



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Through Courier

Before

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

In the matter of

Show Cause Notice issued to Mr. Mufti Muhammad Najeeb Khan

Director of M/s Universal Network Systems Ltd.

Under Regulation 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 and Section 103 read with Section 106(2)(a) of the Securities Act, 2015

Number and date of Show Cause Notice (SCN)	2(357)SMD/Adj-1/2022-375 dated November 08, 2023
Date(s) of Hearing:	January 22, 2024
Present at the Hearing(s):	Ms. Hamna Faruqui, Advocate High Court (Authorized Representative)

ORDER

This Order shall dispose of the proceedings initiated against Mr. Mufti Muhammad Najeeb Khan (the “Respondent”) being the director of M/s. Universal Network Systems Limited (the “Company”) for his alleged failure to file the disclosure of his shareholding(s) on relevant Form 5 in terms of Section 103 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 Companies) Regulations, 2015 (the “Regulations”) within seven (07) days of his appointment as a director of the Company.

2. Brief facts of the case are that the Company made an announcement on Pakistan Stock Exchange Limited (PSX) with respect to holding of its Extraordinary General Meeting (EOGM) on July 10, 2023, wherein, amongst other directors, the Respondent was elected as the director of the Company. The Respondent was required to fulfil the above-referred requirements for filing of Form-5 within the prescribed time. The relevant provisions of Section 103 of the Act & Regulation 3(4) of the Regulations and penal provisions of Section 106(2) of the Act in case of contravention of Section 103 are reproduced as under:

Section 103 of the Act:

“103. Notification to the Commission of directors and others’ interest.—(1) Every



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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.

(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.” (emphasis added)

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 officer and substantial shareholder 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.” (emphasis added)

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.”

3. The record available with the Securities and Exchange Commission of Pakistan (the “Commission”) transpired that the Respondent failed to comply with the aforesaid requirements of the Act and the Regulations within the given timeframe. Accordingly, the relevant department of the Commission requested clarification/ explanation from the Respondent on September 26, 2023. The Respondent thereafter vide letter dated October 09, 2023 apparently admitted the delay on his part being occurred inadvertently and filed the requisite Form-5 with the Commission on October 08, 2023.

4. Considering the above-mentioned facts and the *prima-facie* delay of 83 days in filing of



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relevant form, a Show Cause Notice (the "SCN") dated November 08, 2023 was served upon the Respondent for contravention of Regulation 3(4) of the Regulations read with Section 103 of the Act under the penal provisions of Section 106(2)(a) of the Act, requiring it to justify within fourteen (14) days of the date of the SCN as to why punitive action may not be taken against him.

5. No response to the SCN was received from the Respondent within the given timeframe. A reminder was issued to the Respondent on December 07, 2023; however, the Respondent failed to submit his written response to the SCN. Nevertheless, in order to meet the ends of justice and provide an opportunity of being heard to the Respondent, a hearing notice dated January 03, 2024 was served upon the Respondent for a hearing scheduled for January 09, 2024. The said hearing, however, also remained unattended by the Respondent. Subsequently, another hearing notice dated January 15, 2024 was issued to re-fix the hearing for January 22, 2024.

6. Meanwhile, a response letter dated January 18, 2023 was submitted by the Respondent (received with the Commission on January 22, 2024). A letter of authority in favor of Ms. Hamna Faruqi, Advocate High Court was also submitted therewith. The relevant extracts of the said response are reproduced hereinbelow:

"...At the outset, I would like to inform you that I hold all my statutory compliances in the highest regard and have always strived to ensure that I do not fall short for making compliances stemming from law to maintaining utmost transparency between myself and the relevant regulatory authority, which includes the Securities and Exchange Commission of Pakistan (SECP). As such, I have been confronted with an alleged failure by myself to making compliance with Regulation 3(4) of the Reporting and Disclosure (Of Shareholding By Directors, Executive Officers And Substantial Shareholders In Listed Companies) Regulations, 2015 ("Regulations") pursuant to which, I have filed Form 5 and provided the proof of the same through my letter dated 9th October 2023...I have made all the required compliances as far as the Regulations are concerned, while admitting that Form 5 filed by myself with the Commission for my shareholding pursuant to being appointed as a Director was delayed due to a bona fide mistake and an inadvertent error without any deliberate or malicious intent..."

In view of the above, it is most respectfully submitted that while I made compliance by filing Form 5, albeit with a slight delay, since the intimation has been made, hence, I have made substantial compliance of the provisions of the Regulations.

It is trite law that where substantial compliance has been made, no penalty against the same is leviable as the intention behind requiring such compliance to be made has been



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complied with. Without prejudice to the above, it is submitted that it is a trite law that for levy of fine or penalty, the person levying the penalty needs to be satisfied that there existed a willful default on the part of the non performing party. The Honorable Supreme Court of Pakistan in the case cited as PLD 2016 Supreme Court 620, by the use of various authorities and references, defined the word "willful default". The Apex Court of this country, in the case quoted supra was of the opinion that mere default i.e., mere violation of a provision or an obligation would simply constitute a default and not a willful default. For a default in compliance of an obligation to be considered willful, the same needs to follow a more stringent criteria, where it needs to be shown that not only was there a default in compliance of an obligation but such default was also intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing there from. It is submitted, as is clear from a perusal of my responses provided to you, the delay in filing of Form 5 was purely an inadvertent error and a bona fide mistake, therefore it is submitted that any actions or default arising out of an error that is wholly unintentional and has been rectified without causing any harm or loss to any third party by making substantial compliance cannot constitute or be deemed to form a willful default and therefore, no penalty can be levied..."

7. On the aforesaid date of hearing of January 22, 2024, Ms. Hamna Faruqui appeared on behalf of the Respondent. The Authorized Representative reiterated the earlier submissions and requested for a lenient view considering no intentional or willful default on part of the Respondent.

8. I have gone through the relevant provisions of law and the submissions made by the Respondent through his Authorized Representative. I have observed that the contention of the Respondent that the Commission was required to establish willfulness of the default for the questioned contravention is misconceived and not aided by any legal provision of law. I have also perused Section 106(2)(a) of the Act, which stipulates penal provisions for contravention of Section 103 of the Act. It is eminent to mention here that the penal provision invoked under the instant proceedings i.e. Section 106(2)(a) of the Act plainly relates to any **contravention or failure** to comply with the invoked provisions of the Act – the said provision nowhere establishes a burden for determination of 'willfulness' for such a contravention or failure being adjudicated by the Commission – however, an absence thereof may result in leniency of the punitive action taken against a non-compliant person.

9. The Section 103(2) of the Act read with Regulation 3(4) of the Regulations clearly mandates fulfilment of the reporting requirement before the expiration of a period of seven (07) days beginning from the day on which the requirement first arises. Additionally, a clarification issued by the Commission through PSX to all listed companies on April 20, 2022 clearly



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pronounced that the requirement of filing of Form 5 is applicable on every director, who is appointed afresh, re-appointed and a nominee director. Nevertheless, the Respondent has duly filed the relevant form with the Commission, although with a delay, and has demonstrated his commitment to adhere to all applicable laws in a timely manner in the future.

10. In view of the above-stated facts & circumstances, submissions made by the Respondent and particularly the established default of the Respondent in timely filing the requisite Form-5 with the Commission, I have hereby decided to impose a **penalty of Rs.10,000 (Rupees Ten Thousand) only on the Respondent**. The Respondent is also hereby advised to exercise caution and ensure meticulous compliance with all applicable laws in true letter and spirit in the future.

11. The Respondent is directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited, within a period of thirty (30) days from the date of this Order, and furnish receipted voucher issued in the name of the Commission for information and record.

12. This order is being issued without prejudice to any other action(s) that may be initiated/taken against the Respondent, the Company and/or its officers responsible for the violations of the aforesaid provisions of the law, accordingly.

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

Announced:

January 20, 2024
Islamabad

