



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 87 of 2022

M/s. Gulistan Spinning Mills Limited

...Appellant

versus

HOD, Adjudication-I SECP, Islamabad

...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. 87 of 2022 filed by M/s. Gulistan Spinning Mills Limited (the Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated June 16, 2022 (Impugned Order) passed by the HOD, Adjudication-I Department, SECP, Islamabad (the Respondent) under Sections 166, 169 and 479 of the Companies Act, 2017 (the Act).

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Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that in an extraordinary general meeting (EOGM) held on March 31, 2021, the Appellant appointed Mr. Muhammad Asif Akram and Mr. Muhammad Junaid as independent directors. The Appellant 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. In view thereof, the Respondent issued a show-cause notice dated April 25, 2022 (the SCN) to the Appellant. The SCN was not replied to by the Appellant, whereas, the hearing opportunity was availed by the Appellant's representative on May 30, 2022. The Appellant's representative 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. 50,000/- on the Appellant.
3. The Appellant has 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 Appellant 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 and stated 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 Appellant was responsible to ensure compliance of the requirements of section 166 of the Act, however, it 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. Law has made some provisions mandatory in nature to be followed. Violation of mandatory provision mere on the basis of financial constraints has no justification.

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Securities and Exchange Commission of Pakistan

- ii. The Appellant has admitted his default however, despite admitting his default, he has not made any payment on account of the penalty so 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 deplorable.

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

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

17 APR 2023