



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Dadabhoy Sack Limited

Show Cause Notice No. & Date CSD/ARN/119/2015-155 dated March 20, 2024

Date of Hearing: May 17, 2024; May 27, 2024

Present: Mr. Ali Lakhany, Advocate

ORDER

Under Section 166 of the Companies Act, 2017 read with Sections 169 and 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 March 20, 2024 (the SCN) issued, under Section 166 of the Companies Act, 2017 (the Act) read with Sections 169 and 479 thereof, to Dadbhoy Sack Limited (the Company) and its Board of Directors hereinafter referred to as the Respondents.

2. Brief facts of the case are that:

- (i) Review of annual audited accounts for the year ended June 30, 2023 (the Accounts) of the Company revealed that the Company has disclosed three independent directors namely Mr. Fazal ur Rehman, Mr. Sahir Yousuf Zai and Mr. Aamir Raffiq Bhatti in the Statement of Compliance (SOC) with Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations);
- (ii) The Commission vide letter dated January 05, 2024 sought explanation from the Company with regards to registration of independent directors in database of independent directors maintained by Pakistan Institute of Corporate Governance (PICG). The Company in its response dated March 04, 2024, *inter-alia*, submitted that registration of the appointed independent directors at PICG databank of independent directors is in process and the Commission will be intimated as soon it is completed.
- (iii) It is evident from the aforesaid that the Company failed to select the independent director from the databank maintained by PICG, thus, *prima facie*, has contravened



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the provisions of section 166 of the Act. The said contraventions attract applicability of the penal provisions under section 169 of the Act.

3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondent seeking justification for appointing individuals as independent director whose names were not registered with the databank maintained by PICG. K.D. Rajani & Co. on behalf of the Respondents, vide letter dated April 04, 2024, submitted that the Company is committed to complete the process of registration of independent directors with PICG and requested the Commission to condone the contravention considering strong compliance history of the Company and challenges faced by it. It also pointed out that in several previous instances, lenient view was taken while concluding the proceedings.

4. In order to provide opportunity of personal representation, hearing was scheduled for May 17, 2024 which was adjourned on request by the Respondents. Later hearing was re-fixed on May 27, 2024 wherein Mr. Ali Lakhany, Advocate appeared on behalf of the Respondents No. 1-5 and 7 as their Authorized Representative (AR) and stated that registration of independent directors with PICG has been applied and response is awaited. It is noted that Respondent No. 6 neither in person nor through his authorized representative appeared for hearings.

5. Subsequently, the AR vide email dated June 04, 2024 submitted evidences with regards to registration of Mr. Aamir Rafiq Bhatti and Mr. Sahir Yousuf Zai with PICG.

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

"166. Manner of selection of independent directors and maintenance of databank of independent directors. - (1) 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 an institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment.

169. **Penalties.** - *Whoever contravenes or fails to comply with any of the provisions of sections 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*



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imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years."

7. I have gone through the facts of the case, considered both the written statement by the CEO, verbal submissions of the ARs and record available with the Commission. I have observed that Mr. Fazal ur Rehman, Mr. Sahir Yousuf Zai and Mr. Aamir Raffiq Bhatti were appointed as independent director, when their names were not registered in PICG databank of Independent Directors. The aforesaid defaults have been admitted by the Respondents in their written response dated April 04, 2024 and by the AR during the hearing.

8. It is pertinent to highlight that section 166(1) of the Act requires the companies to select and appoint an independent director from the data bank maintained by the PICG once the company has exercised due diligence prior to selecting a person from the aforesaid data bank. In view of afore-referred provision, the Company is obligated to appoint independent directors selected from the databank of individuals maintained by the PICG. At this juncture, it is imperative to address the following:

a. **Whether the independent directors were selected from the PICG databank by the Company:**

No, the independent directors appointed by the Company were not selected from the database of the PICG.

b. **Whether the applicable provisions of the applicable legal framework provide any exemption from registration of Independent Directors with PICG:**

No, the provisions of section 166 of the Act are clear and explicitly required the Respondents to select the Independent Directors from the databank of Independent Directors maintained with the PICG.

c. **Importance of entering the name of the independent director in the PICG database:**

Registration in the databank of PICG is imperative as it is duly authorized by the Commission and the due diligence of selection of independent directors from its databank synchronizes details of experienced directors as well as newly qualified candidates which reinforces the best governance practices in listed companies.

d. **Whether subsequent compliance absolve the Respondents from the non-compliance of applicable legal framework:**

No, subsequent compliance with the provisions of section 166 of the Act does not absolve the Respondents from their responsibility to select and appoint the Independent Directors from the databank of Independent Directors maintained with the PICG.



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e. Whether previous Judgements relevant and binding in the instant case:

No, it is stated that every case has distinct facts and circumstances., therefore, decision in one case may not be treated as binding precedent for other cases. Furthermore, in the recent judgement of the Islamabad High Court in the case of PKP Exploration Limited vs Federal Board of Revenue (PTD 2021, 1644), it was held that decisions of quasi-judicial forums in one case are not bonding for other similar cases before such tribunal. For reference relevant abstract of the judgement is reproduced below:

“A precedent, therefore, is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed as ratio decidendi. The concrete decision is binding between the parties to it, but it is abstract ratio decidendi which alone has the force of law as regards to the world at large.

As per articles 189, 203GG and Constitution of Pakistan, 1973, decisions of Supreme Court are binding on other Courts, decision of Court binding on High Court and Courts subordinate to it and decision of High Court binding in Subordinate Courts respectively.

13.....Given that it is an adjudicatory forum of a quasi-judicial nature established by statute, it is vested with no inherent power.The consequences of the decision of the Tribunal are limited to the case it decides and do not travel beyond the four corners of the subject-matter before it in appeal. In other words, neither the Constitution nor any statue envisages a law-declaring function for the Tribunal. Its decision do not become binding precedents. The reasoning of the Tribunal in one case could be treated by tax authorities as a persuasive precedent in a subsequent case where the subject-matter is the same or similar. But the persuasive quality or cogent reasoning of a decision of the Tribunal does not transform it into a legally binding precedent for officials exercising executive or adjudicatory authority under tax, statutes, just as the most compelling and potent decisions of District Courts do not make such decisions binding precedents.”

It is evident from the aforesaid that the precedents may be considered as reference but are not binding for the competent forum and accordingly each case can be decided on its merits and facts.

9. In view of the preceding facts, it is evident that the Company has contravened the provisions of sub-section (1) of Section 166 of the Act by appointing the afore-referred independent director not enrolled in the databank maintained by the PICG, hence the non-compliance at relevant point in time is established and the same is also admitted by the Respondents and the AR. I, therefore, in exercise of the powers conferred under Section 169 of the Act, hereby impose a penalty of **Rupees fifty thousand (Rs. 50,000/-)** on the Company



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and Warn all the remaining Respondents and advise them to ensure meticulous compliance of the applicable legal and regulatory framework in future.

10. The aforesaid penalty 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 from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

11. 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, violation of the Act.

(Shahzad Afzal Khan)
Director/ HOD
Adjudication Department-I

Announced:

Dated: June 07, 2024

Islamabad

