



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 86 of 2019

- i. Mr. Ehmer Iqbal
- ii. Mr. Adnan Ullah Tauseef
- iii. Mr. Muhammad Ubaid
- iv. Mr. Mubashara Khan
- v. Mr. Amir Hussain Kazmi
- vi. Mr. Mubashir Mehmood Abbasi
- vii. Mr. Rias Umair Habib Ahmed

Appellants

Versus

The Executive Director, CSD, SECP

Respondent

**Date of hearing:** 23/09/21

### **Present:**

**For the Appellants:**

Barrister Omar Malik, Lawgics

**For the Respondent:**

Mr. Amir Saleem, Additional Director (Adjudication-I), SECP.

### **ORDER**

1. This order is passed in appeal No.86 of 2019 filed by seven directors of M/s. Drekkar Kingsway Limited (the Appellants) under section 33 of the Securities and Exchange



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Commission of Pakistan (Commission) Act, 1997 against the order dated 09/10/19 (Impugned Order) passed by the Executive Director, CSD (the Respondent).

2. The brief facts of the case are that M/s. Drekkar Kingsway Limited (the Company) through its letter dated 06/10/17 filed a notice of its annual general meeting (AGM) stated to be held on 30/10/17. The agenda item no.4 of the said notice, being special business, was to seek approval from the shareholders for divestment of 95.5% majority controlling interest shares of M/s. Invest Forum (Pvt.) Ltd (Invest Forum). However, the Company failed to annex the statement of material facts to the notice of AGM as required under section 134 of the Companies Act, 2017 (the Act). Moreover, the notice of AGM did not contain draft resolution for the special business of divestment of shares of Invest Forum as required under section 140 of the Act.
3. Show-Cause Notice dated 03/10/18 was issued to the Appellants under sections 134 and 140 read with section 479 of the Act indicating the aforesaid grounds. The Company vide its letter dated 16/10/18 stated that the investment of controlling interest in shares of Invest Forum was properly addressed in the notice under the agenda item of special business. However, the Company inadvertently missed to show the same agenda in the Board resolution form in the Statement of Material Facts, as showing the same in Board resolution format was not in practice under the Companies Ordinance, 1984. It also stated that the Company will observe compliance in due course of time. The Company was provided with an opportunity of hearing on 26/11/18, 17/12/19 and 27/03/19, however, no one appeared on the aforementioned dates. Mr. Zahir Shah vide his letter dated 28/03/19 sought adjournment and requested further time for providing written submissions in response to the aforesaid show cause notice. However, despite providing ample time, the Company did not provide any further submissions. A final opportunity of hearing was provided to the Appellants on 04/07/19. Mr. Zahir Shah appeared on behalf of hearing, seeking adjournment and seeking 5 more days to submit





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- a written response which was acceded to. However, the Appellants failed to provide any further submissions.
4. The Respondent dissatisfied with the response of the Company held that section 134 of the Act explicitly provides that in case of special business to be transacted in general meeting there shall be attached a Statement of Material Facts. Furthermore, the Respondent held that requirements of section 140 of the Act are also self-explanatory and clear that in case of special business the notice shall be accompanied by a draft resolution. Therefore, in exercise of powers conferred under aforesaid provisions of the Act, a penalty of Rs 10,000 was imposed on each of the Appellants by the Respondent with the total amount aggregating to Rs 70,000.
  5. The Appellants preferred the appeal *inter alia* on the grounds that no hearing opportunity was provided to them after issuance of the show cause notice and, therefore, the Impugned Order is liable to be dismissed.
  6. The Respondent rebutted the arguments of the Appellants *inter alia* on the grounds that multiple hearing opportunities were provided to the Appellant on 26/11/18, 17/12/19 and 27 /03/19 which the Appellant did not avail nor did they submit any submissions. Furthermore, no satisfactory explanation was given by the Appellants on why the default took place.
  7. We have heard the parties i.e. the Appellants and the Respondent. The Appellants have given no cogent reasons why the Company failed to annex the Statement of Material Facts to the notice of the AGM as required under section 134 of the Act and as to why the notice of AGM did not contain a draft resolution for the special business of divestment of shares of Invest Forum as required under section 140 of the Act. Furthermore, there was no explanation given as to why the Appellants failed to appear



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before Respondent and argue their case despite being given multiple hearing opportunities.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. Therefore, the Impugned Order is upheld and the Appeal is dismissed with no order as to cost.

(Sadia Khan)  
Commissioner

( Farrukh Hamid Sabzwari )  
Commissioner

Announced on: 15 NOV 2021