



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 92 of 2023

Zuhair Siddiqui

...Appellant

versus

Director/HOD-Adjudication Department I, SECP

...Respondent

Date of hearing:

October 09, 2023

Present:

For the Appellant:

1. Mr. Zuhair Siddiqui
2. Mr. Saadullah Tahir, Advocate

For the Respondent:

1. Mr. Shahzad Afzal Khan, Director, Adjudication-I, SECP
2. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
3. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
4. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

ORDER

1. The instant Appeal was disposed of by means of following short order dated October 09, 2023:

*“Due to paucity of time and for detailed reasons to be recorded later, the impugned order dated August 15, 2023 is upheld. Accordingly, the instant Appeal is hereby **dismissed** with no order as to costs.”*

Following are the reasons for the short order:



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2. Brief facts of the case are that the Appellant was a Director of Sui Southern Gas Company Limited (“Company”). The Securities and Exchange Commission of Pakistan (“Commission”) received a complaint dated July 07, 2021 from the Ministry of Energy, Government of Pakistan (“Complaint”) wherein it was requested to proceed against the Appellant in terms of section 172 of the Companies Act, 2017 (“Act”) for the reason that the Appellant ‘*has accepted his role in the commission of offence of corruption and corrupt practices in relation to the award of LNG Terminal 1 in favor of Engro Elengy Terminal Pakistan Limited (EETPL).*’ Upon examining the contents of the Complaint in light of the relevant legal provisions, the Appellant was issued a show-cause notice dated August 09, 2021 (“SCN”) under section 172 of the Act read with clause 2(e) of Annexure to the Public Sector Companies (Corporate Governance) Rules, 2013 (“PSC Rules”). The Respondent, after affording hearing opportunities to the Appellant and considering the written submissions of the Appellant, vide order dated August 15, 2023 (“Impugned Order”), disqualified the Appellant with immediate effect to hold office of a director in any public sector company till November 20, 2024, in terms of clause (o) of section 172(1) of the Act read with clause 2(e) of Annexure to the Rules.

3. The Counsel for the Appellant has contended that the Impugned Order has been passed by the Respondent without application of independent mind relying solely upon the Complaint, which too cannot be deemed as a Complaint from the Federal Government as the same was filed by a section officer of the concerned Ministry. He contended that even the contents of the SCN show that the Respondent did not apply judicious mind while passing the Impugned Order as the SCN alleges entering into ‘plea bargain’ by the Appellant in utter disregard of the fact that the Appellant applied for pardon in terms of section 26 of the National Accountability Ordinance, 1999 (“NAB Ordinance”) which cannot in any manner be construed as a ‘plea bargain’. The Counsel argued that the Respondent has only taken into consideration the extracts of the statements of the Appellant recorded before the, Chairman, National Accountability Bureau (NAB) on November 21, 2019 and the Magistrate on November 25, 2019. He argued that the Respondent failed to appreciate the complete content of the statements and the context therein which, if construed properly, shows that the Appellant, despite immense pressure from various quarters, highlighted the wrongs pertaining to the procedure and mechanism adopted while executing the LNG Service Agreement (“LSA”) for awarding LNG



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Terminal-1. The counsel for the Appellant states that the Impugned Order has been passed on a misplaced presumption that statements recorded for tendering of pardon under section 26 of the NAB Ordinance are confession statements, and thus the Impugned Order suffers from illegality as the statement of the Appellant is to be treated as a witness statement in terms of section 164 of Code of Criminal Procedure, 1898 (reliance 2005 YLR 717).

4. The counsel for the Appellant further argued that, in terms of section 41A of the Securities and Exchange Commission of Pakistan Act, 1997 ("SECP Act"), onus to prove on the balance of probabilities that association of the Appellant with the Company will be detrimental to the interest of the public, was on the Respondent and not the Appellant. He submitted that nowhere in the Impugned Order, the Respondent has shown as to how the association of the Appellant with the Company will adversely affect the public interest and has rather relied solely upon the Complaint while passing the Impugned Order which is evident from the contents therein. Moreover, he argued that the criteria for 'fit-and-proper person' as provided in the Annexure to the PSC Rules, is only for guidance of the appointing authorities and thus, only the appointing authorities may take action against a director who incurs disqualification and does not remain fit and proper in terms clause 2(e) of Annexure to the PSC Rules, and, therefore, the same does not confer jurisdiction on the Commission under the PSC Rules. The Counsel for the Appellant contended that the SCN and the Impugned Order suffer from misapplication of law as the same have been issued under clause (o) of section 172(1) of the Act, whereas clause (m) *ibid* deals with matters pertaining to 'plea bargain' before NAB, and by virtue of the doctrine of '*Ejusdem Generis*', the Appellant can only be disqualified under section 172 of the Act in case of entering into a 'plea bargain' with NAB. The counsel for the Appellant summed up his arguments with the contention that illegality of the whole proceedings is apparent from the record as the SCN was issued in 2021 on the basis of LSA that was signed in 2014, hence, the same suffers from laches, making the Impugned Order liable to be set-aside.
5. The Appellant stated that he was obliged to sign the LSA as Managing Director/Chief Executive of the Company as the same was approved by the Board of the Company, Economic Coordination Committee (ECC), and the Federal Cabinet. The Appellant asserted that despite the fact that he had no voting rights in the Board of the Company as the Managing Director, he urged that the procurement process should



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be scrutinized by NAB especially when there are negative press reports and petitions filed in the Supreme Court regarding the process of award of LNG Terminal-1, however the management did not make any recommendations. The Appellant reiterated that his role was confined only to the extent of signing the LSA as a Managing Director of the Company.

6. The Respondent stated at the outset that as per Forms-29 dated November 08, 2012, March 20, 2014, and July 23, 2014 on record, the Appellant was appointed as Chief Executive/Managing Director with effect from November 08, 2012; elected as director of the Company with effect from October 30, 2013; and resigned from the position of Chief Executive with effect from July 16, 2014, respectively. The Respondent submitted that the Appellant in his statement before the Magistrate, *inter alia*, stated that he was the Managing Director of the Company and was also part of the Board as a Director of the Company. Moreover, the Respondent contended that the aforementioned statements of the Appellant also shows that despite being a director, the Appellant did not dissent with the decision of the Company pertaining to award of LNG Terminal-1 and himself stated the names of three directors who dissented with the decision. In response to the Appellant's contention regarding jurisdiction of the Commission to take cognizance under the PSC Rules, the Respondent argued that clause 2(e) of Annexure to the PSC Rules provides for cessation of a person to be considered as fit and proper. The Respondent also contended that the Appellant has been disqualified under clause (o) of section 172(1) of the Act and by virtue of that he ceases to be a fit and proper person in terms of clause 2(e) of annexure to the PSC Rules. The Respondent argued that recent amendment in section 26 of the NAB Ordinance further supports disqualification of the Appellant vide Impugned Order as the said amendment has been given a retrospective effect by the legislature.
7. The Appellate Bench ("Bench") has heard the parties and perused the record. At the outset it would be pertinent to have a look at the genesis of the Impugned Order. It is evident from the record that the Commission received a Complaint from the Ministry of Energy, Government of Pakistan wherein, *inter alia*, it was alleged that the Appellant has accepted his role in the commission of offence of corruption and corrupt practices in relation to the award of the LNG Terminal-1 in favour of EETPL. It is also a matter of record, that subsequently, SCN under section 172 of the Act was issued to the Appellant whereby opportunity of defense was afforded to the Appellant in accordance with law.



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8. Now, we come to the merits of the instant Appeal. The pith of the submissions of the Appellant is that his statements before the Chairman, NAB and the concerned Magistrate, whereby he was extended pardon in terms of section 26 of the NAB Ordinance, have been made the basis for his disqualification vide the Impugned Order. It is imperative to note that the Appellant has not disputed the said statements at any point of the SCN proceedings or during the course of instant Appeal and the same are the admitted facts of the instant case. The disqualification order under challenge has been passed under section 172 of the Act whereunder the Commission is empowered to disqualify a person to hold the office of a director of a company for a period up to five years. One of the grounds raised by the Appellant is that he was not a director of the Company and thus, had no say whatsoever in the Board as he was only the Managing Director/Chief Executive who was obliged to sign the LSA as the same was approved by the Board of the Company. This contention of the Appellant does not correspond with the record as undisputedly he was elected as director of the Company with effect from October 30, 2013, as reported vide Form-29 dated March 20, 2014. Moreover, for the sake of argument, even if the said contention of the Appellant is admitted, it would still make no difference as, in terms of section 200(2) of the Act (section 188 of the erstwhile Companies Ordinance, 1984), a chief executive (by whatever name called) *“shall if he is not already a director of the company, be deemed to be its director and be entitled to all the rights and privileges, and subject to all the liabilities, of that office.”* The said legal provision leaves no room for doubt that a chief executive of a company is treated on the same pedestal when it comes to decisions taken in the Board of a company as he enjoys all the rights and privileges of the directors, including a right to vote. Thus, the argument of the Appellant that he had no vote in the Board of the Company is factually incorrect.
9. The Appellant, when confronted by the Bench regarding the route followed in signing of LSA, admitted that it was the management of the Company which proposed the LSA and then the same was approved by the Board of the Company before it was placed before the ECC and the Federal Cabinet. As far as the contention that statements whereby the Appellant was extended pardon under the NAB Ordinance are being looked into out of context is concerned, the question arises that what is it that the Appellant is being pardoned from? The Appellant’s assertion that his statements whereof he was extended pardon should not be treated as an admission of his involvement directly or indirectly in any of the offences



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under the purview of the NAB Ordinance was not the case before the Commission, rather it was his eligibility to remain as a director of the Company in view of what has been placed on record during the SCN proceedings. Though the Appellant has raised objection with respect to the Complaint received by the Commission, however, the Appellant failed to convince the Bench as to how the hands of the Commission are tied from passing a disqualification order against a person in presence of an express provision under sub-section (3) of section 172 of the Act empowering the Commission to proceed *inter alia* on a complaint.

10. The contention of the Appellant that he was liable to disqualification only if he entered in a 'plea bargain' with NAB is misplaced for the reason that clause (o) of the section 172(1) of the Act is an independent provision and the same can be invoked where the circumstances suggest that it is expedient in the public interest to disqualify a person. The argument that matters pertaining to NAB only fall under the purview of clause (m) of *ibid* is not tenable as the said provision specifies a particular instance for disqualification whereas clause (o) *ibid* has a wider connotation. It is evident from the record that the Appellant is associated with the Board of the Company since 2012 and as Chief Executive/Managing Director remained involved in execution of LSA for awarding of LNG Terminal-1. The argument that the Appellant's association with the Company is in the best interest of minority shareholders is a far-fetched notion as the Appellant, while remaining associated with the Company, was under a fiduciary duty to safeguard the interests of the Company (which is a public sector company). It is beyond comprehension as to how the Appellant considers himself a protector of interests of the minority shareholders, when the record shows that he never took any action to register his dissent in support of his disapproval towards the whole process and mechanism adopted in the award of LNG Terminal-1 while he was part of the Board at that point in time.
11. To put it succinctly, the Impugned Order, whereby the Appellant has been disqualified, is an order passed under the express provisions of the Act. It is based on the statements of the Appellant where there are admissions made. What treatment is meted out to those admissions under the NAB Ordinance is not the domain of the Commission. The argument of the Appellant that proceedings against him suffer from laches as LSA was signed in the 2014 whereas the SCN was after almost seven years is misconstrued for the reason that the Complaint against the Appellant was received in 2021 and thus no



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unreasonable delay can be ascribed to the SCN proceedings against the Appellant. Moreover, the contention of the Appellant that he has been subject to discrimination as no other director of the Company has been show-caused by the Commission, is based on incorrect understanding of law. As per facts available on record, reference pertaining to the award of LNG Terminal-1 is still pending adjudication before the competent forum and the outcome of that will determine the fate of the accused persons in that reference.

12. The decision of the Bench is based on the following reasons:

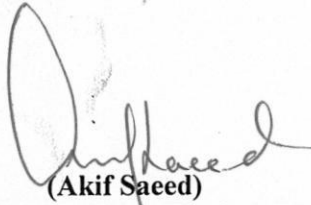
- a) As the Chief Executive/Managing Director i.e. head of the management of the Company, the Appellant did not propose to the then Board of the Company to reject the LSA. The management only proposed that the Board should seek prior clearance from certain agencies;
- b) As the member of Board of the Company, the Appellant did not vote against signing of the LSA;
- c) Later on, the Appellant contended that signing of LSA was wrong and he signed it only on Board's instructions;
- d) The Appellant was a director of the Company, with same powers as any other director, with effect from October 30, 2013 and has mis-stated that he had no voting power in the Board and was only the Chief Executive/Managing Director in the Company;
- e) During the hearing in the instant Appeal, the Appellant admitted that he did not vote against the signing of LSA as member of Board because he was under pressure from certain powerful Board members;
- f) The Appellant's conduct has been inconsistent, unprincipled and unworthy of a member of Board of a company and merits disqualification from appointment as member of Board of public company in the public interest;



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- g) The contention of the Appellant that the Impugned Order has been passed in a mechanical manner while relying merely on the Complaint is not tenable. The record shows that due process of law has been followed and the facts and circumstances have been considered before issuance of the Impugned Order.

13. Foregoing are the reasons for the short order dated October 09, 2023 whereby the instant Appeal was dismissed.



(Akif Saeed)
Chairman/Commissioner



(Abdul Rehman Warraich)
Commissioner

Detailed reasons for short order dated October 09, 2023 issued on: 16 JAN 2024