



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Chashma Sugar Mills Limited

Number and date of show cause notice: No. CSD/ARN/305/2016 - 230 dated April 24, 2024

Date of hearing: June 05, 2024

Present: Mr. Mujahid Bashir (Company Secretary); and
Mr. Qasim Siddiqui (Manager Accounts)

ORDER

Under Section 205, 207 and 176 of Companies Act, 2017 read with 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 dated April 24, 2024 ("SCN") issued under sections 205, 207 and 176 of the Companies Act, 2017 (the "Act") read with section 479 thereof against Chashma Sugar Mills Limited (the "Company") and its Board of Directors, herein collectively referred to as Respondents.

2. Brief facts of the case are that:

- i. examination of the accounts of the Company for the year ended September 30, 2023 ("Accounts2023") revealed that the Company entered into a number of Related Party Transactions ("RPT") without, *prima-facie*, complying to the provisions of sections 205 and 207 of the Act, 2017. The description of such RPTs includes the following:

Related Party	Basis of Relationship	List of Common Directors	Transaction Details
The Premier Sugar Mills and Distillery Company Limited	Holding Company (47% shareholding) and Common Directorship	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz 3. Mr. Iskander M. Khan 4. Ms. Zarmine Sarfaraz	Purchases/ Sales/ Expenses Paid Rs. 886 million
Syntronics Limited	Common Directorship	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz 3. Mr. Iskander M. Khan 4. Mr. Abdul Qadar Khattak	Purchase of store items Rs. 163 million
Syntron Limited	Common Directorship	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz	Purchase of store items



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		3. Mr. Iskander M. Khan	Rs. 94 million
Azrak Enterprises (Private) Limited	Common Directorship	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz	Services Rendered/ Expenses Rs. 57 million
Phipson & Company Pakistan (Private) Limited	Common Holding Company (1.07% shareholding) and Common Directorship	Baigum Laila Sarfaraz	Expenses paid Rs. 0.4 million

ii. the Commission vide letter dated March 06, 2024 advised the Company to submit the minutes of the board meeting approving the RPTs along with attendance sheets. The Company vide its letter dated March 25, 2024 provided the minutes of board meeting held on February 02, 2024 along with attendance sheet, wherein RPT for the year ended September 30, 2023 were approved.

iii. it was observed from the minutes of Board meeting held on February 02, 2024 that the following directors attended the aforesaid board meeting and approved RPTs:

- (i) Mr. Abbas Sarfaraz Khan
- (ii) Baigum Laila Sarfaraz
- (iii) Mr. Iskander M. Khan
- (iv) Mr. Abdul Qadar Khattak
- (v) Mr. Feisal Kemal Khan

iv. review of the Accounts 2023 revealed that the Company had following directors in common (**Interested Directors**) with the aforesaid related parties:

- (i) Mr. Abbas Sarfaraz Khan
- (ii) Baigum Laila Sarfaraz
- (iii) Mr. Iskander M. Khan
- (iv) Mr. Abdul Qadar Khattak

v. the board meeting held on February 02, 2024 wherein RPTs were approved was attended by five directors including four interested directors. The said interested directors being interested in the respective transactions as referred in Para 2 (i) above, were not qualified to participate and vote to approve the RPTs, therefore the quorum of directors for this resolution was not formed as per requirement of section 176 of the Act, therefore, the matter was required to be taken before the shareholders in the general meeting in terms of section 207(2) of the Act, as the quorum was not present.

vi. the interested directors, by virtue of their respective directorship, were interested in the RPTs, and failed to disclose their interest, are therefore in contravention to the provisions of Section 205 of the Act. Moreover, the interested directors failed to abstain from participating in proceedings and passing resolution in the board meeting



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held on February 02, 2024 approving RPTs, in contravention of the provisions of sub-section (1) of Section 207 of the Act.

3. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents for the aforesaid contraventions of sections 176, 205 and 207 of the Act, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions.

4. In response to the SCN, the company secretary of the Company on behalf of the Respondents through letter dated May 7, 2024 made written submission, relevant extracts of which are produced below:

- All the RPTs during the year ended September 30, 2023 were placed before and approved by the shareholders in 36th Annual General Meeting (AGM) of the Company held on February 26, 2024;
- The directors give general notice every year to the Company about their interest in various group companies in compliance of section 205(3) of the Act and the same was read in board meeting held on October 04, 2023.
- Two common directors in RPTs with Phipson & Company Pakistan (Private) Limited and Azlak Enterprises (Private) Limited, left the board room while respective transactions were discussed in compliance of section 207 of the Act.
- The Company gains significant benefits from purchasing packing materials, specifically Polypropylene bags from Syntronics Limited and Syntron Limited. However these are purchased on credit basis and at competitive rates as compared to open market .
- TRPTs with Premier Sugar Mills and Distillery Company Limited reflects positive scenario for the company attributable not only to common directorship but also to competitive advantage and smooth transactions.
- Molasses is purchased from an associated company ensures stable supply chain but also provides competitive pricing due to geographical location and facilitating early delivery. Sale of store items and Bagasse results in operational efficiency, benefitting the associated companies.
- Acknowledges the inadvertent omission and committed to provide comprehensive and transparent information in the future ensuring adherence to regulatory requirements.

5. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 05, 2024 wherein Mr. Mujahid Bashir, Company secretary and Mr. Qasim Siddiqui, Manager Accounts appeared on behalf of the Respondents as their Authorized Representative (AR) and while reiterating their reply to SCN vide letter dated May 07, 2024, committed to disclose interest of directors in all relevant board meetings and requested lenient view.

6. Relevant provisions of the Act are reproduced as under:

"205. Disclosure of interest by director. —(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board:



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Provided that a director shall be deemed also to be interested or concerned if any of his relatives, is so interested or concerned.

(6) Any contravention or default in complying with requirements of sub-sections (1) or (2), shall be an offence liable to a penalty of level 1 on the standard scale.

207. Interested director not to participate or vote in proceedings of board.—(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void:

Provided that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered.

(2) If majority of the directors are interested in, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, the matter shall be laid before the general meeting for approval.

(4) Any contravention or default in complying with requirements under this section shall be an offence liable to a penalty of level 1 on the standard scale."

176. Proceedings of the board.—(1) The quorum for a meeting of board of a listed company shall not be less than one-third of number of directors or four, whichever is greater and the participation of the directors by video conferencing or by other audio visual means shall be counted for the purposes of quorum under this sub-section:

Provided that if at any time, there are not enough directors to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.

(4) If a meeting of the board is conducted in the absence of a quorum or a meeting of board is not held as required by sub-section (3), the chairman of the directors and the directors shall be liable-

(a) if the default relates to a listed company, to a penalty of level 2 on the standard scale."

7. I have gone through the facts of the case, and considered the written submissions made through various letters by the Respondents and the arguments made during the hearings by their AR, in light of the aforesaid legal provisions and the record placed before me and state as under:

(i) **Disclosure of interest of directors under Section 205 of the Act:**

The Board of Director of the Company in its meeting held on February 02, 2024 approved the aforementioned RPTs. It is hereby pointed out that Section 205 of the Act provides for disclosure of nature of direct as well as indirect interest in any contract or arrangement entered or to be entered at the meeting of the board. Therefore, in context of the Company, the interested directors namely; (i) Mr. Abbas Sarfraz Khan, (ii) Baigum Laila Sarfraz, (iii) Mr. Iskander M. Khan and (iv) Mr. Abdul Qadar Khattak, were required to disclose their interest in the meeting of the board of



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directors held on February 02, 2024 w.r.t. the RPTs, in terms of the requirements of Section 205 of the Act. However copy of the minutes of the Board meetings provided by the Company did not state any such disclosure by the subject directors. Further the stance of the Respondents that the directors give general notice every year to the Company about their interest in various group companies in compliance of section 205(3) of the Act and the same was read in board meeting held on October 04, 2023 is not cogent as section 205 of the Act clearly requires that any direct or indirect interest has to be disclosed during the board meeting where RPTs are being approved.

It is, therefore, noted that the Respondents namely; (i) Mr. Abbas Sarfraz Khan, (ii) Baigum Laila Sarfraz, (iii) Mr. Iskander M. Khan and (iv) Mr. Abdul Qadar Khattak were interested in the aforementioned RPTs due to their directorship and shareholding in the related associated companies, and by not disclosing the same during the board meeting held on February 02, 2024 wherein RPTs were approved; these four Respondents, being directors of the Company contravened the provisions of section 205 of the Act and the same has been admitted by the Respondents and their AR.

(ii) Interested director not to participate or vote in terms of Section 207 of the Act:

With regard to the provision of section 207 of the Act, it is an established fact that the four interested directors were present in the meeting held on February 02, 2024. The minutes of the Board's stated meeting, however did not disclose that the interested directors recused from discussion and voting, when the matter of RPTs was being considered and approved. It may be noted that in view of requirements of sub-section (1) of section 207 of the Act, interested directors of a company are prohibited to participate in discussion and vote on any contract/ arrangement entered or to be entered where such director is directly or indirectly concerned. For listed companies, the requirements are further stringent as to the presence of a director having material personal interest is prohibited to be present in such meeting of the board while considering the said matter.

Hence, it is noted that the Respondents namely; (i) Mr. Abbas Sarfraz Khan, (ii) Baigum Laila Sarfraz, (iii) Mr. Iskander M. Khan and (iv) Mr. Abdul Qadar Khattak had interest in RPTs of the Company due to their directorship and shareholding in the associated companies, and by participating in the consideration and approval of the aforementioned RPTs; these four Respondents, being directors of the Company contravened the provisions of section 207 of the Act and the same has been admitted by the Respondents and their AR.

(iii) Insufficient Quorum and matter to be placed before general meeting:

The minutes of meeting of the Board held on February 02, 2024 discloses that matter of RPTs was placed before the Respondents for consideration and approval. Considering the fact that out of five directors in-attendance of meeting held on February 02, 2024, following directors were interested in RPTs with respective company, as detailed below;



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Related Party	Interested Directors
The Premier Sugar Mills and Distillery Company Limited	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz 3. Mr. Iskander M. Khan
Syntronics Limited	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz 3. Mr. Iskander M. Khan 4. Mr. Abdul Qadar Khattak
Syntron Limited	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz 3. Mr. Iskander M. Khan
Azlak Enterprises (Private) Limited	1. Mr. Abbas Sarfaraz Khan 2. Baigum Laila Sarfaraz
Phipson & Company Pakistan (Private) Limited	Baigum Laila Sarfaraz

Accordingly the interested directors in respective companies were required to refrain from participation and voting in the meeting of the Board and their presence could not be counted for the purpose of forming the quorum while considering the RPTs. Therefore, the quorum of meeting dated February 02, 2024 in terms of section 176 of the Act was not formed.

(iv) RPTs for the benefit of the Company:

The stance of the Respondents that RPTs were entered for the benefit of the Company does not provide an excuse to the Respondents for not complying with the requirements prescribed under sections 176, 205 and 207 of the Act. Further the said section do not prohibit the Company from transacting with the related parties but provide a mechanism to be followed for their approval by the Board or members in general meetings.

(v) Ex-post facto approval by the members in AGM:

The Company stated that approval for all the RPTs was obtained from the shareholders during AGM dated February 26, 2024 along size approval of financial statements for the year ended September 30, 2023 and the same is evidenced in the minutes of the said EOGM.

It is noted that requirements prescribed through sections 176, 205 and 207 of the Act are explicit and obtaining ex-post-facto approval from members in AGM does not absolve the Respondents from their responsibility to ensure compliance thereof.

8. In view of the foregoing, I hereby conclude that with respect to the RPTs executed by the Company:

- a. by not disclosing their interest in RPTs, the Respondents namely; (i) Mr. Abbas Sarfraz Khan, (ii) Baigum Laila Sarfraz, (iii) Mr. Iskander M. Khan and (iv) Mr. Abdul Qadar Khattak have contravened the provisions of section 205 of the Act, hence are liable to be penalized;



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- b. by not abstaining from participating in the proceedings of the Board meeting relating to the consideration and approval of the RPTs; the four (4) directors of the Company namely; (i) Mr. Abbas Sarfraz Khan, (ii) Baigum Laila Sarfraz, (iii) Mr. Iskander M. Khan and (iv) Mr. Abdul Qadar Khattak had contravened the provisions of section 207 of the Act and, therefore, are liable to be penalized; and
- c. obtaining approval in the Board meeting, in the absence of quorum for the Board meeting dated February 02, 2024 for the aforesaid RPTs, all the Respondents, being directors of the Company, had contravened the provisions of section 176 of the Act and are liable to be penalized. However the said contravention was later ratified by obtaining approval of RPTs in AGM dated February 26, 2024

9. Taking cognizance of the aforesaid established contraventions/ non-compliances, I in exercise of the powers conferred under sections 205 and 207 of the Act, hereby impose aggregate penalty of Rupees Forty Thousand (Rs. 40,000/-) on the Interested directors in the following manner and warn all the Respondents on violation of section 176 of the Act with advise to be careful and ensure compliance to the applicable regulatory framework in future in letter and spirit:

Sr. #	Name of the Respondents	Penalty (Rs.) for violation of Section 205 and 207
1.	Mr. Abbas Sarfraz Khan	10,000
2.	Baigum Laila Sarfraz	10,000
3.	Mr. Iskander M. Khan	10,000
4.	Mr. Abdul Qadar Khattak	10,000
	Total:	40,000

10. The Respondents are hereby, directed to deposit the aforesaid 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 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 penalty.

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

(Shahzad Afzal Khan)
Director/ HOD
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Announced:
Dated: July 10, 2024
Islamabad

