



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 88 of 2022

M/s. Gulshan 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. 88 of 2022 filed by M/s. Gulshan 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 Head of Department Adjudication-I, (Respondent) under Section 512 and Section 479 of the Companies Act, 2017 (the Act) read with Regulation 7 and Regulation 41 of the Listed Companies (Code of Corporate Governance) Regulations, 2017 (Regulations).

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Appellate Bench

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2. The brief facts of the case are that in the election of the Board of Directors (BOD) held on July 18, 2019, seven (7) directors were elected, however, the Appellant failed to appoint a female director in violation of the mandatory requirements of Regulation 7 of the Regulations. Hence, a show-cause notice (SCN) dated April 29, 2022 was issued to the Appellant, which was not replied to by the Appellant. A hearing in the matter was held on May 30, 2022. The Appellant's representative appeared and stated that no person consents to becoming a director of the Company without fee and remuneration, as the Appellant is facing financial constraints and is unable to pay remuneration to its directors, However, it was assured that a female director will be appointed upon creation of any causal vacancy or by 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 the Appellant has filed an application under Regulation 38 of Regulations for relaxation/extension of time for compliance of the regulation i.e appointment of a female director before the Respondent and it is a settled principle of law that the Courts/Tribunals are bound to first decide the application pending before them and then to proceed further in accordance with the law. However, without deciding the Appellant's application, the Respondent has passed the Impugned Order which is liable to be set aside. It has also been stated by the Appellant that the penalty imposed by the Respondent will badly affect the process of rehabilitation of the Appellant i.e Scheme of Arrangement. The Appellant pleaded that the only reason for not appointing a female director was the financial constraints of the company and that, a lenient view may be taken so that, the penalty of fine imposed on the Appellant may be waived.
4. The Respondent rebutted the grounds of Appeals and put forth the following arguments:
 - i. That the election of directors was held on March 31, 2021 however, at the time of said election the Appellant failed to appoint the female director. Hence, the Appellant violated the provisions of Regulation 7 of the Regulations at the time of the election. Whereas, the application under Regulation 38 of Regulations was filed after the SCN was served upon the Appellant. Hence default was made by the Appellant.
 - ii. The Regulations came into force for the period starting September 25, 2019, whereas elections of the Directors were held on March 31, 2021 wherein no female director was appointed, contrary to the mandatory requirement of Regulation 7 of the Regulations. Hence the Appellant violated the provision of Regulation 7 of the Regulations.

Zg.
/_____
ML.



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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. The application filed by the appellant under Regulation 38 of the Regulations was not maintainable as the violation has already been committed. In other terms, the Appellant was seeking a retrospective effect which cannot be granted.
- ii. 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. The law has made some provisions mandatory in nature which are required to be followed. Violation of mandatory provisions merely on the basis of financial constraints has no justification.
- iii. The Appellant has admitted the default, but has not made any payment on account of the penalty thus far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- iv. The Appellants' argument, that the penalty may be waived due to adverse financial conditions, is unacceptable.

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