



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

| ORDER                         |   |
|-------------------------------|---|
| Name of Company:              | M/s Ali Asghar Textile Mills Limited  |
| Show Cause Notice No. & Date: | CSD/ARN/15/2015-972, dated March 03, 2025   |
| Name(s) of Noticee(s):        | (i) M/s Ali Asghar Textile Mills Limited, the Company;<br>(ii) Mr. Nadeem Ellahi Shaikh, Chief Executive/ Executive Director;<br>(iii) Mr. Muhammad Afzal, Chairman/Non-Executive Director;<br>(iv) Mr. Abdullah Moosa, Executive Director;<br>(v) Mr. Ahmed Ali, Independent Director;<br>(vi) Mr. Muhammad Suleman, Executive Director;<br>(vii) Mr. Anwar Ali, Independent Director; and<br>(viii) Mr. Muhammad Zubair, Independent Director |
| Date(s) of Hearing(s):        | (i) March 25, 2025; and<br>(ii) April 11, 2025  |
| Case Represented by:          | (i) Mr. Nadeem Ellahi Shaikh, CEO; and<br>(ii) Mr. Muhammad Suleman, Executive Director<br>as the Authorized Representatives  |
| Provision of Law Involved:    | Section 194 and 512 of the Companies Act, 2017 read with Regulation 52 of the Companies Regulation, 2024  |
| Date of Order:                | May 16, 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/15/2015-972 dated March 03, 2025 (SCN) against M/s Ali Asghar Textile Mills Limited (the "Company") and its Board of Directors, including the CEO, hereinafter collectively referred to as the "Noticee(s)" under Section 194 and 512 of the Companies Act, 2017 ("the Act") read with Regulation 52 of the Companies Regulations, 2024 ("the Regulations").

2. The provisions of Section 194 of the Act, requires that a public company must have a company secretary possessing such qualification as may be specified. Furthermore, the Commission in terms of Regulation 24 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 ("the CCG Regulations"), specified that:

*24. Qualification of company secretary. - No person shall be appointed as the company secretary unless he holds the qualification as specified under the relevant Regulations by the Commission:*

3. The Commission, in terms of Regulation 52 of the Regulations [the relevant Regulations as referenced in CCG Regulations above], specified that:

*52. Qualifications and Experience of company secretary. -Subject to the provisions of section 194 of the Act, the public company shall appoint as company secretary—*

(i) a person who is a member of—

(a) a recognized body of professional accountants; or

(b) a recognized body of corporate or chartered secretaries; or

(ii) a person holding a master degree in business administration or commerce or being a law graduate from a university recognized by the Higher Education Commission of Pakistan or in case of foreign qualification in the above disciplines, holds an equivalence certificate from

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Higher Education Commission of Pakistan and having at least five years relevant experience in case of listed company or two years relevant experience in case of other public company; or

(iii) a retired government servant in BS-18 or equivalent or above with at least fifteen years' service:

Provided that a person already engaged by a public company as company secretary in terms of the Companies (General Provisions and Forms) Rules, 1985 ("the 1985 Rules"), or the Companies (General Provisions and Forms) Regulations, 2018 ("the 2018 Regulations") may continue in that capacity.

4. The non-compliance with the aforementioned provisions attracts penal provisions provided under Section 512 of the Act read with Regulation 147 of the Regulations, the relevant provisions of the Act and the Regulations are hereunder:

The Act:

*"512. (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."*

The Regulations:

*Regulation 147. Penalty for contravention of regulations. –Whoever fails or refused to comply with, or contravenes any requirements of the regulations shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.*

5. Brief facts of the case are that the Auditor's Review Report dated October 03, 2024 on the Statement of Compliance as per the CCG Regulations to the Members of the Company for the year ended June 30, 2024, observed the non-compliance with regards to Regulation 24 of the CCG Regulations, wherein the Company Secretary is not meeting the qualification criteria as prescribed by the CCG Regulations.

6. The Commission vide letter dated December 05, 2024 sought clarification from the Company. The Company in its response dated December 20, 2024, *inter alia*, submitted that:

*"Regarding the corporate governance points raised, the Company has separated the offices of the CFO and company secretary as per requirements of the Companies Act, 2017. We note that the observations about the CFO and Company Secretary for not having the proper certifications. However, we would like to add that both individuals have been serving in senior positions at the Company for over 15 years, handling all financial issues and negotiations with banks, SECP, and PSX diligently. As the Company's financial positions further improves and it is in a position to afford higher salaries, we will appoint more highly qualified individuals".*

7. Taking cognizance of the alleged violation of law, SCN was served upon the Noticee(s) on March 03, 2025 to show the cause in writing as to why a penal action may not be taken against them for non-compliance of the requirements of Section 194 and 512 of the Act read with the Regulation 52 of the Regulations. In response to the SCN, the Company Secretary vide letter dated March 21, 2025 submitted that *they have noted the observation about the Company Secretary of not having the proper certification. That the Company Secretary has been serving in senior position at the Company for over 15 years and was appointed before promulgation of CCG-2019, hence the provisions do not apply on the current Company Secretary.* The Company also sought leniency and enclosed a legal opinion dated January 05, 2022 along with the aforesaid letter.

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8. In order to provide an opportunity for personal representation and to meet the ends of justice, a hearing in the matter was fixed for March 25, 2025, which was adjourned on the request of the Company Secretary vide letter dated March 14, 2025. Thereafter the hearing was re-fixed for April 11, 2025. On the date of hearing, Mr. Nadeem Ellahi Shaikh, CEO and Mr. Muhammad Suleman, Executive Director, appeared online on behalf of all the Noticee(s) as the **Authorized Representatives**. During the hearing, the Authorized Representatives reiterated the stance taken vide letter dated March 21, 2025 and also submitted that they would furnish a fresh and relevant legal opinion specifically relating to the grandfathering exemption available to the Company Secretary as per their understanding of the law.

9. Subsequently, the Authorized Representatives through email dated April 16, 2025, shared a legal opinion from their legal advisors dated April 15, 2025 wherein, it was submitted that "...the proviso in Regulation 52 of the Regulations explicitly states that a person "already engaged" as Company Secretary under the 1985 or 2018 regulatory regimes may continue without any limiting language or sunset provision, which suggests an intention to preserve existing appointments. While the expression "already engaged" may ostensibly be subject to interpretation, it is nonetheless broad enough to encompass individuals appointed and serving continuously prior to the 2024 Regulations. The absence of definitional clarity on the phrase reinforces interpretative ambiguity, allowing for a reasonable construction in favor of existing appointments. Furthermore, neither Regulation 24 of the CCG Regulations, 2019 nor Regulation 52 of the Companies Regulations, 2024 contains any transitory mechanism or retrospective disqualification clause with respect to previously appointed secretaries. In light of the settled legal principle that subordinate legislation must be construed strictly and prospectively unless explicitly stated otherwise, the absence of such language weighs against any inference of retroactive invalidation.

*That it is a trite principle of law, reaffirmed by superior courts in Pakistan, that statutory and regulatory provisions that affect rights, obligations, or qualifications must be interpreted prospectively unless the legislative intent to apply them retrospectively is clearly and unequivocally expressed (see PLD 2007 642; 2022 SCMR 45). Thus, applying the 2024 Regulations retrospectively to annul or question the continuity of a duly appointed officer who has served uninterruptedly for over 13 years would not only lack legal basis but may also raise constitutional questions of legitimate expectation and protection of vested rights.*

*We are of the opinion that the qualification criteria stipulated under Regulation 24 of the CCG Regulations, 2019 and Regulation 52 of the Companies Regulations, 2024 apply prospectively to fresh appointments, and do not ipso facto invalidate or question the continued engagement of a Company Secretary who was appointed prior to their enforcement.*

*The proviso to Regulation 52 operates as a saving clause, permitting existing company secretaries, such as the individual engaged by the Company, to continue in their role without interruption. There is no express or implied statutory obligation requiring retrospective compliance with the newly introduced qualifications by persons already validly holding the office of Company Secretary. In absence of any express derogation of previously held appointments, the Commission's objective appears to be based on an overly broad construction of regulatory intent, and may not sustain judicial scrutiny if challenged.*

*The Company Secretary has been working in the same position since 13 years in the Company and by respectfully asserting that the new regulatory provisions do not apply retrospectively to require requalification or disqualification of office holders already in place."*

10. I have reviewed the facts of the case and also considered the written and verbal submissions made by the Noticee(s) along with the opinion of their legal advisor on the subject. I have also reviewed the provisions of Section 194 of the Act in the context of the provision of Regulation 52 of Regulations,

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Regulation 24 of the CCG Regulations and relevant parts of the 2018 Regulations and 1985 Rules. At this juncture, it is important to discuss the following legal and factual elements:

- (i) The Company Secretary vide letter dated December 20, 2024 has submitted that “we note the observation about the CFO and Company Secretary not having the proper certifications. However, we would like to add that both individuals have been serving in senior positions at the company for over 15 years.....As the company’s financial position further improves and it is in a position to afford higher salaries, we will appoint more highly qualified individuals”.
- (ii) The Company Secretary vide letter dated March 21, 2025 submitted again that “we note the observation about Company Secretary not having the proper certification”. It is observed that both aforesaid letters bear an unqualified admittance of default for not appointing a qualified person as the Company Secretary and the assurance by the Company to rectify the same, subject to improved financial health of the Company. It is further observed that tying up the statutory compliance with a future prospect of the Company is not a plausible justification at all as regulatory compliance is not and cannot be subject to any contingencies.
- (iii) With regards to the stance taken vide letter dated March 21, 2025 that the *Company Secretary was appointed before promulgation of CCG-2019, hence enjoys the protection as the provisions do not apply on the current Company Secretary*, it is observed that the CCG Regulations provide a continuing criterion (*to be observed at the time of appointment and at all times*) for the qualification of a person to act as Company Secretary and unambiguously refer to the 2018 Regulations; wherein the proviso of the relevant regulation (i.e., Regulation 52) clearly mentions that a person already engaged by a public company as company secretary in terms of the Companies (General Provisions and Forms) Rules, 1985 may continue in that capacity. It is, therefore, apt to look at the relevant provision of 1985 Rules [*as amended through Notification SRO 1014(I)/2005, dated September 28, 2005*]; where Rule 14B provides, a person already engaged by a public listed company as company secretary before the 26th October, 2002, may continue in that capacity if he has an experience of not less than five years in that position. Therefore, it is abundantly vivid that the wants of law require an individual to either meet the qualification criteria as set out in Regulation 52 of the Regulations or if such person has been appointed under the Companies (General Provisions and Forms) Rules, 1985 before the date of October 26, 2002 and does not meet the qualification criterion, he/she may enjoy the grandfathering and continue in the same capacity as employed by meeting other requirements. In the instant matter, however, the Company Secretary was appointed in the year 2012, therefore the grandfathering cover provided under the 2018 Regulations, is not available to him. This detailed consideration also caters to the arguments stemming from the legal opinion dated April, 2025 which now does not require any separate delving.
- (iv) It is, for guidance on the cruciality of the role of company secretary, especially where a listed company is involved, noted that in 2010 CLD 79 it was held that Company Secretary is required for corporate culture and bring good corporate governance by ensuring quality secretarial services for the corporate sector. Therefore, it is to be observed that Company Secretary plays a pivotal role in smooth functioning of secretarial affairs of a Company and the required qualification for Company Secretary has been placed as part of the regulatory framework to ensure that only qualified individuals are appointed for such an important role.
- (v) In an effort to settle a subtle point of jurisdiction raised during the hearing, guidance is sought from 2014 CLC 114 Lahore High Court, Lahore where it was held *the rules are progeny of a statute, which are made by competent authority in exercise of its delegated legislative power under such Act and application thereof is empowered, confined and limited to the law under*

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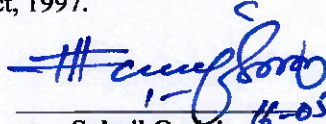
which those are framed. Section 194 of the Act, clearly states that a public company must have a company secretary; possessing such qualifications as may be specified. A plain reading of this section shows that the intent of the Legislature is quite clear that a Company Secretary must possess qualifications as specified, and here the word 'specified', refers to any the Regulations that would be made to specify such qualifications and therefore Regulations along with the 2018 Regulations were made to specify such qualifications and thus they are within the scope of the primary legislation and there is no ambiguity.

11. In view of the above, the aforesaid contravention with the requirements of Section 194 of the Act and Regulation 52 by the Noticee(s) has been established beyond doubt which attracts a penal actions in terms Regulation 147 of the Regulations read with Section 512(2) of the Act. I, therefore, in exercise of the powers conferred upon me under Section 512(2) of the Act, read with SRO 1545(I)/2019 dated December 06, 2019, hereby impose an aggregate penalty of Rs. 45,000/- (Pak Rupees Forty-Five Thousand Only) on the Noticee(s) in the following manner:

| S. No.       | Name of the Noticee(s)                                       | Amount of the Penalty (Rs) |
|--------------|--|----------------------------|
| 1            | M/s Ali Asghar Textile Mills Limited, the Company            | 10,000                     |
| 2            | Mr. Nadeem Ellahi Shaikh, Chief Executive/Executive Director | 5,000                      |
| 3            | Mr. Muhammad Afzal, Chairman/Non-Executive Director          | 5,000                      |
| 4            | Mr. Abdullah Moosa, Executive Director                       | 5,000                      |
| 5            | Mr. Ahmed Ali, Independent Director                          | 5,000                      |
| 6            | Mr. Muhammad Suleman, Executive Director                     | 5,000                      |
| 7            | Mr. Anwar Ali, Independent Director                          | 5,000                      |
| 8            | Mr. Muhammad Zubair, Independent Director                    | 5,000                      |
| <b>Total</b> |  | <b>45,000</b>              |

12. The Noticee(s), in exercise of powers conferred under Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 06, 2019, are DIRECTED to ensure comprehensive compliance in the instant matter in an immediate manner but not later than forty-five (45) days from the date of this order. The Noticee(s) are further DIRECTED to report compliance of this direction to the Supervision Division of the Commission within the stipulated time without fail. The Noticee(s) are also advised to remain careful in the future and ensure meticulous compliance with the provisions of law effectively and efficiently.

13. The Noticee(s) are, 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.

  
 16-05-2025  
 Sohail Qadri  
 Director/ HOD  
 Adjudication Department-I

**Announced:**  
 May 16, 2025  
 Islamabad

