



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)

In the matter of

Directors of Fazal Cloth Mills Limited

Number and date of Show Cause Notice (SCN)	2(433)SMD/Adj-1/2023-274 Dated September 27, 2023
Date of Hearing:	January 31, 2024
Present at the Hearing:	Mr. Rashid Sadiq (Authorized Representative)

ORDER

UNDER SECTION 106 OF THE SECURITIES ACT, 2015

This Order shall dispose of the proceedings initiated against Directors of Fazal Cloth Mills Limited (**the Company**) through Show Cause Notice No. 2(433)SMD/Adj-1/2023-274 dated September 27, 2023 (**the SCN**) issued under Section 106(2)(a) of the Securities Act, 2015 (**the Act**) read with Regulation 3(4) of the Reporting and Disclosure of (Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Company) Regulations, 2015 (**the Regulations**) and Section 103 of the Act.

2. Brief facts of the case are that the following individuals (**Collectively referred hereunder as Respondents**) were appointed as Director of the Company on May 30, 2023. In terms of Section 103 of the Act read with Regulation 3(4) of the Regulations, the Respondents were required to file a statement of beneficial ownership i.e. Form 5 to the Commission, within (7) seven days of their appointment as director of the Company. However, they filed the said Form with the delay as under:

S. No	Respondents	Date of Filed Form 5	Number of Days Delay
1	Mr. Sheikh Naseem Ahmed	August 31, 2023	86
2	Mr. Amir Naseem Sheikh	August 31, 2023	86
3	Mr. Muhammad Mukhtar Sheikh	August 31, 2023	86
4	Mr. Babar Ali	August 24, 2023	79
5	Mrs. Parveen Akhter Malik	August 31, 2023	86



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6	Mr. Rehman Naseem	August 24, 2023	79
7	Mr. Faisal Ahmed	August 24, 2023	79
8	Ms. Fahd Mukhtar	August 31, 2023	86
9	Mr. Masood Karim Shaikh	August 24, 2023	79

3. From the above, it appeared that the Respondents, *prima facie*, has failed to comply with the requirements of Section 103 of the Act which attracts applicability of the penal provision of Section 106(2)(a) of the Act. Accordingly, the Commission while taking cognizance of the aforementioned non-compliance served upon the Respondents, the SCN requiring him to submit its written reply within 14 days of the date of the SCN. Mr. Rashid Sadiq on behalf of the Respondents vide letter dated October 24, 2023, submitted that as under:

“.....

For a complete understanding of the matter at hand and by way of illustration of the efforts of the Directors to remain compliant with the law with regard to the requirements for timely filing of the requisite Form5, brief background in the case at hand may be observed as under:

i. All the directors named in the SCN have filed the beneficial ownership return previously when the requirement first arose as per Section 103 (2) of the Act and subsequently they are required to file particular of any change in the interest aforesaid or any change in position.

ii. On 30 May, 2023 the Company held an extraordinary general meeting ('EOGM') for the election of directors where all retiring Directors were re-elected and the requisite Forms 4 as prescribed under the Regulations were duly filed by the Company with the Commission and were duly accepted;

iii. Upon initiating online processes for the filing of the requisite Form 5 on behalf of the directors through the SECP designated portal, an error was noticed with regards to the paid-up capital of the Company where the mentioned amount was 25,000,000 shares rather than the actual 30,000,000 against which percentages of the beneficial ownership of the Directors was to be calculated;

iv. After making attempts to rectify the error but finding no solution, the error was brought to the attention of relevant authorities through emails dated 14 June, 2023 to which there was no response following which a reminder email was sent on 03 July, 2023 to SECP Head Quarter and relevant Company Registration Office to which there was no response;

v. Having no success in getting the necessary assistance online, a meeting was arranged and held on August 07, 2023 with the Company Registration Office Lahore ('CRO') with the objective of resolving the issue as promptly as possible to comply with the legal requirements;



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vi. The CRO advised that the matter be taken up with the SECP office in Islamabad;

vii. Having personally travelled to Islamabad on August 08, 2023, the representative of the Company namely met with who heads the Management Information System of the SECP following which the issue was resolved to allow the proper but delayed filing of the requisite forms.

3. In light of the above background, you will appreciate that the timing for filing the requisite Forms 5 was not within the control of the Directors or the Company where to proceed on the basis of the erroneously reported paid-up capital would lead to a misstatement and registering of incorrect information.

4. It is respectfully submitted that the perceived non-compliance was entirely due to fault in the MIS of the SECP and that this incident may be treated by the SECP as an opportunity to address any shortcomings in the systems developed by the SECP for the facilitation of its regulates in the timely filing of returns as required under specific laws and no adverse action be taken against the Directors where fault for delayed filing cannot be attributed to them in the case at hand as has been held in many other such cases in the interest of equality and uniformity of the adjudication process.

It is, therefore, prayed that in the interests of justice and to ensure the substantial application of the law, the SCN be withdrawn and no adverse action be taken against the Directors."

4. The Respondents were provided opportunity of personal representation and the hearing in the matter was fixed for November 22, 2023 but no one appeared. Lately, hearing in the matter was fixed for January 31, 2024, which was attended by Mr. Rashid Sadiq as Authorized Representative (the Representative) of the Respondents. During the hearing proceedings, the Representative reiterated the arguments earlier submitted in the written response dated October 24, 2023. The Representative assured full compliance with the aforesaid legal provisions, in future and requested for lenient view in the matter.

5. The relevant provisions of the law are reproduced as under:

Section 103 of the Act

"103 - Notification to the Commission of directors and others' interest

(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form -

(a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;

(b) the particulars of any change in the interest aforesaid; and

(c) any change in his position.



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(2) *The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises.*"

Regulation 3(4) of the Regulations

"3 – Reporting of Beneficial ownership in listed equity securities under Section 101 to Section 103 of the Act ...

(4) The directors, executive officers and substantial shareholders of the equity securities in a listed company shall in accordance with section 103 of the Act submit statement of Beneficial ownership in Form 5 and report any subsequent change therein or position to the Commission on Form 6."

Section 106 of the Act

"106. Directive by the Commission. —

(2) where any person who contravenes or fails to comply with any provision of sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct, —

(a) in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees and to a further sum which may extend to one thousand rupees per day for every day during which the default continues."

6. I have gone through the facts of the case and considered the submissions of the Representative both written and verbal in light of the applicable legal provisions mentioned in the preceding paras and the available record, which reflects that the Respondents were required to file their respective return of beneficial ownership on Form 5 within seven (07) days of becoming director of the Company on May 30, 2023 as required under Section 103 of the Act read with regulation 3(4) of the Regulations. In this regard, the Representative submitted that an error was noticed at the SECP's portal during the process of online filing of requisite Form 5 of the Respondents regarding Company's paid-up capital amount was showing Rs.25 Million instead of Rs. 30 Million against which percentages of the beneficial ownerships of the Respondents was to be calculated. Therefore, the Respondents could not made the required disclosures to the Commission on Form 5 within stipulated time provided in the law because of the anomaly in online system of the Commission. Once, the matter was resolved by the officers of the Commission, the disclosures were made on Form 5 to the Commission on August 31, 2023.

7. In view of the foregoing, non-compliance/ contravention of the provisions of Section 103 of the Act read with regulation 3(4) of the Regulations has been established. However, keeping in view the facts of case mentioned above I hereby, in terms of the power conferred under Section 106(2)(a) of the Act conclude these proceedings with **warning** to the Respondents to be careful in future about compliance of the law in letter and spirit.



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8. Order is issued without prejudice to any other action that the Commission may initiate against the Respondents in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

A handwritten signature in black ink, appearing to read 'Shahzad Afzal Khan', is positioned above a horizontal line.

(Shahzad Afzal Khan)
Director\ Head of Department
(Adjudication Department-I)

Announced:
February 07, 2024
Islamabad

