



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Company:	M/s. S.G. Power Limited
Show Cause Notice No. & Date:	CSD/ARN/201/2015-324 dated June 10, 2024
Name of Respondents:	i. M/s. S.G. Power Limited; ii. Mr. Sohail Ahmed, Chief Executive Officer; iii. Mr. Asim Ahmed – Director; iv. Mrs. Saba Sohail – Director; v. Mrs. Sana Sohail- Director; vi. Mr. Farhan Sohail – Director; vii. Mr. Salim Razak Tabani – Independent Director; and viii. Mr. Mansoor Muben – Independent Director;
Date(s) of Hearing(s):	i. August 27, 2024; and ii. May 20, 2025
Case represented by:	Mr. Amir Khan Afridi, Corporate Consultant (the Authorized Representative)
Provision of law involved:	Section 166 of the Companies Act, 2017 read with Section 169, Section 479 and Section 512(2) thereof and the Companies (Manner and Selection of Independent Directors) Regulations, 2018.
Date of the Order:	June 02, 2025

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/201/2015-324 dated June 10, 2024 (“**SCN**”) issued to M/s. S.G. Power Limited (the **Company**) and its Board of Directors, including the Chief Executive Officer, hereinafter collectively referred to as the “**Respondents**”, under Section 166 of the Companies Act, 2017 (the **Act**) read with Section 169 and Section 512(2) thereof and Regulation 4(7) the Companies (Manner and Selection of Independent Directors) Regulations, 2018 (the **Regulations**).

2. The provisions of sub-section (1) of Section 166 of the Act requires that an independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission. Accordingly, the Commission vide S.R.O. 73(1)/2018 dated January 25, 2018 has notified Pakistan Institute of Corporate Governance (the “**PICG**”) as the institute for maintenance of the databank of independent directors. Moreover, the proviso to sub-section (1) of Section 166 of the Act provides that the company shall exercise due diligence before selecting a person from the PICG’s databank as an independent director. Furthermore, sub-Section (2) of Section 166 of the Act provides for that an Independent Director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest.

3. Furthermore, Regulation 4(7) of the Regulations requires that every company shall be responsible for exercising its due diligence before selecting an individual from the databank or

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appointment as independent directors, in particular, any company shall require such individual to submit an undertaking on a non-judicial stamp paper that he/she meets the requirement of sub-regulation (1) of this regulation along with relevant supporting information supporting the same.

4. Moreover, Section 169 of the Act specified that whoever contravenes or fails to comply with any provision of Section 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years. Moreover, Section 512(2) of the Act stipulates that any contravention of the Regulations thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which sub contravention continues.

5. Brief facts of the case are that review of the minutes of Annual General Meeting (AGM) for Financial Year (FY) 2023 of the Company dated October 27, 2023 revealed that the Company had appointed the following persons as independent directors on its Board of Directors (BoD):

- i. Mr. Salim Razak Tabani; and
- ii. Mr. Mansoor Mubeen

6. During the offsite examination for FY2023, the Commission vide letter dated January 26, 2024 sought clarification from the Company whether one of the afore-mentioned elected independent directors, namely Mr. Salim Razak Tabani, was enrolled in the databank maintained by the PICG pursuant to the requirements of Section 166 of the Act. In response the Company through letter dated March 01, 2024, *inter alia*, stated that:

"In order to meet the requirement of SECP, two family directors had resigned and in their place Mr. Salim Razak Tabani and Mr. Mansoor Mubeen were co-opted as independent directors on June 05, 2023. Both of them had offered themselves for reelection as independent directors in AGM held on October 27, 2023. It is confirmed that provisions of Section 166 of the Act was duly complied with."

7. Review of the afore-said response and ancillary records thereto unveiled that:

- i. The confirmation email from PICG corroborating independent directors' enrollment in its database, comprising username and password credentials, was received on March 20, 2024 i.e. well after the election of directors in AGM dated October 27, 2023 and the abovesaid letter of the Commission. Thus, Mr. Tabani was not eligible to contest the election in the AGM for FY 2023 and appointment as an independent director thereof;
- ii. The afore-said elected independent directors were also serving on the BOD of M/s. S.G. Allied Businesses Limited as independent directors; an associated company of the Company, where the Company as its principal business activity to generate and supply power, was also supplying to this associated company; thereby having a material business relationship. Independent Directors serving on the Boards of two associated companies which are enjoying material business relationship, have a strong potential conflict of interest which may compromise the criteria of independence viz., influence the execution of their duties and responsibilities; and

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- iii. The facts narrated above indicated that the Company neither attained prior confirmation from PICG not performed due diligence to fulfill the independence criteria before selecting and appointing independent directors on its BOD.

8. In view of the afore-mentioned instances, the Respondents, *prima facie*, contravened the provisions of Section 166(1) and 166(2) of the Act; and Regulation 4(7) of the Regulations which attract penal action in terms of Section 169 and 512(2) read with Section 479 of the Act. Having being not satisfied with the aforesaid response, SCN was issued to the Respondent to show the cause in writing as to why a penal action may not be taken for non-compliance of the mandatory requirements of the Act and the Regulations. However, the Respondents did not prefer to file a response to SCN within the due time.

9. In order to provide opportunity of personal representation, hearing in the matter was fixed on August 27, 2024 on which date Mr. Amir Khan Afridi (Corporate Consultant from M/s. M.J. Panni Associates) appeared as *Authorized Representative* on behalf of the Respondents. The Authorized Representative submitted the following arguments which were also reiterated vide an even dated letter furnished during the hearing:

- i. *The Authorized Representative admitted to the oversight made on part of the Respondents regarding the appointment of independent directors in the AGM held on October 27, 2023 and submitted that Mr. Salim Razak Tabbani was later included in PICG databank on March 20, 2024.*
- ii. *Regarding the appointment of afore-mentioned independent directors on the board of associated companies, the Respondents failed to provide any response.*

10. In order to meet the ends of justice, another hearing in the matter was fixed on May 20, 2025 on which date the Authorized Representative again appeared before the Adjudicating Officer. During the hearing proceedings, the Authorized Representative reiterated the submissions made in response to the Show Cause Notice dated August 27, 2024, reaffirmed the arguments presented during the earlier hearing, and requested the Commission to take a lenient view in the matter, while assuring future adherence to regulatory compliance.

11. I have reviewed the relevant facts of the case and also considered the written and verbal submissions made by the Respondents through their Authorized Representative. I have also reviewed the relevant provisions of Section 166 of the Act and Regulation 4(7) of the Regulations which stipulate a comprehensive framework for ensuring that eligible persons are elected as Independent Directors of the listed companies. At this juncture, it is important to discuss the following legal and factual elements of the case:

- i. Prior to discussing the merits of the case, it would be highly relevant to delve into the role of an Independent Director with respect to the board of directors of a public listed company. The spirit of Section 166 of the Act, which demands appointment of eligible individuals as the Independent Directors, is crucial in ensuring that corporate governance structure of a listed company is transparent, especially when it comes to safeguarding the interests of shareholders and promoting best business practices. In the context of the proceedings of the board of directors, the role and performance of Independent Directors is vital in ensuring integrity, transparency, and fairness of decision-making process. The Independent Directors provide the checks and balances on the powers of the management, protect minority shareholder interests,

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and enhance the overall governance framework of the company. Their active participation is essential for maintaining stakeholders' confidence and ensuring that the company adheres to both legal and ethical standards.

- ii. The Authorized Representative submitted evidence of inclusion of Mr. Salim Razak Tabani in the PICG databank dated March 20, 2024. However, it has been observed that he was appointed as independent director of the board of the Company in AGM held on October 27, 2023. The law unambiguously provides that an independent director must be selected from the databank maintained by the PICG *prior* to appointment. The Company failed to carry out the necessary due diligence with respect to the selection of independent director from the PICG databank in contravention of Section 166(1) and Regulation 4(7) of the Regulations.
- iii. The Respondents and/or its Authorized Representative, despite being specifically required to clarify this point, failed to provide any explanation or documentation regarding the issue that how the elected/appointed independent directors of the Company simultaneously served on the BOD of its associated company which has a significant business relationship with the Company. This omission is significant in light of the independence criteria prescribed under Section 166(2)(c) of the Act, which disqualifies individuals from serving as independent directors if they are serving on board positions in the companies/bodies having material business relationship with the Company.

12. In view of the foregoing, the contravention of Section 166(1) and 166(2) of the Act along with Regulation 4(7) of the Regulations have been established beyond doubt which attracts a penal action in terms of Section 169 and Section 512(2) thereof. However, keeping in view that the fact that Respondents have taken steps to achieve compliance with respect to the requirement of Section 166(1) of the Act and Regulation 4(7) of the Regulations, albeit in a post-facto manner, I am inclined to take a lenient view and to, hereby, conclude the proceedings in terms of powers conferred under Section 169 and Section 512(2) of the Act thereof read with S.R.O.1545(I)/2019 dated December 06, 2019 with a strict **WARNING** to the Respondents to remain vigilant in future regarding the compliance of the regulatory framework with respect to the appointment/election of only eligible persons as independent directors of the Company.

13. Furthermore, in exercise of the powers conferred under Section 169 and Section 479 of the Act, read with S.R.O. 1545(I)/2019 dated December 06, 2019, I, hereby conclude the proceedings by imposing an aggregate penalty of **Rs. 45,000/- (Rupees Forty-Five Thousand only)** on the Respondents for contravention of Section 166(2) of the Act, relating to the appointment of independent directors on the board of associated companies despite the existence of a material business relationship, in the following manner:


S. No	Name of Respondent(s)	Penalty (in Rs)
1.	M/s. S.G. Power Limited;	10,000
2.	Mr. Sohail Ahmed, Chief Executive Officer;	5,000
3.	Mr. Asim Ahmed – Director;	5,000
4.	Mrs. Saba Sohail – Director;	5,000
5.	Mrs. Sana Sohail- Director;	5,000
6.	Mr. Farhan Sohail – Director;	5,000

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7.	Mr. Salim Razak Tabani – Independent Director; and	5,000
8.	Mr. Mansoor Muben – Independent Director;	5,000
	Total	45,000

14. Furthermore, in exercise of powers conferred under Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 06, 2019, the Respondents are **DIRECTED** to ensure compliance with respect to Section 166(2) of the Act within forty-five (45) days of the date of this Order and submit evidence of compliance with the Supervision Department of the Commission.

15. The Respondent is, hereby further directed to deposit the aforesaid amount of 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 to 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 fines as arrears of land revenue pursuant to provision of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.


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(Sohail Qadri)
 Director/ Head of Department
 Adjudication Department-I

Announced:
 Dated: June 02, 2025
Islamabad.

