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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	M/s. Hala Enterprises Limited
Show Cause Notice No. & Date:	CSD/ARN/487/2017-543 dated November 04, 2024
Respondents:	(i) Mr. Tahir Jahangir, Chairman, Director; (ii) Mr. Jilani Jahangir, Director; (iii) Mrs. Munizae Jahangir, Director; (iv) Mrs. Sulema Jahangir, Director; (v) Mr. Rashid Ahmad Khan, Director; (vi) Mr. Hassan Ahmad, Director; (vii) Mr. Abdul Munaf, Director; and (viii) M/s. Hala Enterprises Limited.
Date(s) of Hearing(s):	(i) December 11, 2024 (ii) December 27, 2024
Case represented by:	Rana Shakeel – Corporate Consultant (*as Authorized Representative*)
Provision of law involved:	Sections 166 and 169 of the Companies Act, 2017 and Regulations 6, 27 and 36 of the of the Listed Companies (Code of Corporate Governance) Regulation, 2019 read with Section 512 of the Act and Regulation 37 of the CCG Regulations.
Order Date:	April 18, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan **(the "Commission")** through Show Cause Notice No. CSD/ARN/487/2017-543 dated November 04, 2024 **("SCN")** issued to M/s. Hala Enterprises Industries Limited (**the "Company"**) and its Board of Directors (**the "BOD"**), hereinafter collectively referred to as the **"Respondents"**, under Sections 166 and 169 of the Companies Act, 2017 (**the "Act"**) read with Section 512 thereof, and Regulations 6, 27 and 36 of the of the Listed Companies (Code of Corporate Governance) Regulation, 2019 (**the "CCG Regulations"**) read with Regulation 37 thereof, for failure to comply with the provisions of Section 166 of the Act and Regulations 6, 27 and 36 of the CCG Regulations.

2. The provisions of sub-section (1) of Section 166 of the Act requires that an independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission. Accordingly, the Commission vide S.R.O. 73(I)/2018 dated January 25, 2018 has notified Pakistan Institute of Corporate Governance (**the "PICG"**) as the institute for maintenance of the data bank. Furthermore, the proviso to sub-section (1) of Section 166 of the Act provides that the company shall exercise due diligence before selecting a person from the PICG's data bank as an independent director.

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3. Moreover, sub-section (2) of Section 166 of the Act provides that an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest. Sub clause (g) of sub-section (2) of Section 166 of the Act further provides that no director shall be considered independent if he has served on the board for more than three consecutive terms from the date of his first appointment.

4. Furthermore, sub regulation (1) of Regulation 6 of the CCG Regulations provides that it is **mandatory** for each listed company to have at least two or one third members of the Board, whichever is higher, as independent directors. Moreover, Regulation 27(1)(i) and (ii) of the CCG Regulations provides that it is **mandatory** that the audit committee shall be constituted by the BOD keeping in view the following requirements:

(i) the Board shall establish an audit committee of at least three members comprising of non-executive directors and at least one independent director; and

(ii) chairman of the committee shall be an independent director, who shall not be the chairman of the Board.

5. Furthermore, Sub-regulation (1) of Regulation 36 of the CCG Regulations provides that it is **mandatory** that the company shall publish and circulate a statement along with their annual reports to set out the status of compliance with the requirements of the CCG Regulations and the said statement shall be specific and supported by necessary explanations.

6. The penalty for non-compliance of the aforementioned provisions of Section 166 of the Act attracts a penal action under Section 169 read with Section 479 thereof as whoever contravenes or fails to comply with any of the provisions of Section 166 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years.

7. Moreover, Regulation 37 of the CCG Regulations provides that whoever fails or refuses to comply with, or contravenes Regulation 6, 27 and 36 of the CCG Regulations, shall be punishable with penalty as provided under sub-section (2) of Section 512 of the Act, which provides that any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

8. The brief facts of the case are that the review of the Annual Audited Financial Statements of the Company for the year ended June 30, 2023 (**the "Accounts"**), revealed that the Company has following two independent directors:

(a) Mr. Hassan Ahmad; and

(b) Mr. Rashid Ahmad Khan.

9. Company's compliance status with the provisions of Section 166(1) of the Act i.e. whether the name of these two independent directors exists in the PICG independent director database, was assessed on February 26, 2024 where it was observed that the afore-mentioned directors'

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names were not found in the PICG database. It was further observed that the Company held its election of directors in the EOGM on December 21, 2023 and elected both of the abovementioned individuals as independent directors; whereas:

i. Mr. Rashid Ahmad Khan was first elected as a director on December 21, 2014, and served three consecutive terms with the Company. He was re-elected as an independent director on December 21, 2023, thereby his fourth consecutive term is contrary to the requirements of Section 166(2)(g) of the Act.

ii. Mr. Hassan Ahmad has been a member of the board of M/s. Premier Garments Limited (an associated company having common directorship with the Company) since December 30, 2021 and was elected as an independent director in the Company contrary to the requirements of Section 166(2) of the Act.

10. As both the aforesaid directors failed to comply with primary requirement of having being registered with the PICG as well as failed to meet the criteria for eligibility as independent directors due to exceeding the allowable number of terms in office and BOD position at the Company's associated concern respectively, the Company, *prima facie,* failed to comply with the provisions of Section 166(1), 166(2) and Section 166(2)(g) of the Act which attract a penal action under Section 169 of the Act.

11. Furthermore, the Company by not having any Independent Directors on its BOD, especially on account of lack of eligibility of two of directors which were elected as independent directors, *prima facie,* failed to comply with the requirements of Regulation 6 of the CCG Regulations. In addition to the aforesaid, it was also observed that Mr. Rashid Ahmad Khan acted as the Chairman of the Audit Committee which is, *prima facie,* contrary to the requirements of Regulation 27 of the CCG Regulations clearly requiring that an independent director is to be the Chairman of the Audit Committee. Moreover, the directors of the Company also failed to report the above stated non-compliances with the CCG Regulations in their relevant Statement of Compliance, *prima facie,* in contravention of requirements of Regulation 36 while also including an untrue statement therein (Reference para no. 18) by declaring themselves to be fully compliant with the CCG Regulations; whereas multiple non-compliances were undertaken. Such non-compliances of the CCG Regulations, are punishable under Regulation 37 of the CCG Regulations read with Section 512 of the Act.

12. The Commission vide letter dated February 28, 2024 required the Company to comment on the aforementioned non-compliance to which the Company vide letter dated March 28, 2024 *inter alia* responded as follows:

> *"...This is with relation to your queries regarding independent directors, we hereby confirm to you that the management of the Company has decided to replace the existing independent directors in the near future.*
> *....We are of the view that Mr. Rasheed Ahmad Khan duly qualifies as an independent director. However, due to the reason of continuously working on the board for more than three terms, the management of the Company has decided to replace him with another independent director soon."*

13. Having being not satisfied with the aforesaid response, SCN was issued to the Respondents to show the cause in writing as to why a penal action may not be taken against them for non-compliance of the requirements of the Act and the mandatory provisions of the CCG Regulations.

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It is pertinent to observe that despite grant of extension in time for submission of response to SCN upon the request of the Company, the Respondents did not file a response in time.

14. In order to provide opportunity of personal representation and to meet the ends of justice, hearing in the matter was first fixed for December 11, 2024. However, the Respondents requested for an adjournment in the matter. Subsequently, the Company vide letter dated December 23, 2024 submitted the following written response:

> *1. The company has appointed two new independent directors in replacement of Mr. Rashid Ahmed Khan (CNIC #42301-0695353-3) and Mr. Hassan Ahmed (CNIC # 35202-8877408-7). The details of the newly appointed directors namely, Mr. Mommin Malik S/o Fayyaz Malik CNIC # 35202-6415310-9 and Ms. Nilofer Afridi Qazi D/o Ashraf Jahangir Qazi CNIC # 54303-0716246-2.*
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> *2. Both newly appointed directors have been selected from the Data Bank of the Pakistan Institute of Corporate Governance in compliance with the relevant provisions of law.*
>
> *3. A certified copy of Form 9, dated December 17, 2024, confirming the appointments of the above-mentioned directors, is enclosed herewith for your reference.*
>
> *4. Additionally, the company has reconstituted the Audit Committee and the Human Resource and Remuneration Committee in line with the new appointments.*
>
> *5. We trust that the explanations and actions outlined above adequately address your concerns. We further assure the Commission of our commitment to full compliance with all relevant legal provisions moving forward.*
>
> *6. We kindly request the Commission to take a lenient view of any lapses, as the same were neither intentional nor wilful, and to consider withdrawing the show cause notices issued in this matter.*

15. The Respondents were again granted an opportunity for representation in the instant proceedings and hearing in the matter was fixed for December 27, 2024; where Mr. Rana Shakeel Shoukat – Corporate Consultant, appeared on behalf of the Respondents as the Authorized Representative (**the "Authorized Representative"**) and reiterated the written submissions made earlier vide letter dated December 23, 2024 and admitted the oversight on all accounts of alleged violations with a request for a leniency in the matter.

16. I have reviewed the facts of the case and also considered the written and verbal submissions made by the Respondents through their letters as well as through the Authorized Representative. At this juncture, it is important to discuss the following legal and factual elements:

(i) The significance of selecting duly qualified independent directors from the PICG databank under sub-section (1) and (2) of Section 166 of the Act and maintaining the minimum number of Independent Directors in line with Regulation 6 of the CCG Regulations is paramount in upholding the standards of corporate governance and regulatory compliance. This requirement ensures that independent directors are not only qualified and experienced but also are duly vetted for their eligibility and independence. By adhering to this mandate, companies demonstrate a commitment to transparency and accountability, which are critical for maintaining stakeholder trust and confidence.

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(ii) It is imperative to underscore that under Section 166(2) of the Act an independent director must be free from any direct or indirect pecuniary or other relationship with the company, its associated undertakings, or its directors, which may give rise to a situation of conflict of interest. The essence of this provision lies in ensuring that such a director can be reasonably perceived as exercising independent business judgment, without being influenced or subordinated by any affiliation or interest. Any deviation from this standard undermines the spirit of corporate governance and the statutory requirement of independence. Therefore, by appointing two independent directors who were not eligible, the spirit of the provisions of Section 166(2) was defeated.

(iii)It is observed that the primary objective of Section 166(2)(g) of the Act is to ensure that an individual appointed as an independent director of a company should be able to exercise independent business judgment without being acquiescent to any form of conflict of interest. To meet this objective, the provisions of Section 166(2)(g) of the Act specifically require that his prolonged consecutive terms as director should not potentially compromise his independent business judgment. The principle of statutory interpretation is also affirmed in PLD 1992 SC 602, which resolves that statutes must be interpreted in light of their objectives.

(iv)Regulation 27(1)(i) and (ii) of the CCG Regulations requires that the Audit Committee of a listed company shall be composed solely of non-executive directors, with at least one independent director and also the chairman of the committee shall be an independent director. The purpose of this requirement is to ensure that the committee maintains independence and objectivity, providing effective oversight of the company's financial reporting and internal controls. However, the Company included Mr. Rashid Ahmed Khan, as a member and Chairman of the Committee. Accordingly, his inclusion not only compromised the independence of the committee but also diluted its impact as an independent forum reviewing the critical areas of the audit and compliance; thereby contravening Regulation 27(1)(i) & (ii) of the CCG Regulations.

(v) It is also pertinent to observe that Regulation 36(1) of the CCG Regulations requires the listed companies to publish a Statement of Compliance (**the "SOC"**) in their annual reports, detailing adherence to the CCG Regulations. The SOC must disclose any deviations from the CCG Regulations to ensure transparency. However, the Company failed to report its multiple non-compliances with Regulation 6 and 27(1)(i) & (ii) in its SOC for the financial year ending June 30, 2023; thereby contravening requirements of Regulation 36 of the CCG Regulations. It is also pertinent to note that Para 18 of the SOC wrongly declared that the Company is complaint; where it was actually non-compliant on multiple accounts; thereby clearly showing lack of ability of the Respondents to assess the factual position in an objective manner.

17. In view of the above, the aforesaid contravention with the requirements of Section 166 of the Act and Regulations 6, 27 and 36 of the CCG Regulations have been established beyond doubt and the same have been admitted by the Respondents which attract penal actions in terms of Section 169 of the Act along with Regulation 37 of the CCG Regulations read with Section 512(2) of the Act. I, therefore, in exercise of the powers conferred upon me under Section 169 read with Section 479 and Section 512(2) of the Act read with SRO 1545(I)/2019 dated December 06, 2019, hereby impose an aggregate penalty of **Rs. 520,000/- (Pak Rupees Five Hundred and Twenty Thousand Only)** on the Respondents in the following manner:

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S. No.	Name of Respondents	Penalty Amount for contravention of provisions of Section 166 of the Act Rs	Penalty Amount for contravention of Regulations 6, 27 and 36 of the CCG Regulations Rs
1.	Mr. Tahir Jahangir, Chairman, Director	30,000	30,000
2.	Mr. Jilani Jahangir, Director	30,000	30,000
3.	Mrs. Munizae Jahangir, Director	30,000	30,000
4.	Mrs. Sulema Jahangir, Director	30,000	30,000
5.	Mr. Rashid Ahmad Khan, Director	30,000	30,000
6.	Mr. Hassan Ahmad, Director	30,000	30,000
7.	Mr. Abdul Munaf, Director	30,000	30,000
8.	M/s. Hala Enterprises Limited	50,000	50,000
	Total Amount	**260,000**	**260,000**

18. The Respondents are also advised to ensure comprehensive compliance in the instant matter in an an immediate manner and report the same to the Commission. Respondents are further advised to ensure meticulous compliance of the regulatory framework in true letter and spirit in the future.

19. The Respondents are, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue pursuant to provision of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.

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(Sohail Qadri)
Director/ Head of Department
Adjudication Department-I

Announced:
Dated: April 18, 2025
Islamabad.

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