

# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. IV**

In the matter of

**Appeal Nos. 85 of 2016**

Universal Service Fund

...Appellant

Versus

(i) Securities and Exchange Commission of Pakistan

(ii) Commissioner (Company Law Division)

...Respondents

Date of Hearing

14/11/16

### **Present:**

#### **For the Appellant:**

- 1) Mr. Syed Sibte-e-Hassan Gardezi, General Manager (Law) Universal Service Fund

#### **For Respondents:**

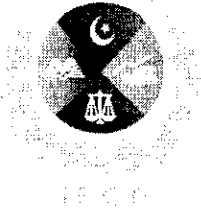
- 1) Mr. Mubasher Saeed, Director (CCD)
- 2) Ms. Beenish Waqas, Assistant Director (CCD)

### **ORDER**

1. This Order is passed in the matter of Appeal No. 85 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the Order (Impugned Order) dated 06/09/16 passed by Respondents.

Appeal No. 85 of 2016

Page 1 of 4

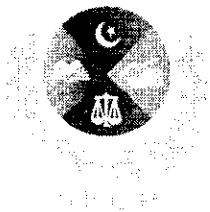


## Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that M/s. Universal Service Fund (the Appellant), being a public sector company, was required to publish, circulate and file statements of compliance (SOC) and review reports from the auditor for the years ended 30/06/14 and 30/06/15 as required under rule 24(1) & (2) of the Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules) but failed to do so.
3. The Show Cause Notice dated 28/04/16 (SCN), issued under rule 25 of the Rules read with section 506(2) of the Companies Ordinance, 1984 (the Ordinance) was issued calling upon the Appellant and its Directors/Officers to explain in writing and also to appear in person or through an authorized representative for hearing on 15/06/16 to clarify the position. In response to the above SCN, the Appellant, vide letter dated 11/05/16, submitted the SOC for the year 2014 and further informed that SOC for the year 2015 will be submitted once the review report is received from the external auditors. The Assistant Company Secretary appeared on behalf of the Appellant on the date of hearing and made the same submissions. The Appellant, vide letter dated 15/06/16, also submitted that SOC for the year ended 30/06/15 will be submitted within a period of one month. The Appellant, however, failed to submit the SOC for the year ended 30/06/15 within the time frame as had been communicated by them.
4. The Respondents dissatisfied with the response of the Appellant, held that the Appellant and its Directors had violated the mandatory requirements of rule 24 of the Rules by not filing the SOC for the year ended 30/06/15. In exercise of the powers conferred under rule 25 of the Rules read with 506(2) of the Ordinance, a fine of Rs.100,000/- was imposed on the Appellant. Further, the Appellant and its Directors including its Chief Executive were warned to be careful in future to ensure compliance of the mandatory provisions of the Rules.
5. The Appellant preferred the appeal on the following grounds:

Approved: 11/06/2016

Page: 2 of 4

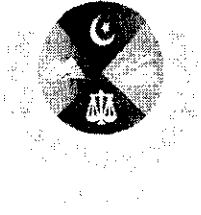


## Securities and Exchange Commission of Pakistan

- a) The Assistant Company Secretary stated in the immediate reply to the SCN that there is a delay at the external auditors' end on the Review Report to the Directors and that the SOC will be submitted to the Commission as soon as the Review Report is released from the auditors. As directed by the Commissioner, the Assistant Company Secretary marked her attendance at the Commission and the authorized representative of the Appellant was directed to discuss the matter with Mr. Saeed Ullah Khan, Additional Registrar CCD. The draft SOC was submitted to the Additional Registrar and it was stated that the Appellant was trying its best to submit the SOC. The delay, however, was only because of the delay by the external auditors. Extension was requested until the time of external auditor's submission. On 23/09/16, SOC duly approved by the external auditors was submitted to the Deputy Registrar. The Copy of the Review Report was also submitted to Mr. Waseem Ahmad Khan; Additional Registrar of Companies. The Appellant, therefore, has already complied to the extent of submission of SOC for the year 2014/15.
- b) The Impugned Order is against settled principle of law causing substantial injustice to the Appellants. The Appellant has a good prima facie case and if the operation of the Impugned Order is not suspended, the Appellant will suffer an irreparable loss.
6. The representatives of Respondents rebutted the arguments of the Appellant as follows:
- a) The Appellant, vide letter dated 15/06/16, informed Respondents that the SOC for the year 2015 will be submitted within a period of one month. The SOC, however, was submitted on 23/09/16 which was after the issuance of Impugned Order dated 06/09/16. The Appellant, therefore, was directed to deposit the amount of Rs.100,000/- within 30 days of the Impugned Order for violating the mandatory provisions of rule 25 of the Rules.

Appendix SF of 2016

Page 3 of 4



## Securities and Exchange Commission of Pakistan

- b) The Impugned Order was issued under the relevant provisions of the law and was passed on merits. The Appellant has no case to defend as the default is admitted.
7. We have heard the parties i.e. the Appellant and Respondents. The Appellant has accepted the default but stated that it was due to the delay of the auditors that the SOC was submitted subsequent to passing of the Impugned Order. We are of the view that the Respondents had been reasonable in giving the Appellant adequate time to submit the SOC, however, there was unreasonable delay in submitting the SOC and any delay on part of the external auditors is not a sufficient reason for contravention of the Rules. The penalty for contravention of the Rules, therefore, was rightly imposed on the Appellant.
8. In view of the above, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.

(Fida Hussain Samoo)  
Commissioner (Insurance)

(Zafar Abdullah)  
Commissioner (SCD)

Announced on: 18 JAN 2017