts of the case are that the Appellant failed to convene an annual general meeting for the financial year ended June 30, 2021 (the AGM) within a period of one hundred and twenty days following the close of its financial year. Therefore, a show cause notice dated December 23, 2021 (the

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Securities and Exchange Commission of Pakistan

SCN) was issued to the Appellant, whereas, the SCN was replied vide a letter dated January 7, 2022. The hearing in the matter was held on May 30, 2022, wherein Mr. Muhammad Ijaz, Company Secretary and advocate Mr. M. Hamza Khokhar (the Representative) stated that the AGM was delayed due to the resignation of M/s. Baker Tilly Mehmood Idrees Qamar (the Auditor) in November 2020. The Representative stated that the Auditor resigned without signing the accounts of FY 2020, which eventually delayed the AGM of FY 2020. The Representative further stated that the Auditor also refused to issue NOC to the new auditor, hence the Appellant approached the SECP through letters dated November 13, 2020, and November 16, 2020, and also highlighted the matter with the ICAP through a letter dated January 19, 2020. The Representative informed that subsequently, M/s. Malik Haroon Shahid Safder and Co. was appointed as the new auditor who completed the audit of FY 2020 accounts in October 2021. The Representative stated that the delay in FY 2020 accounts and the AGM, ultimately caused a delay in holding of the AGM for FY 2021. The Representative stated that the audit for FY 2021 is ongoing and expected to be completed by June 2022, hence the AGM for FY 2021 is anticipated to be held in August 2022. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 100,000/- on the Appellant.

3. The Appellant has reiterated the reasons stated herein above, as grounds of Appeal and requested a lenient view.
4. The Respondent has rebutted the grounds of Appeal and put forth the following arguments:
 - i. The compliance history of the Appellant is not satisfactory and, in many cases, the compliances were made only after SECP took notice of the matter.
 - ii. The Appellant has admitted the default of Section 132 of the Act.
 - iii. Holding the AGM in a timely manner is not only a requirement of law but also ensures transparency and provides necessary information about the company's state of affairs to all stakeholders.

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Securities and Exchange Commission of Pakistan

5. The Appellate Bench (the Bench) has heard the parties and perused the record. In view of the arguments put forth by the parties, the Bench's analysis and findings are as under:

- i. In view of the Appellate Bench's order dated March 1, 2023, passed in Appeal No. 60 of 2020 we reiterate here that in case of violation of Section 132 of the Act, the company as a juristic person and directors and company secretary as natural persons are liable to the penal consequences.
- ii. A public listed company has a higher responsibility to disseminate a true and accurate state of affairs to all the stakeholders by holding the AGM within the stipulated time so that appropriate and timely decisions are made. Therefore, the Company, the BOD, and Company Secretary should have conducted the AGM as per the applicable legal framework.
- iii. The Appellant has an unsatisfactory compliance history as there have been multiple instances of non-holding of AGMs in recent years and even in this case default has been admitted.
- iv. Upon the resignation of the Auditor, the Appellant, and other responsible persons failed to follow the procedure envisaged in Section 246 of the Act for the appointment of a new auditor. Letters dated November 13, 2020, and November 16, 2020, are insufficient to establish that requirements of the applicable framework for the appointment of a new auditor have been met by the Appellant, therefore, we are not inclined to accept such letters as a plausible defense.

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

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

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Securities and Exchange Commission of Pakistan

- ii. Although the real value (time value) of the penalty amount has significantly reduced due to high inflation, the amount of the penalty is not enhanced by giving due regard to the admission of default by the Appellant.
- iii. While taking a further lenient view, we restrain ourselves to direct the Respondent to proceed against the BOD and the company secretary as well. However, in all future cases, we hereby direct the Respondent to ensure the issuance of SCNs to all persons including the company, directors, and company secretary for alleged violation of Section 132 of the Act.
- iv. The Appeal is dismissed without any order as to cost.

(Mujtaba Ahmad Lodhi)
Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on: **20 APR 2023**