



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

#### Order

#### *In the Matter of*

#### **Chenab Limited**

Number and Date of SCN: No. CSD/ARN/516/2017-318 dated June 6, 2024  
Hearing Dates: July 30, 2024; August 16, 2024; September 18, 2024  
Present: Mr. Rashid Sadiq– Managing Partner, RS Corporate Advisory

#### **Under Section 237 of the Companies Act, 2017 and Section 479 thereof**

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/516/2017-318 dated June 6, 2024 (the “SCN”) issued under Section 237 of the Companies Act, 2017 (the Act) read with Section 479 thereof and Circular No. 11 dated August 11, 2023 (the “Circular”) against the Board of Directors and Chief Financial Officer, hereinafter collectively referred to as the Respondents, of Chenab Limited (the “Company”).

2. The brief facts of the case are that from the perusal of relevant record, it transpires that the Company failed to file/transmit with the Registrar/ Commission, its second and third Quarterly Financial Statements (“QFS”) as detail provided hereunder:

Sr. #	Period ended	Transmission due on
1	December 31, 2023	February 29, 2024
2	March 31, 2024	April 30, 2024

3. The aforesaid QFS were also not posted on the website of the Company within stipulated timeline. Therefore, the Respondents, *prima-facie*, contravened the provisions of Section 237 of the Act read with the Circular by not filing/ electronically transmitting QFS to the Registrar/ Commission.

4. The relevant provisions of the Act stipulate as under:

Sub-section (1) of Section 237 of the Act read with the Commission’s Circular No. 24 dated October 19, 2017 entails:

- 1) Every listed company shall prepare quarterly financial statements within a period of :-  
a) thirty days from the close of first and third quarters of its year of accounts; and  
b) sixty days from the close of its second quarter of its year of accounts.

2) The quarterly financial statements shall be posted on the company’s website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1).

.....

4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.

5. In taking cognizance of the matter, the SCN was issued to the Respondents. In response, the Company Secretary through letter dated July 04, 2024 sought two weeks extension to furnish a reply to the SCN. However no reply was submitted.

6. In order to afford the Respondents, an opportunity of personal representation, hearings in the matter were fixed for July 30, 2024 and August 16, 2024 which were adjourned on request by the Respondents. The matter was re-fixed for hearing to be held on September 18, 2024 wherein Mr. Rashid Sadiq, on behalf of the Respondents, (**the Authorized Representative**) appeared and *inter alia*, submitted that:

- (i) The delay is due to non-finalization of annual accounts. If the accounts for the year 2023 are not finalized, the subsequent QFS may present misleading numbers;
- (ii) The Commission did not issue any SCN when the matter was with the liquidator, however, when the matter was transferred back to the Company, SCNs were issued for non-compliance of the provisions of Section 237 of the Act.
- (iii) The Commission needs to look at compliance of the active companies, whereas the Company is a dormant company.

7. Thereafter, Mr. Rashid Sadiq, on behalf of the Respondents, through letter dated September 30, 2024, *inter alia*, submitted in the following manner:

- The Lahore High Court, Lahore (hereinafter the '**Court**') ordered winding up of the Company through order dated July 13, 2017 and the appointed official liquidators took over the place of the board and chief executive of the Company in terms of Section 387 of the Act. During the pendency of the above petition, a scheme of arrangement was agreed upon by the contributories of the Company with the secured creditors for revival of the Company and the said scheme was sanctioned by the Court through its order dated September 14, 2021. Subsequently, the contributories filed an application before the Court under Section 313 of the Act seeking recall of the winding up order which was allowed by the Court vide its order dated October 29, 2021 and directed the liquidators to hand over the assets of the Company to the management.
- In terms of Section 368 of the Act, it was the duty of the liquidator to prepare annual and interim financial statements and the liquidators report on the dealings/conduct of the Company's winding up till the assets and record of the Company were handed over to the management. The current management took possession of the Company in November, 2021 from the liquidators and until the liquidators prepare financial statements for the period when the Company was in their possession, the subsequent period financial statements cannot be prepared and filed. Moreover, the interim financial statements 'Cannot be prepared unless annual financial statements are prepared as has been held in the recent judgment of the Commission in the matter of *WorldCall Telecom Limited* dated 11 March, 2022.
- In terms of rule 5.6.7(b) of Rule book of Pakistan Stock Exchange ("**PSX**"), it is of paramount importance for a listed company that the results released on PSX reflect an accurate picture of the financial health of the Company.
- The management after utmost efforts has been able to clear the backlog of annual and quarterly accounts related to period when the Company was under control of liquidators and for the periods thereafter. The second quarterly accounts are to be reviewed by the auditors and the same will be released once finalized along with quarterly accounts of third quarter. The annual accounts for the year ended June 30, 2023 were approved on April 15,

2024, therefore, filing of quarterly accounts on or before April 15, 2024 was not possible. This position is recognized by SECP itself in Appeal No. 79 of 2019 through Order dated December 30, 2022, whereby the Appellate Bench of the SECP held that:

*"The Bench is of the view that the Annual Accounts were approved on May 31, 2019, therefore, preparation and filing of Quarterly Accounts on or before April 31, 2018 was not possible. The Bench is of the view that delay in approval of the Annual Accounts in the AGM has inevitably caused delay in filing of the Quarterly Accounts."*

- Reliance is placed on the principle enshrined in Article 25 of the Constitution as well as Section 20(6)(c) of the SECP Act that provides for the requirement of uniformity and consistency in performance of the Commission's functions and the exercise of its powers. The superior judiciary of Pakistan has highlighted the importance of the equality principle in several cases. The cases of PLD 2012 Supreme Court 421, 2001 SCMR 1320, PLD 2009 Lahore 362, and Commercial Appeal No. 1 of 2015 of the LHC were stated. Moreover, the Appellate Bench of the Commission itself has acknowledged the importance of the equality principle in the cases of 2017 CLD 686, Appeal No. 29 of 2016. There are a number of cases, in which SECP condoned the delay in filing of quarterly accounts.
- There must be a substantial finding of guilt before application of stringent penal provisions, as categorically instructed by the Supreme Court of Pakistan in its judgment in the matter of *Securities and Exchange Commission of Pakistan v. First Capital Securities Corporation Limited* (2011 CLD 907, PLD 2011 SC 778) in the following terms:

*"20. It should also be clarified that since the penal provision is stringent in nature it should be applied in an appropriate manner. In applying such a provision SECP should always bear in mind the importance of determining not merely a technical contravention but a substantial finding of guilt in relation to the person on whom the fine or penalty is being levied. It is not sufficient either in the case of this law, or any other law, merely on the basis of a technical contravention to arbitrarily impose a fine either the full amount of 50% or 75% or any other arbitrarily chosen figure, a condign punishment is the requirement of law and equity."*

- In light of the above submissions, the SCN issued to the Respondents may please be dropped without any further action as default was beyond the control of the Respondents. Further, due to the reasons aforesaid, the quarterly accounts could not be placed on website of the Company.
- In light of the above case law on establishing guilt before imposition of penalty, it is submitted that the Respondents cannot be held guilty as the liquidators have not prepared the financial statements delineated herein above and the backlog would need to be cleared first before preparation, release and filing of interim financial statements.
- For established willful non-compliance, the reliance was placed in case of Appellate Bench of the SECP in Appeal No. 44 of 2014 in *Fauji Cement Company Limited vs. Director* dated August 24, 2015. Reliance was also placed in case of *Next Capital Limited vs. Director MSRD* in Appeal no. 26 of 2015 dated July 24, 2015.
- In light of the above submissions, the SCN issued to the Respondents may please be dropped without any further action.

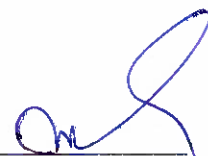
8. Moreover, the Authorized Representative through email dated October 28, 2024, *inter alia*, submitted that: "*Chenab Limited has advised us to convey to you that they are targeting compliance of outstanding final (30.06.2024) and interim accounts by 31 December, 2024.*"

9. I have considered the facts of the case based on the relevant provisions of the Act, available record of Company, as well as the written and verbal submissions of the Authorized Representative, it is imperative to discuss the following elements:

- In terms of Section 237 of the Act, every listed company is required to file/transmit QFS within sixty days from the date of close of its second quarter and within thirty days from the close of its third quarter of its year of accounts. QFS are crucial source of information for stakeholders/members. It provides timely insights into a company's financial performance and such information is essential for assessing the company's overall financial health.
- The provisions of Section 237 of the Act are unambiguous and explicit. In order to ensure transparency, the Company is required to meticulously adhere to the provisions of Section 237 of the Act for timely filing/transmission of QFS. Reliance is placed on the SECP Appellate Bench Order dated March 1, 2023 (Appeal No. 73 of 2022- Gulistan Textile Mills Limited, vs. SECP) it was held that a public listed company has higher responsibility to disseminate true and accurate state of affairs to all the stakeholders in a timely manner so that they may take appropriate decisions.
- The possession of the Company, as admitted by the Authorized Representative, was taken over by the board/management in November 2021 and they had ample time till quarter ended December 31, 2023 and March 31, 2024 to ensure timely compliance with the requirements of Section 237 of the Act.
- The instant proceedings are not initiated in terms of the rule 5.6.7(b) of the PSX Rulebook rather are under Section 237 of the Act, which, *inter alia*, requires that the QFS are transmitted with the Commission/Registrar in a timely manner. It is, therefore, statutory obligation of the Respondents to ensure compliance of the applicable provisions of the Act read with the Circular.
- The Authorized Representative's reliance on cited precedent cases is neither applicable nor relevant to the facts of this case. In this regard it is important to understand that every case has its own peculiar facts and circumstances, therefore, decisions of past cases cannot be mechanically applied to this case. In instant matter, the Respondents have failed to comply with the requirements of Section 237 of the Act, whereas, in cited case law of Nishat Mills Limited, 2017 CLD 686, Appeal No. 29 of 2016, Worldcall Telecom Limited, K-Electric Limited, Citi Pharma Limited, Burshane LPG (Pakistan) Limited, AGP Limited, Mandviwalla Mauser Plastic Industries Limited, Husein Industries Limited the facts of cases were different. In view thereof, *ratio decidendi* of the cases relied upon by the Respondents has no bearing on the merits and facts of this case.

The Authorized Representative has also referred case laws cited as 2011 PLD 778, appeal No 26 of 2015 and appeal No 44 of 2014, to build an argument that before proceeding in the instant matter, the Commission was required to establish substantial findings of guilt against the Respondents. However, the mentioned case law and its facts are different from the case at hand. In the stated case laws there was the requirement to establish a willful default under Section 222, 223 and 224 of the Companies Ordinance, 1984, however, no such requirement is applicable in this case as relevant provision of Section 237(4) of the Act is reproduced as below:

*(4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.*



Further while deciding Appeal No. 73 of 2022 in the matter of Gulistan Textile Mills Limited vs. SECP against the order passed under Section 237 of the Act, the Appellate Bench of the Commission, *inter-alia* stated that:

*If a company's financial statements are not available to the stakeholders within the stipulated time prescribed in law, then its Board is responsible for such default and liable to penal consequences.*

Moreover, in the matter of Appeal No. 11 of 2021 - Dadabhoy Cement Industries vs. SECP, the Appellate Bench of the Commission, *inter-alia*, stated that:

*The Bench is of the view that Public listed companies have a higher and more significant responsibility towards their stakeholders and are obligated to act in their interest. The law has made it obligatory for the Company to file the Accounts with the Commission within the stipulated time period, however, it has failed to comply with the express provision of the Act.*

It is pertinent to iterate that every case has to be decided on its own merits and facts, which substantiates that mechanical application is neither required nor mandatory. The cases highlighted in the replies of the Respondents were decided by the adjudicating authorities on peculiar facts and mitigating factors as available. Moreover, the decided cases are not binding in the instant matter.

In view thereof, the failure to prepare and transmit the QFS for the period ended December 31, 2023 and March 31, 2024 is evident as the provisions of the Section 237 of the Act have not been complied with at relevant point in time.

- In the context of the Authorized Representative argument for equal treatment on the basis of binding precedents for just and fair dispensation of justice, it is stated that every case has distinct facts and circumstances, therefore, decision in one case may not be treated as binding precedent for other cases. Furthermore, in the recent judgement of the Islamabad High Court in the case of PKP Exploration Limited vs Federal Board of Revenue (PTD 2021, 1644), it was held that decisions of quasi-judicial forums in one case are not binding for other similar cases before such tribunal. For reference relevant abstract of the judgement is reproduced below:

*"13... .. Given that it is an adjudicatory forum of a quasi-judicial nature established by statute, it is vested with no inherent power. .... The consequences of the decision of the Tribunal are limited to the case it decides and do not travel beyond the four corners of the subject-matter before it in appeal. In other words, neither the Constitution nor any statute envisages a law-declaring function for the Tribunal. Its decision do not become binding precedents. The reasoning of the Tribunal in one case could be treated by tax authorities as a persuasive precedent in a subsequent case where the subject-matter is the same or similar. But the persuasive quality or cogent reasoning of a decision of the Tribunal does not transform it into a legally binding precedent for officials exercising executive or adjudicatory authority under tax, statutes, just as the most compelling and potent decisions of District Courts do not make such decisions binding precedents."*

It is evident from the aforesaid that the precedents may be considered as reference but are not binding for the competent forum.

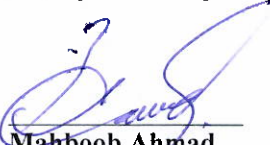
- The Respondents made written submissions, sought adjournment in conduct of hearing which was duly allowed, appeared in the hearing through the Authorized Representatives. The Respondents were, therefore, provided adequate and ample hearing opportunities coupled with the right to legal representation and have been treated in a fair, just and transparent manner pertinent to the applicable laws. Hence, no violation of Article 4, 10A and 25 of the Constitution of Pakistan and Section 20(6)(c) of the SECP Act, 1997 may be attributed in the instant matter.

10. In view of the above, I have come to the conclusion that the afore-said provisions of the Act have been violated and it renders the Respondents liable to penal action in terms of Section 237 of the Act as a result of failing to prepare and file/ transmit Company's QFS for the periods ended December 31, 2023 and March 31, 2024 within the stipulated time and by not timely posting the same on the Company's website. The QFS of the afore-said quarters were filed on December 06, 2024 i.e. with a delay of 280 days and 219 days, respectively. Therefore, in exercise of powers conferred under sub-section (4) of Section 237 of the Act, I hereby impose an aggregate penalty of **Rs. 120,000/- (Rupees One Hundred and Twenty Thousand only)** on the Respondents as follows:

S. No.	Name of the Respondents	Penalty for Quarter Ended (Rs.)	
		December 2023	March 2024
1	Mian Muhammad Latif – CEO	7500/-	7500/-
2	Mian Muhammad Javaid Iqbal, Director	7500/-	7500/-
3	Mr. Muhammad Naeem, Director	7500/-	7500/-
4	Mr. Muhammad Faisal Latif, Director	7500/-	7500/-
5	Mr. Muhammad Farhan Latif, Director	7500/-	7500/-
6	Mr. Muhammad Zeeshan Latif, Director	7500/-	7500/-
7	Mr. Tariq Ayub Khan, Director	7500/-	7500/-
8	Mr. Muhammad Arshad, CFO	7500/-	7500/-
<b>Total</b>		<b>60,000/-</b>	<b>60,000</b>

11. The aforementioned penalties must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the *Securities and Exchange Commission of Pakistan* within thirty (30) days from the receipt of this Order, and duly deposited bank challan shall be furnished to the Commission. In case of non-deposit of the penalties, proceedings for recovery under Section 485 of the Act as arrears of land revenue will be initiated. It may also be noted that the penalty has been imposed on the Respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

12. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.



**Mahboob Ahmad**  
Additional Director/ Head of Wing  
Listed Companies Wing

**Announced:** December 13, 2024  
Islamabad