



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 94 of 2019

1. Mr. Musharaf Rasool Cyan, CEO
 2. Mr. Adnan Ahmed Khan,
 3. Mr. Arif Ahmed Khan,
 4. Mr. Farrukh Hussain Khan,
 5. Mr. Muhammad Ali Tabba,
 6. Mr. Shahid Mahmood,
 7. Syed Ghazanfar Abbas Jilani,
 8. Mr. Muhammad Irfan Elahi
 9. Mr. Atif Aslam Bajwa,
 10. Mr. Tariq Kirmani,
 11. Ms. Faryal Jooma,
 12. Mr. Navaid Hiasib Malik,
 13. Mr. Haque Nawaz,
- (All directors of Pakistan International Airlines Corporation Limited)

Appellants

Versus

The Director (Corporate Supervision Department) SECP

Respondent

Date of hearing:

September 24, 2020

Present:

For Appellant:

1. Dr. Tariq Hassan, ASC
2. Syed Bulent Sohail, Advocate High Court
3. Mr. Muhammad Sameer, Advocate

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Sardar Sohaib Amin, Assistant Director (Adjudication-I), SECP.



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ORDER

1. This Order shall dispose of Appeal No. 94 of 2019 filed by Mr. Musharaf Rasool Cyan and 12 other directors (the Appellants) of M/s. Pakistan International Airlines Corporation Limited (the Company) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated September 5, 2019 (the Impugned Order) passed by the Executive Director, CSD, SECP (the Respondent) under section 132 read with Section 479 of the Companies Act, 2017 (the Act).
2. The brief facts of the case are that in pursuance of the requirement contained under Section 132 of the Act, the Company failed to convene its annual general meeting within a period of one hundred and twenty days following the close of its financial year ended December 31, 2017 (the AGM). Therefore, a show-cause notice dated January 17, 2019 (the SCN) was issued to the Appellants. Hearing in the matter was held on May 8, 2019 whereas written replies to the SCN were received on May 17, 2019 and June 26, 2019. The Respondent concluded the SCN proceedings and imposed fines on the Appellants in the following manner;

S.No	Appellants Name	Amount of Fine (Rs.)
1.	Mr. Musharaf Rasool Cyan, CEO	100,000/-
2.	Mr. Adnan Ahmed Khan, Director	10,000/-
3.	Mr. Arif Ahmed Khan, Director	10,000/-
4.	Mr. Farrukh Hussain Khan, Director	10,000/-
5.	Mr. Muhammad Ali Tabba, Director	10,000/-
6.	Mr. Shahid Mahmood, Director	10,000/-
7.	Syed Ghazanfar Abbas Jilani, Director	10,000/-
8.	Mr. Muhammad Irfan Elahi	10,000/-
9.	Mr. Atif Aslam Bajwa, Director	10,000/-
10.	Mr. Tariq Kirmani, Director	10,000/-
11.	Ms. Faryal Jooma, Director	10,000/-
12.	Mr. Navaid I--iasib Malik, Director	10,000/-
13.	Mr. Haque Nawaz, Director	10,000/-
	TOTAL	220,000/-



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3. The Appellants have filed this Appeal on multiple grounds, however, during the hearing before the Appellate Bench (the Bench), the Appellants' Counsel Syed Bulent Sohail (the Counsel) has argued that the Respondent had no power to issue the SCN to the Appellants under Section 132 of the Act. The Counsel has argued that issuance of the SCN under Section 132 of the Act was *void ab initio* because the Section does not empower the Respondent to implicate directors of the Company on account of non-holding of the AGM. The Counsel argued that under the repealed Section 158 of the Companies Ordinance, 1984, the Respondent had power to penalize the Company and its directors if they fail to convene the AGM within stipulated time, however, under Section 132 of the Act, the Respondent can only take penal action against the Company. The Counsel stated that on this sole ground the Impugned Order is liable to be *set-aside*. The Counsel submitted written comments on October 15, 2020 and reiterated the assertion regarding scope of Section 132 of the Act.
4. The Appellants' Counsels and the Respondent's representatives have argued their case at length, however, without going into the merits of the case, we find it appropriate to analyse and evaluate the admissibility of the argument presented by the Counsel. For reference penal (charging) provisions of Section 158 of the Ordinance and Section 132 of the Act are reproduced below;

The Companies Ordinance, 1984	The Companies Act, 2017
<p>158. Annual general meeting. -(4) If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--</p> <p>(a) if the default relates to a listed company, to a fine not less than [fifty] thousand rupees and not exceeding [five hundred] thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and</p> <p>(b) if the default relates to any other company, to a</p>	<p>132. Annual general meeting. — (5) Any contravention or default in complying with requirement of this section shall be an offence liable—</p> <p>(a) in case of a listed company, to a penalty of level 2 on the standard scale; and</p> <p>(b) in case of any other company, to a penalty of level 1 on the standard scale.</p>



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fine not exceeding [one hundred] thousand rupees and to a further fine not exceeding [five] hundred rupees for every day after the first during which the default continues.	
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5. The Bench has perused the Section 158(4) of the Ordinance, which says that in case of non-holding of the AGM, the Company and every officer of the company shall be responsible for the default, whereas under Section 132 (5) only company could be held liable for default to convene the AGM. The Bench is of the view that intention of the legislature is very clear, therefore, only the company has been made responsible for default under Section 132 of the Act. The Bench is of the view that the aforestated legal position has caused serious damage to the sanctity of the SCN and the Impugned Order.
6. This Bench has already decided a similar matter in Appeal No. 1 of 2019 on October 26, 2020 wherein it was held that under Section 132 of the Act, the Respondent had no power or jurisdiction to initiate proceedings and to impose penalty on the directors of the company. In the circumstance, we are of the view that discussion on merits of the case, may cause prejudice to the rights of the parties, therefore, the Bench will not touch upon the merits of the case.
7. In view of the forgoing, we hereby admit this Appeal and set aside the SCN and the Impugned Order, however, the Respondent may initiate fresh legal proceedings against the Company under Section 132 of the Act. This order has been passed, without any order as to cost.

(Farrukh Hamid Sabzwari)
Commissioner (SCD-PRDD)

(Shaukat Hussain)
Commissioner (INS,C&CD)

Announced on: **12 JAN 2021**