



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 78 of 2021

1. Mr. Sohail Ahmed
2. Mr. Asim Ahmed
3. Ms. Ghazala Saleem
4. Mr. Farhan Sohail
5. Mr. Muhammad Hasan

...Appellants

versus

Additional Director, Listed Companies, Adjudication Department – I

...Respondent

### Date of hearing:

March 09, 2023

### Present:

#### For the Appellants:

1. Mr. M. Javed Panni
2. Barrister Shahzad Javed Panni – Advocate High Court

#### For the Respondent:

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

### ORDER

1. This Order shall dispose of Appeal No. 78 of 2021 filed by Mr. Sohail Ahmed and four others (chief executive, directors, and chief financial officer) of M/s. S.G. Power Limited (the “**Appellants**”), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the “**SECP Act**”).
2. The brief facts of the case are that the M/s. S.G. Power Limited (the “**Company**”) failed to electronically transmit its interim financial statements to the Securities and Exchange Commission of



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Pakistan (the “SECP/Commission”) within the stipulated time for the period ended September 30, 2017 (filing due on October 30, 2017), December 31, 2017 (filing due on March 1, 2018), March 31, 2018 (filing due on April 30, 2018), September 30, 2018 (filing due on October 30, 2018), December 31, 2018 (filing due on March 1, 2019), and March 31, 2019 (filing due on April 30, 2019) (the “Default Periods”). The Additional Director/HOW (Adjudication-I), SECP (the “Respondent”) vide order dated April 19, 2021 (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 with the Commission within the statutory timeframes; and, thus, vide the Impugned Order, imposed a fine of Rs. 280,000/- (Rs. 40,000/- each Appellant in the instant Appeal).

3. The Appellants submitted that the Respondent vide the Impugned Order erred in holding that the Company’s authorized representative failed to submit the evidence of filing interim accounts for the periods ended September 30, 2017, December 31, 2017, and March 31, 2018 with Company Registration Office (CRO) Karachi as it is not based on true facts due to the reason that proof of filing was emailed and confirmation of receipt was obtained via phone. Moreover, they stated that the periodical accounts were transmitted to Pakistan Stock Exchange (PSX), CRO and the shareholders did receive the accounts as per requirements of the law, however, only SECP HQs could not be sent the accounts electronically due to oversight of the staff, therefore, as such the compliance of law has been established. It was argued by the Appellants that the SECP was under a statutory obligation to prove that the Appellants had acted deliberately in defiance of law, was guilty of conduct contumacious, dishonest or acted in conscious disregard of his obligation. Moreover, the Appellants contended that it has been held by the superior courts that levy of penalty is a matter of discretion which must be exercised by the authorities judiciously on consideration of relevant circumstances; thus, each and every case has to be decided on its own merits, whereas in the instant case the non-compliance was neither willful nor it could be construed to be malafide evasion of duty.

4. Controverting the arguments, the Respondent contended that interim accounts for the periods ended September 30, 2017, December 31, 2017, and March 31, 2018 were never transmitted to the

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Commission through designated email provided in terms of Circular No. 24 of 2017. Even otherwise the same were filed with the concerned CRO with a delay. Moreover, the Respondent submitted that timing of interim financial statements is of essence, the disclosure requirements of these accounts have been kept to a bare minimum. The Respondent contended that the Impugned Order is based upon default committed by the Company as it failed to transmit its interim financial statements for the Default Periods within the stipulated time, 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. Firstly, it is imperative to look at the record of filing of the interim financial statements for the Default Periods with the Commission and the same is reproduced in the matrix as hereunder:

Quarter	Default Periods	Filing Due	Filed with the Commission (Email/eServices/Registrar/Physical)	Filed with PSX
1 <sup>st</sup>	September 30, 2017	October 30, 2017	January 2018 (Registrar)	December 27, 2018
2 <sup>nd</sup>	December 31, 2017	March 1, 2018	February 2019 (Registrar)	December 27, 2018
3 <sup>rd</sup>	March 31, 2018	April 30, 2018	May 2018 (Registrar)	Nil
1 <sup>st</sup>	September 30, 2018	October 30, 2018	Nil	Nil
2 <sup>nd</sup>	December 31, 2018	March 1, 2019	February 27, 2019 (Physical), March 4, 2019 (eServices)	February 26, 2019
3 <sup>rd</sup>	March 31, 2019	April 30, 2019	April 30, 2019 (Physical)	Nil

6. The above clearly shows that no interim financial statements for the Default Periods were electronically transmitted to the Commission as envisaged under section 237 of the Act. Moreover, apart from the quarterly accounts for the period ended December 31, 2018 and March 31, 2019, no interim financial statements for the rest of the Default Periods were filed with Commission within the stipulated time period through any mode. The case of Appellants is that, though the Company failed to transmit its

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interim financial statement for the Default Periods within time, however, no willful default can be attributed to the Company for the reason that the said interim financial statements were filed with the concerned CRO and PSX. In order to ascertain the requirement of the law, relevant provisions of section 237 of the Act are reproduced hereinunder for ease of reference:

*“237. Quarterly financial statements of listed companies.—(1) Every listed company shall prepare the quarterly financial statements within the period of—*

*(a) thirty days of the close of first and third quarters of its year of accounts; and*

*(b) sixty days of the close of its second quarter of its year of accounts:*

...

*(2) The quarterly financial statements shall be posted on the company's website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1):*

...

*(4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.”*

7. Bare perusal of the above legal provision transpires that sub-section (1) of section 237 of the Act expressly provides the timeline for filing of quarterly accounts whereas sub-section (2) thereof specifies mode of filing of the quarterly accounts i.e. electronically. Furthermore, the Commission in order to facilitate the companies and streamline the filing process, issued Circular No. 24 of 2017 which makes it incumbent upon a listed company to electronically transmit its quarterly financial statements, in terms of section 237(2) of the Act, on the designated email address [financial.statements@secp.gov.pk](mailto:financial.statements@secp.gov.pk).
8. It is imperative to mention that interim financial statements prepared accurately and in a timely manner provide a reliable source of information regarding a company's financial position and performance to its users, besides illustrating the results of the management's stewardship of resources entrusted to it. The Appellants have fiduciary duties towards the Company and its shareholders while providing information to various stakeholders concerning their performance as to how diligently and ethically

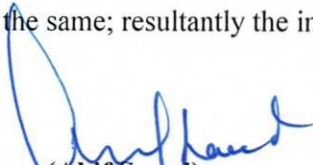
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they are discharging their fiduciary duties and responsibilities. Hence, the contention of the Appellants that filing of quarterly financial statements with the concerned CRO and PSX fulfils the requirements of the section 237 of the Act does not *stricto sensu* correspond with the relevant provision and may be construed as a mitigating factor attracting leniency, only if done within the stipulated time, which is not the case in the instant matter. Moreover, the argument of the Appellant does not sustain on the touchstone of alternate filing modes as in most of the Default Periods the same was done either with delay or not done at all.

9. In view of the above, the Bench does not find any reason to interfere with the Impugned Order and thus upholds the same; resultantly the instant Appeal is **dismissed** with no order as to cost.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 25 AUG 2023