



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	Pakistan Engineering Company Limited
Show Cause Notice No. & Date:	No. CSD/ARN/188/2015-626 dated November 20, 2024
Respondents:	(i) Mr. Salman Mufti, Chief Executive Officer; (ii) Mr. Muhammad Arif Habib, Director; (iii) Mirza Mahmood Ahmad, Director; (iv) Mr. Rashid Ali Khan, Director; (v) Mr. Muhammad Iqbal, Director; (vi) Mr. Ansar Javed, Director; (vii) Mr. Manzoor Raza, Director; and (viii) Pakistan Engineering Company Limited
Date(s) of Hearing(s):	(i) December 02, 2024 (ii) December 20, 2024
Case represented by:	(i) Mr. Muhammad Arif Habib – Director (ii) Ms. Saher Mangi – Director (iii) Mr. Muhammad Abbas Mirza – Director and (iv) Mian Anwar Aziz – Company Secretary
Provision of law involved:	Section 166(1) of the Companies Act, 2017 and regulation 6(1) of the Listed Companies (Code of Corporate Governance) Regulations, 2019 read with regulation 37 thereof and Sections 169 and 512(2) of the Companies Act 2017
Date of Order:	March 20, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the “Commission”) through the Show Cause Notice No. CSD/ARN/188/2015-626 dated November 20, 2024 (“SCN”) against M/s Pakistan Engineering Company Limited (the “Company”) and its Board of Directors (“BoD”), hereinafter collectively referred to as the “Respondents”, issued under Section 166(1) of the Companies Act, 2017 (the “Act”) read with Sections 169 and 512 thereof and regulation 6(1) read with regulation 37 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the “Regulations”).

2. The brief facts of the case are that the Company, in terms of Section 166 of the Act, was required to select independent directors from the databank of independent directors maintained by an institute notified by the Commission. Further, as an element of minimum compliance, it was mandatory for the Company to appoint at least two or one-third members of the Board, whichever is higher, as independent directors. From the perusal of the Notice of Extra-Ordinary General Meeting dated March 26, 2024 (“EOGM Notice”), it was revealed that the Company notified that its BoD shall comprise of twelve (12) directors including eight (8) directors to be elected in EOGM and four (4) directors to be nominated by the Federal Government. Subsequently the Company, vide Notice under Section 159(4) of the Act, notified election of eight (8) private directors including two (2) independent directors.

3. In order to probe the matter, the Commission vide letter dated April 24, 2024 advised the Company to clarify its position for appointing less than the required number of independent directors in the EOGM. In response the Company vide letter dated April 29, 2024, *inter-alia*, stated that:

- (i) We have received nominations from: i) Mr. Arslan Nayyar Sheikh; ii) Mr. Mohammad Abbas Mirza; and iii) Ms. Sehar Mangi to be appointed as independent directors;
- (ii) Ms. Sehar Mangi is also an independent director along with being female director; and
- (iii) As per composition of the BoD, three (3) directors are independent; being higher of two or one third of the Board members, representing private shareholding, as Section 166(2) of the Act specifically

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excludes directors appointed under Sections 164 and 165 of the Act from the definition of independent director.

4. It has been observed that the newly elected/ to be nominated BoD of the Company, as fixed, comprised of twelve directors and it was mandatory for the Company to have at least four independent directors. However the Company appointed only two independent directors. Moreover the stance of the Company that Ms. Sehar Mangi is also an independent director could not be substantiated as neither her name was found in the databank of independent directors maintained by Pakistan Institute of Corporate Governance (“PICG”) nor was appearing under the category of independent directors in the notice dated April 06, 2024 issued by the Company under Section 159(4) of the Act.

5. The aforesaid contraventions indicated that the Respondents appointed only two independent directors as against the minimum requirement of four independent directors on its board and appointed Ms. Sehar Mangi as independent director whereas her name was not included in the databank of independent directors, *prima-facie*, constituting contravention of mandatory provision prescribed under regulation 6(1) of the Regulations and Section 166(1) of the Act, respectively. The afore-stated contravention attract penal action as provided under Section 169 of the Act and regulation 37 of the Regulations read with Section 512(2) of the Act. The relevant provisions of law are reproduced hereunder for clarity of reference:

“Section 166 of the Act:

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 any 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...

Regulation 6 of the Regulations:

6. Independent Director. - (1) It is mandatory that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors.

Section 169 of the Act:

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

Regulation 37 of the Regulations:

37. Penalty.- Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.”

Section 512 of the Act:

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 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.

6. Accordingly, a SCN was served upon the Respondents to show the cause in writing as to why a penal action may not be taken against them for non-compliance with the provisions of Section 166(1) of the Act and regulation 6(1) of the Regulations, however, no response was submitted by the Respondents.

7. In order to provide an opportunity of being heard to the Respondents, hearing in the matter was fixed for December 02, 2024; which was adjourned upon request of the Respondents. Subsequently, written response to the SCN was submitted by the Company Secretary through letter dated December 02, 2024, *inter alia*, stating that:

Order in the matter of M/s. Pakistan Engineering Company Limited and its Board of Directors dated March 20, 2025

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- (i) PECO is a public listed company with almost 33% government ownership and as per its Articles of Association, Federal Government is responsible for appointing Chairman, Chief Executive Officer (“CEO”) and nominating directors on the board;
- (ii) The members of the BoD and their appointed employees were not allowed to access the premises of the Company or any records for four years since the appointment of ex Managing Director (“ex MD”) by the Government in October 2018 which resulted in statutory non-compliances and damaged Company’s operations;
- (iii) The previous BoD of the Company comprised of nine directors including three government nominee directors. However to induct independent and female directors while retaining experienced members, number of directors was increased to twelve including four government nominee directors;
- (iv) In April 2024, the Company received consents from two individuals for election as independent directors, one consent from an individual for election as a director in the female category, and consents from five individuals for election as other directors. This led to the appointment of eight unopposed directors representing private shareholders. Therefore, by electing two independent directors (i.e., 2.67 out of 8), the Company complies with the requirement to appoint at least one-third independent directors, as the Regulations do not require rounding up. Additionally, Section 165(2) of the Act mandates the proportional allocation of votes among different categories of directors;
- (v) Ms. Saher Mangi was mistakenly mentioned as independent director and the correct position is reflected in Company’s notice under section 159(4) wherein independent directors are accurately mentioned as two;
- (vi) The Company had never stated fixation of twelve directors as the EOGM notice mentioned that: *“The number of directors to be elected has been fixed at eight (8) representing private shareholding, by the Board of Directors”* while to provide fair disclosure to the stakeholders about Federal Government’s increased proportionate representation on the Board, it was clarified vide notice dated April 18, 2024 that: *“The total strength of the post-election Board of Directors of the Company shall be eight (8) elected directors, representing private shareholding and four (4) Federal Government nominees”*;
- (vii) Despite repeated requests to Ministry of Industries and Production, nomination of four directors including the Chairman by the Federal Government is pending since October 2022. The matter of one-third independent directors will be addressed in consultation of Federal Government, once the Board is fully constituted comprising twelve directors when independence of any government nominee or Ms. Saher Mangi may be considered for categorizing as independent director; and
- (viii) Given the practical difficulty and the efforts by the current Board, the Commission is requested to take a lenient view on subject non-compliances.

8. In order to meet the ends of justice, another hearing was fixed on December 20, 2024 which was attended by Mr. Muhammad Arif Habib – Director (“Respondent No. ii”), Ms. Saher Mangi - Director, Mr. Muhammad Abbas Mirza - Director and Mian Anwar Aziz – Company Secretary (the “Directors and Company Secretary”). However, the remaining Respondents (i.e. Respondents No. i, iii, iv, v, vi, vii, viii) neither appeared in person nor through any Representative. The Directors and Company Secretary during the hearing reiterated the response already provided in response to SCN submitted vide letter dated December 02, 2024 and, *inter-alia* stated that:

- (i) The Company has requested Ministry of Industries to nominate directors on its board;
- (ii) Ms. Saher was supposed to be only a female director on the Board of the Company, therefore, she is not an independent director;

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(iii) Given the practical difficulty and the efforts by the current Board, the Commission is requested to take a lenient view on subject non-compliances.

9. Subsequent to the hearing, a letter dated December 26, 2024 was submitted by the Company Secretary reiterating the written response submitted earlier, submissions made during the hearing and requested to disregard the inadvertent error in listing Ms. Saher Mangi as an independent director.

10. I have gone through the relevant provisions of Section 166(1) of the Act, regulation 6(1) of the Regulations and considered the facts of the case along with the available record of the Company as well as written and verbal submissions of the Directors and Company Secretary. I have also perused regulation 37 of the Regulations along with Sections 169 and 512(2) of the Act, which stipulates penal provisions for contravention of the afore-referred provisions of law. It is observed that in terms of Section 166(1) of the Act, every company is required to select independent directors for appointment on its Board from the data bank of eligible independent directors maintained by PICG as notified by the Commission. Furthermore, it is also observed that the listed companies, in terms of regulation 6(1) of the Regulations, are mandatorily required to appoint at least two or one-third members of the Board, whichever is higher, as independent directors. Accordingly, the Company in the instant matter was obligated to appoint at least four (4) independent directors, being one-third of total strength of the BoD consisting of twelve members, which it has failed to adhere to.

11. The inclusion of adequate percentage of independent directors in the Board enhances the transparency, accountability and governance structure. It also ensures that the board has a diverse range of perspectives, particularly from individuals not directly tied to the company's management or major shareholders which helps to safeguard against potential conflicts of interest and fosters objective decision-making. Inclusion of independent directors is a key element in boosting investor confidence and independent directors are likely to provide oversight that is crucial for protecting minority shareholders and promoting corporate responsibility.

12. In a judgment passed by the Appellate Bench of the Commission in the matter of *Tandlianwala Sugar Mills Limited vs. Director/HoD Adjudication-I* (Appeal No. 85 of 2022), it was held that "Regulation 6 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 makes it incumbent upon a listed company to appoint independent directors. The use of word "mandatory" in regulation 6 leaves no room for any ambiguity that the Legislative Intent behind the said provision is to have independent directors on the board of a listed company." Similarly wisdom on the matter can also be borrowed from 2022 PLC (CS) 1035 of 2022 Islamabad where it was held that "...Legislative intent in S. 166 of Companies Act, 2017 and R. 3(4) of Public Sector Companies (Corporate Governance) Rules, 2013, is to ensure managerial/administrative independence of such Corporation so that they operate through their Board and not by direct intervention of Federal Government--Concept of managerial independence inculcated in Public Sector Companies (Corporate Governance) Rules, 2013, reflects that majority of directors of Board of directors are to be independent directors to maintain balance amongst nominee directors of Federal Government, who are working on instructions or will of Federal Government, whereas independent directors have their own views through which balance has to be maintained amongst the Board for their future business decisions to run Corporation/public sector companies in the best of their ability---"

13. Furthermore, it is pertinent to observe here that in terms of Section 166(2)(h) of the Act, the nominated directors cannot be classified as independent directors. Accordingly the understanding of the Directors and Company Secretary suggesting that government-nominated directors can potentially be nominated as independent, is misplaced.

14. It has further been observed that even after the Federal Government nominates the remaining four directors to complete the board, the Company will still not comply with the mandatory provision prescribed under regulation 6(1) of the Regulations for the following reasons:

- (i) It has already been decided that the Board of the Company shall consist of eight directors representing private shareholders and four directors nominated by the Federal Government, bringing the total number of directors to twelve; and

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- (ii) The law mandates the Company to appoint one-third of its directors as independent directors. The board of the company consists of twelve directors, and the company's understanding that appointing two independent directors from the eight directors representing private shareholders fulfills the legal requirement is incorrect. The legislative intent behind this requirement is to ensure that one-third of the entire board, which in this case is twelve directors, are independent. Accordingly, the Company was required to appoint at least four independent directors i.e. one third of its total board, to comply with the law.
- (iii) The directors to be nominated by the Federal Government are not considered as independent directors due to restriction specified in Section 166(2)(h) of the Act.

In view thereof, with only two independent directors (i.e. 16.67%) on a twelve-member board, the company shall be constrained to and continue to be non-compliant with the mandatory requirement specified per regulation 6(1) of the Regulations which requires appointment of at least four independent directors (i.e. 33.33%).

15. The argument of the Directors and Company Secretary that they did not have access to the records of the Company after the appointment of ex MD is not relevant in the subject case.

16. It is pertinent to note that the Directors and Company Secretary acknowledged in their written response to the SCN dated December 2, 2024, as well as in their verbal submissions during the hearing on December 20, 2024, that Ms. Saher Mangi was mistakenly listed as an independent director. In fact, she is the elected female director, which confirms the Company's compliance with Section 166(1) of the Act.

17. It is also observed for record that the Respondent No. ii along with two current directors and Company Secretary attended the hearing while the Company Secretary submitted written responses in respect of SCN. With regards to Respondents No. i, iii, iv, v, vi, vii and viii, despite provision of multiple hearing opportunities, they failed to participate in the instant proceedings or providing any response regarding their alleged non-compliance; thereby reflecting their unwillingness to participate in the proceedings in the instant matter. I, therefore, am left with no other option except to pass an *ex-parte* order against the aforesaid Respondents on the basis of record available with this office.

18. In view of the above-stated facts and circumstances, I am of the considered view that by failing to appoint at least one-third members of the Board as independent directors, the Respondents have contravened the requirements of regulation 6(1) of the Regulations. Moreover, as it has been admitted by Directors and Company Secretary that Ms. Saher Mangi has not been elected as Independent Director, the proceeding under Section 166(1) of the Act do not remain relevant.

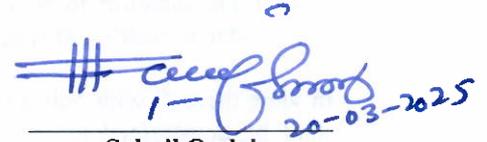
19. I, therefore, in exercise of the powers conferred upon me under regulation 37 of the Regulations and Section 512(2) of the Act read with S.R.O. 1545(I)/2019 dated December 06, 2019, hereby, impose a penalty of **Rs. 80,000/- (Rupees Eighty Thousand only)** on the Respondent in the following manner:

Sr. #	Names	Penalty (Rs.)
1.	Mr. Salman Mufti, Chief Executive Officer	10,000
2.	Mr. Muhammad Arif Habib, Director	10,000
3.	Mirza Mahmood Ahmad, Director	10,000
4.	Mr. Rashid Ali Khan, Director	10,000
5.	Mr. Muhammad Iqbal, Director	10,000
6.	Mr. Ansar Javed, Director	10,000
7.	Mr. Manzoor Raza, Director	10,000
8.	Pakistan Engineering Company Limited	10,000
Total		80,000

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20. Furthermore, in exercise of powers as conferred under Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 6, 2019, the Company is **DIRECTED** to ensure compliance with the applicable provisions of law by appointing requisite independent directors, without fail.

21. The Respondents are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record. 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 provisions of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.


1-20-03-2025
Sohail Qadri
Director/ HOD
Adjudication Department-I

Announced:
Dated: March 20, 2025
Islamabad