



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Respondent	Mr. Shoaib Shaffi
Show Cause Notice No. & Date:	No. 2(453) SMD/Adj-1/2024-293 dated June 04, 2024
Date(s) of Hearing(s):	i. October 03, 2024 ii. December 18, 2024
Case represented by:	Mr. Rashid Sadiq (the Authorized Representative)
Provision of law involved:	Under Sections 103 and 106 of the Securities Act, 2015 read with Regulation 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015
Date of Order	March 21, 2025

This Order shall dispose of the proceedings initiated against Mr. Shoaib Shaffi (the **“Respondent”**) through the Show Cause Notice No. 2(453) SMD/Adj-1/2024-293 dated June 04, 2024 (the **“SCN”**) issued under Sections 103 and 106 of the Securities Act, 2015 (the **“Act”**) read with Regulation 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 (the **“Regulations”**).

2. The brief facts of the case are that Mr. Shoaib Shaffi (the **Respondent**) became substantial shareholder of Jubilee Spinning and Weaving Mills Limited (the **“Company”**) on November 14, 2023 and in terms of Section 103 of the Act read with Regulation 3(4) of the Regulations, Respondent was required to file Form 5 attached to the Regulations within seven days of becoming the substantial shareholder. However, the Respondent filed the requisite Form 5 with the Securities and Exchange Commission of Pakistan (the **“Commission”**) on December 28, 2023 i.e. with a **delay of 37 days** which is *prima facie* a non-compliance of Section 103 of the Act and Regulation 3(4) of the Regulations.

3. The afore-said contravention of the law attracts penal provisions provided in Section 106(2) of the Act which provides that any person who contravenes or fails to comply with any provision of Sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct, in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees.

4. The relevant provisions of the Act and the Regulations stipulate as under:

Section 103 of the Act:

103 - Notification to the Commission of directors and others' interest

(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form -

(a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;

(b) the particulars of any change in the interest aforesaid; and

(c) any change in his position.

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(2) The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises."

Regulation 3(4) of the Regulations:

3 – Reporting of Beneficial ownership in listed equity securities under Section 101 to Section 103 of the Act ...

(4) The directors, executive officers and substantial shareholders of the equity securities in a listed company shall in accordance with section 103 of the Act submit statement of Beneficial ownership in Form 5 and report any subsequent change therein or position to the Commission on Form 6."

5. While taking cognizance of the aforesaid contravention, an SCN was served on the Respondent calling upon it to explain reasons for the aforesaid contravention. In response to the SCN, the Respondent through its Authorized Representative explained the fact through a letter dated October 02, 2024 and inter alia submitted as under:

- i. The Respondent purchased shares of the company on November 14, 2023 and informed the company that his aggregate shareholding in the company was 13.09% of its total paid up share capital. However, he did not submit the Form 5 within stipulated time period. The delay in making the disclosure to the Commission was not wilful as the Respondent did not realize that certain disclosure requirements were attracted on becoming substantial shareholder and he, on his own, filed the requisite Form 5 on 28 December 2023. Intent of the Respondent was not to avoid disclosure but as a first-time substantial shareholder, he was unfamiliar with the landscape of applicable scheme of law and the delay was not motivated by bad intentions of the Respondent.
- ii. As mentioned above, the delay in making the disclosure was not willful as the Respondent informed the company about his aggregate shareholding of 4,251,480 shares and filed the required Form 5 with a slight delay on his own. It is further submitted that the jurisprudence developed by the Courts of Pakistan discourages the technical application of the law and prefers a substantial application of law. Additionally, where a default has been inadvertent, then the decision of the Supreme Court of Pakistan in the case of Securities and Exchange Commission of Pakistan v. First Capital Securities Corporation Limited (2011 PLD 778) may be followed where it has been noted that there be established a substantial finding of guilt as opposed to consideration of technical violations before imposition of fine.
- iii. In furtherance to the submissions on fairness in the application of the law, to maintain uniformity in the exercise of powers entrusted to the SECP in cases having similar circumstances, the law administered by the SECP has to be applied uniformly in accordance with Section 20(6)(c) of the SECP Act 1997. These Provisions of the SECP Act are reproduced hereunder for ease of reference:

"20. Powers and functions of the Commission. -

...

6) In performing its functions and exercising its powers, the Commission shall strive

...

(c) to achieve uniformity in how it performs those functions and exercise those powers;"

- iv. In the past the SECP has graciously condoned non-compliances with provisions of the Act and the Regulations and a similar treatment for leniency is prayed as per the scheme envisaged under Section 20(6)(c) of the SECP Act. Some examples of leniency by the SECP under the provisions of the Act and the Regulations are placed hereunder:

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- a. In the matter of WorldCall Services (Private) Limited relating to Substantial shareholding and filing of Form 5 that was not filed in prescribed time but with a delay of over one year, the Commission took lenient view through Order Dated 24 February 2021, disposing off the case with issuance of warning.
 - b. In the matter of directors of Pakistan Aluminum Beverages Cans Limited, Form 5 was not filed in due date on 26 July 2021 but on 17 March 2022 and after the inquiry the SECP dropped the case in Order dated 07 December, 2022 without imposing any penalty
 - c. In the matter of Show Cause Notice issued to substantial shareholder of Pakgen Power Limited, Mr. Jahangir Feroz through order dated 13 December, 2022, the case was concluded by taking lenient view without imposing any penalty
 - d. In the matter of Show cause Notice issued to Ms. Sarwat Salahuddin Khan, director of Agritech Limited, through Order dated 26 July, 2022 the SECP took a lenient view against the violation of Section 102(3) of the Act where the director did not file the requisite form within the prescribed time and only a warning was issued.
 - e. Reference is also placed on the Orders in the matter of Ghani Chemical Industries Limited dated June 22, 2022, Mr. Junaid Shahzad Ahmad, Director of Trust Securities & Brokerage Limited order dated 27 May 2022. EFG Hermes Oman LLC through order dated 21 November, 2022 AKD Securities Limited through Order dated June 13, 2022.
- v. In relation to this submission on uniform application of the law, reference is made to the ruling of the **Appellate Bench dated 22 May 2015** in the matter of **ANS Capital (Pvt.) Limited v. Director (SMD) 2017 CLD 686** where it has been noted that law requires equal and fair treatment and the Commission should have a uniform approach in exercising powers.
 - vi. In another case through its judgment dated **01 September, 2016 Paramount Spinning Mills Limited (Appeal No. 29 of 2016)**, it was emphasized that it is mandatory for the Bench to follow principle consistency in order to maintain balance and the doctrine of equality before law as enshrined in Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, we hereby allow this appeal and set aside the Impugned Order to the extent of Appellant....." (emphasis provided).
 - vii. The matter of uniformity was also taken up by the Lahore High Court in the unreported case of **Nishat Mills Limited v. SECP Appellate Bench** which related to delay in filing certain returns. When presented with precedent developed by the SECP, Shams Mehmood Mirza, J of the Lahore High Court noted as the Court has gone through the orders passed by SECP in a number of cases where delay in filing the Form 31 was condoned. The perusal of these orders clearly shows that SECP condoned the delay on the assurance and undertaking given by the defaulters for timely filing of the returns in future.
 - viii. The Supreme Court of Pakistan has commented on the need for consistency in application of the law and warned against the danger of inconsistency by reiterating the objective of the law in the matter of **Mst. Gul Jan vs. Naik Muhammad (PLD 2012 SC 421)** through judgement of Asif Saeed Khosa, J stated as the *raison d'être* or object of all laws is to regulate the affairs of a society in uniformity and through such uniformity to establish a just order. Also, compliance with the rule of consistency is central to the administration of justice as noted in the case of **Administrator District Council Larkana v Ghulam Khan (2001 SCMR 1320)**.
 - ix. The Supreme Court of Pakistan emphasized on the importance of the uniform application of the law through its judgement in the case of **Ghulam Murtaza v The State (PLD 2009 Lahore 362)** stating "justice according to the law" aims to ensure predictable and

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consistent judicial outcomes based on codified standards, rather than personal discretion. This is crucial for maintaining fairness.

- x. We also refer to the Peshawar High Court case of **Zahid Ullah v NWFP Public Service Commission through Chairman, Peshawar (PLD 2010 Peshawar 2)** 17 which while referring to uniform application of law stated that "lack of uniformity is an unmistakable indication of tyranny. The more tyrant the ruler, the more numerous the laws, is too known an adage to be reiterated."
- xi. The SECP has acknowledged the above position where, in the past, it has considered remedial measures, corrective behavior and subsequent compliance, amongst other factors, to be reason enough to allow leniency and condonation of defaults.
- xii. Accordingly, in light of the above submissions, it is prayed that the SECP may drop the proceedings initiated through the SCN without any adverse consequences for the Respondent and appreciate that the Respondent is devoted to demonstrating regulatory compliance in future...."

6. In order to provide the Respondent an opportunity of personal representation, hearing in the matter was fixed for October 03, 2024 when Mr. Rashid Sadiq appeared as Authorized Representative on behalf of the Respondent (**the "Authorized Representative"**) and reiterated the written stance taken earlier vide letter dated October 02, 2024. In order to meet the ends of justice, another hearing in the matter was fixed on December 18, 2024 at which date the Authorized Representative again appeared before the undersigned to present their submissions. During the hearing proceedings, the Authorized Representative additionally submitted as under:

- i. Primarily, the delay in filing of the substantial shareholding was due to a lack of understanding and unawareness on behalf of the Respondent.
- ii. On December 1, 2023, Respondent wrote a letter to the Company where he disclosed his acquisition of shareholding demonstrating his commitment to compliance. However, as he was a first-time substantial shareholder, he did not acknowledge the legal disclosure requirements that were attached to it under Section 103 of the Act read with Regulation 3(4) of the Regulations.
- iii. Reference was made to several cases in the past, wherein the Commission has condoned such delay in filing of Form 5 as also provided in response to the SCN.
- iv. That the default in this regard was unintentional and non-willful. Therefore, a lenient approach may be taken.


7. I have gone through the facts of the case, the written and verbal submissions made by the Respondent and its Authorized Representative, and in view of the foregoing events and arguments, I have the following questions posed before me to take a decision in the matter:

- i. In the instant matter, it has been observed that the Respondent has made the requisite disclosure as per the requirement of Section 103 of the Act read with Regulation 3(4) of the Regulations with a delay of **37 days**. The Respondent, on November 14, 2023, acquired 1,653,468 i.e. 5.09% voting shares in the Target Company which increased his total shareholding to 4,251,480 i.e. 13.09% of the total voting shares of the Target company. In view of the said, the Respondent was required to file the requisite disclosure on Form 5 within seven days (i.e. by November 20, 2023) However, the disclosure was filed by the Respondent on December 28, 2023 with a delay. The Authorized Representative admitted the default made by the Respondent and submitted that the delay was not willful or intentional.
- ii. The importance of disclosure under Section 103 of the Act, and Regulation 3(4) of the Regulations, lies in fostering a transparent, fair, and stable market environment. It ensures regulatory compliance, enhances market integrity, protects investors, supports good corporate governance, and allows for informed strategic decision-making within companies.

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- iii. With regard to the case laws provided by the Authorized Representative in its reply dated October 02, 2024, the Authorized Representative submitted that the Commission has condoned such non-compliances in the past and, therefore, leniency is requested in the matter.

8. Having reviewed the facts of the case, along with the written and verbal submissions made by the Respondent and its Authorized Representative, I conclude that the contravention of Section 103 of the Act, read with Regulation 3(4) of the Regulations, has been **established** beyond doubt. However, since the Respondent has made subsequent compliance and demonstrated a bona fide effort to rectify the violation, I am inclined to take a lenient view. Considering the given circumstances, I, therefore, in the exercise of powers conferred under Section 106 of the Act read with S.R.O. 1545(I)/2019 dated December 06, 2019, hereby conclude the proceedings initiated through the SCN against the Respondent, without imposing any penalty. However, the Respondent is **STRICTLY WARNED** to remain vigilant with regard to the compliance of the Act and the Regulations in future, in true letter and spirit.


21-03-2025
(Sohail Qadri)
Director/ Head of Department
(Adjudication Department-I)

Announced:
March 21, 2025

