



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan – Director/Head of Department

In the matter of

Yousaf Weaving Mills Limited

Show Cause Notice No. & Date: No. CSD/ARN/156/2015-221 dated April 23, 2024

Date of hearings May 17, 2024 & May 24, 2024

Hearing attended by: Mr. Nadeem Anwar (Company Secretary)

ORDER

Under Section 510 and 512 of the Companies Act, 2017 read with Regulation 3 & 4 of the Companies (Postal Ballot) Regulations, 2018 and Regulation 11B thereof

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/156/2015-221 dated April 23, 2024 (the SCN) issued under Section 510 and 512 of the Companies Act, 2017 (the Act) read with Regulation 3 & 4 of the Companies (Postal Ballot) Regulation, 2018 (the Regulations) and Regulation 11B thereof against Yousaf Weaving Mills Limited (the Company) and its Board of Directors, hereinafter referred to as the Respondents.

2. Review of the annual audited accounts of the Company for the year ended June 30, 2023 revealed that the Company held an EOGM on January 21, 2023 wherein special businesses were approved.

3. The Securities and Exchange Commission of Pakistan (the Commission) through letter dated February 28, 2024 advised the Company to provide evidence of granting voting right to shareholders through ballot paper for special businesses, as mandated by the Companies (Postal Ballot) Regulations, 2018 (the Regulations). In response, the Company submitted that:

"This was an unintentional default stemming from lack of awareness of the specific regulations governing such proceedings. As a responsible corporate entity, we deeply regret the oversight....."

4. Analysis of Company's reply revealed that, the Company has not provided any explanation regarding the non-provision of facility of Electronic Voting and Voting by Post in terms of regulation 3, 4(1) and 4(1A) of the Regulations.

5. In view of above, *prima facie*, the Company has violated regulations 3, 4(1) and 4(1A) of the Regulations read with Circular 4 of 2021 dated February 15, 2021 issued by the Commission.



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6. Regulation 3, 4(1) and 4(1A) of the Regulations, requires that right to vote through postal ballot as well as right to vote through electronic voting and voting by post shall be provided to the members. Furthermore, Circular 4 of 2021 also requires listed companies to ensure participation of members in general meeting through electronic means that includes video-link, webinar. The said regulations 3, 4(1) and 4(1A) and Circular 4 of 2021 are reproduced as under:

"3. Applicability. - The right of vote through postal ballot shall be provided to members of-

(a) every company, subject to the requirements of sections 143 and 144 of the Act;

(b) a listed company [for all business classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.]"

"4. Responsibility of company. - (1) The right of vote through postal ballot shall be provided to members of every company, subject to the requirements of sections 143 and 144 of the Act.

(1A) The right to vote through electronic voting facility and voting by post shall be provided to members of every listed company for all businesses classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act."

Circular No. 4 of 2021 dated February 15, 2021 issued by Commission provides that:

"Provision of facility for attending general meetings of listed companies virtually through video-link, webinar, or other electronic means helps maximization of members' participation in such meetings; SECP in continuation of its above-mentioned circular hereby directs that all listed companies to ensure participation of members in general meeting through electronic means as a regular feature from the date of this circular till further order."

7. The Company, *prima facie*, failed to comply with the requirements of regulations 3, 4(1) and 4(1A) of the Regulations read with Circular 4 of 2021 punishable under regulation 11(B) of the Regulations and Sections 510 and 512 of the Companies Act, 2017 (the Act), respectively.

8. Section 510 and 512 of the Act, regulation 11(B) of the Regulations, are reproduced as under:

"510. Power to issue directives, circulars, guidelines. - (2) Any person, who obstructs or contravenes or does not comply with any directive, prudential requirements, codes, circulars or notifications, given under this section shall be liable to a penalty of level 3 on the standard scale."

"512. Power to make regulations. -

(2) 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



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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."

"11B. Penalty for contravention of these regulations. – (1) Whoever fails or refuses to comply with, or contravenes any provision of these regulations, or authorizes or permits such failure, refusal or contravention shall be punishable with penalty as provided in sub-section (2) of section 512 of the Act."

9. In response, to the aforementioned SCN the Company vide its letter dated May 22, 2024 submitted the following response which is provided hereunder;

"The SECP, through its correspondence marked as letter no. EMD/233/233/2002-239, dated February 28, 2024, brought to our attention to our company's failure to employ the postal ballot for special business during the Extraordinary General Meeting (EOGM) convened on January 21, 2023.

The initial notification under SRO# 254(1)/2018, issued on February 22, 2018, exclusively mandated the use of postal ballots for the election of Directors. Subsequently, this provision underwent an amendment on December 05, 2022, extending its scope to encompass all special business.

Regrettably, at the time of planning the EOGM, the amendment was still in its formative stage, and we were not duly apprised of the statutory change. It is crucial to note that the Board of Directors, in its meeting convened on December 23, 2022, diligently approved the resolutions slated for consideration by the members during the EOGM. The notice of the EOGM, duly sanctioned by the Board, was disseminated on the Pakistan Stock Exchange (PSX), with a corresponding copy forwarded to the SECP. Importantly, no objections were raised by the SECP regarding the notice.

The sequence of events underscores that there was no deliberate intent to contravene the provisions of the amendment. Our oversight stemmed from genuine ignorance and an inadvertent error, made in good faith and devoid of any willful intent. We firmly assert that any prudent individual, placed in similar circumstances, would arrive at the same conclusion given the contextual framework.

While we acknowledge the overarching regulatory framework governed by the Act and its accompanying regulations, we sincerely regret the inadvertent omission of the postal ballot option. We reaffirm our unwavering commitment to future compliance and pledge to exercise utmost diligence to ensure meticulous adherence to the regulatory provisions. "

10. In order to provide an opportunity of hearing to the Respondents, the matter was fixed for hearing to be held on May 17, 2024 however, Mr. Nadeem Anwar (Company Secretary), vide email dated May 13, 2024 requested for an adjournment and accordingly the hearing was re-fixed for May 24, 2024. On the date of hearing, Mr. Nadeem Anwar appeared as Authorized Representative on behalf of the Respondents (the **Representative**). The Representative reiterated the stance as provided through reply letter dated May 22, 2024. They submitted that the default was not deliberate and requested for a lenient view.

11. Subsequently, the Company vide its letter dated May 30, 2024 also submitted the following response which is provided hereunder;



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"This refers to our previous correspondence dated May 22, 2024 in respect of subject cited above, we would like to reiterate our earnest efforts to uphold regulatory standards and abide by SECP directives. However, it has come to our attention that during the convening of the Extraordinary General Meeting (EOGM) on January 21, 2023, there existed a notable discrepancy in the dissemination of information pertaining to the aforementioned amendment.

We regret to note that neither did the SECP upload these regulations on its official website nor did it communicate them to the Pakistan Stock Exchange (PSX) or through any other means of communication such as newspapers or formal notices to listed companies. Consequently, we were unable to obtain information regarding these amendments. It was only on February 22, 2023, that these amendments were made available on the SECP's official platform, subsequent to the occurrence of our EOGM.

In light of this oversight, we firmly believe that the burden of non-compliance should not rest upon us. Nonetheless, in a gesture of good faith, we extend our sincere apologies for any inadvertent lack of compliance. Rest assured, our commitment to regulatory adherence and corporate governance remains resolute, and we have taken immediate corrective measures to prevent similar occurrences in the future.

We humbly request your esteemed consideration and leniency in this matter. Understanding the gravity of regulatory oversight, we respectfully seek acknowledgment of our apology and a favorable disposition regarding the proceedings related to the latest amendment in "The Companies (Postal Ballot) Regulations, 2018".

12. I have reviewed the facts of the case, considered the written and verbal submissions made by the Respondents and the Representative in the light of the applicable legal provisions and available record before me. In this regard, it is stated that:

a. **What are the requirements for provision of right to vote through of electronic voting facility to the members of a listed company for businesses classified as special business:**

In terms of regulation 4 of the Regulations, the right to vote through electronic voting facility and voting by post shall be provided to members of every listed company for all businesses classified as special business. Provision of electronic voting ensures participation of the members especially where special business is being considered in the meeting. Hence, under the Regulations it is obligatory for all listed companies to ensure provision of the electronic voting facility in general meetings where a business is classified as a special business.

b. **What are the requirements for provision of the facility of attending general meetings of listed companies virtually through video-link, webinar, or other electronic means as a regular feature:**

In terms of Circular No. 4, provision of facility of attending general meetings of listed companies virtually through video-link, webinar, or other electronic means helps maximization of members' participation in such meetings. Hence, it was made obligatory that all listed companies to ensure participation of members in general meetings through electronic means as a regular feature. The Company, however, through its notice of the meeting, did not provide to all of its shareholders the provision of facility for attending the said meeting through the electronic / virtual means. The Respondents admitted the default, however, stated that it was not deliberate and willful. I am of view



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that the Circular No. 4 was not specific for Covid-19 pandemic, as the Commission in pursuance thereof issued Circular No. 6 and related clarification, emphasizing the use of video-link as a regular feature in general meetings. The explanation dated December 15, 2021, inter alia, highlighted that: "While making arrangement for the virtual meetings it is responsibility of the company to ensure that facilities for the electronic meetings are seamless and without any interruption whereby shareholders are provided proper opportunity to raise observation/ comments which should be properly responded and minuted."

In view of the given requirements of Circular No. 4, the default is established. Therefore, I am of the view that provision of video-link facility through electronic means to the shareholders to attend the meeting is with the objective to maximize the participation of the shareholders. The Respondents in this regard have admitted the default and assured for future compliance.

- c. **Whether any assurance for the subsequent compliance, absolves the respondents from the non-compliance made due to ignorance or an inadvertent error:**

No. The Respondents' assurance for subsequent compliance does not exonerate them for the violations as stated above, citing reasons of ignorance and inadvertence.

13. Keeping in view of the aforesaid contraventions, the Respondents are liable under Sections 510 (2) and 512 (2) of the Act, respectively. In exercise of the powers conferred under the said provisions, I hereby impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Company i.e. **Yousaf Weaving Mills Limited**. I also warn the remaining Respondents to be careful and to ensure the compliance of applicable regulatory framework in letter and spirit.

14. The aforesaid fines 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 days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

15. 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 or violation of the Act.

Shahzad Afzal Khan
Director/Head of Department
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Announced: July 08, 2024
Islamabad

