



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

**Shahzad Afzal Khan, Director/ Head of Department
(Adjudication Department-I)**

In the matter of

TEZ Financial Services Limited

Show Cause Notice No. & Issue Date:	ADJ-I/SCD/TFSL/09/2019 February 02, 2024
Date of Hearing:	March 12, 2024
Present at the Hearing Representing the Respondent	1. Ms. Naureen Hayat, Director/Chief Executive Officer 2. Mr. Humza Hussain, Director 3. Mr. M. Shoaib Shamim, Company Secretary/CFO 4. Ms. Samar Masood, Nominee Director 5. Ms. Raheela Raheel, Associate at ABS & Co (Authorized Representatives)

ORDER

UNDER SECTION 169 READ WITH SECTION 479 OF THE COMPANIES ACT, 2017 FOR CONTRAVENTIONS OF SECTION 154 (1)(C) THEREOF

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the Commission**) through the Show Cause Notice dated February 02, 2024 (**the SCN**) against TEZ Financial Services Limited (**the Company /Respondent 1**); Ms. Naureen Hayat, Director/Chief Executive Officer (**Respondent No. 2**); and Mr. Humza Hussain, Director (**Respondent No.3**) of the Company/Respondent No. 1 respectively, hereinafter, are collectively referred to as (**the Respondents**), issued under Section 169 read with Section 479 of the Companies Act, 2017 (**the Act**) for contraventions of section 154(1)(c) thereof.

2. The Company was incorporated on March 08, 2018 as a public company under the provision of the Act and licensed by the Commission on July 10, 2018 to undertake Microfinance business as Non-Banking Finance Company (NBFC) under Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**) and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**the NBFC Regulations**).

3. Brief facts leading to this case are that in terms of Section 154(1)(c) of the Act, it is mandatory for a public company other than a listed company to have at least three Directors on its Board of Directors (**the Board**). However, the examination of the annual returns filed by the Company for the year 2023, transpired that one of the Directors of the Company i.e. Dr. Mayada Baydas (Lebanese National) had resigned on May 4, 2023, and since then the Company, being a public company, was operating with only two (2) Directors, contrary to the aforesaid requirement of the Law, which attracts the penal provisions of the Section 169 read with Section 479 of the Act. Therefore, the SCN was issued to the Respondents. These requirements of law are reproduced as under:

Section 154 (1) (c) of the Act:

"154. Minimum number of directors of a company: —

(1) Notwithstanding anything contained in any other law for the time being in force,

(c) a public company other than a listed company shall have not less than three directors."



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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 the company for a period not exceeding three years

Section 479 of the Act:

"Adjudication of offences and standard scale of penalty: —

(1) There shall be a standard scale of penalty for offences under this Act, which shall be known as "the standard scale".

(2) The standard scale consists of—

<u>Level</u>	<u>Limit of penalty</u>	<u>Per day penalty during which the default continues</u>
<u>1</u>	<u>Upto Rs.25,000</u>	<u>Upto Rs.500</u>
<u>2</u>	<u>Upto Rs.500,000</u>	<u>Upto Rs.1,000</u>
<u>3</u>	<u>Upto Rs.100 million</u>	<u>Upto Rs.500,000"</u>

4. In response to the SCN, the counsel of the Company i.e. ABS & Co Advocate and Counsels, vide their letter dated February 16, 2024, submitted on merits as under:

".....We appreciate the diligence of the SECP in ensuring regulatory compliance, and therefore would like to provide clarification on the matter at hand. Please note, that the Company has consistently maintained three directors, namely Naureen Hayat, Humza Hussain and Samar Masood. We would like to bring to your attention that the Company had initially submitted Form-29 in May 2023 for Samar Masood's appointment as an independent director. However, rejection of SECP required the Company to cancel the submission, and unfortunately, the Company was not informed about any objections during the period from May to September. It is essential to note that Samar Masood was appointed as an independent director in May 2023 which was communicated to the SECP as well. Despite the Company's continuous efforts to stay informed, no response or objection was issued by the SECP until September 2023. The Company remained under the assumption that the appointment had been accepted during this period.

Due to issues with the SECP's acceptance process, the Company has now made the decision to appoint Samar Masood as the nominee director to fulfill the three-director criterion promptly in our Board of Director's meeting held on January 18, 2024 and have submitted the requisite documents to SECP for review.

While we acknowledge the importance of having an independent director, we want to emphasize that the Company has taken proactive measures to comply with regulatory requirements. the adjustment in Samar Masood's designation from an independent director to nominee director was made to ensure continuous compliance with the law while navigating the challenges faced during the acceptance process.

The Company therefore assures the SECP that our commitment to adhering to all regulatory provisions remains unwavering. It is our utmost priority to work collaboratively with the SECP to address any concerns and ensure full compliance with all relevant regulations.



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We kindly request the SECP's understanding and consideration of the circumstances surrounding the adjustment in Samar Masood's directorial status. we are open to any further clarification or information required to resolve this matter...."

5. In order to provide the Respondents an opportunity for personal representation, a hearing in the matter was held on March 12, 2024, before the undersigned, wherein Respondent No 2 (i.e. Ms. Naureen Hyat, Director/Chief Executive Officer of the Company); Respondent No 3 (i.e. Mr. Humza Hussain, Director of the Company); Mr. M. Shoaib Shamim, Company Secretary/CFO of the Company/Respondent No 1; Ms. Samar Masood, proposed Nominee Director of the Company; and Ms. Raheela Raheel, Associate at ABS & Co appeared as Authorized Representative of the Respondents (**Representatives**). The Representatives reiterated the stance taken in the above-stated written response to the SCN. They further asserted that after the occurrence of the vacant position of independent director, the Company had applied to the Commission for approval of the appointment of Ms. Samar Masood, as an independent director, as per the requirement of the NBFC laws, however, the Commission refused / rejected the said appointment in September 2023. Now to ensure at least three Directors on the Board, in compliance with the requirement of Section 154(1)(c) of the Act, they have decided to appoint Ms. Samar as a Nominee Director, to represent the interest of Orient Swiss, SA (majority shareholder) on the Board of the Company. Moreover, they submitted that they are looking for a suitable person for appointment as an independent director, for which they require time till June 2024. The representative further stated that they will make serious efforts in future to comply with the regulatory requirements.

6. Subsequent to the hearing, the Company via letter dated March 13, 2024, submitted as under:

"...As discussed, and committed during the meeting, Tez Financial Services Limited ("TFSL") seeks to be fully compliant with all applicable laws and we undertake to appoint an independent director by the 30th of June 2024. Undertakings to this effect furnished by two directors of TFSL are attached herewith.

Additionally, just to summarize the discussion during the hearing, the reasons for the non-compliance were the following:

- 1. We had appointed Ms. Samar Masood as an independent director to fill the casual vacancy created by the resignation of Dr. Mayada Baydas in May 2023. We believed Ms. Masood to have met the criteria under Section 166 of the Companies Act, 2017 since there was no material business relationship with TFSL and Ms. Masood, her designation as "partner" only reflected her firm, ABS & Co.'s internal hierarchy - which is a common structure in law firms, and she was not a partner in the partnership deed of ABS & Co. We communicated our stance to the SECP but the same was not accepted and after a series of back and forth on our view, we decided to appoint Ms. Masood as a director representing special interests of Orient Swiss SA, the major shareholder of TFSL.*
- 2. Ms. Masood was appointed as a director representing special interests only to ensure compliance with Section 154 of the Companies Act, 2017 i.e. the requirement for a public company to have a minimum of 3 directors. Once another independent director is appointed, Ms. Masood will step down since TFSL will only have three directors at a given time.*
- 3. Ms. Masood's appointment as director representing special interests has been filed with the SECP and communication in this respect is appended to this letter.*



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To reiterate, we remain committed to ensuring that we are legally compliant at all times and value your efforts in ensuring the same."

7. In view of the aforementioned stance to the Respondents, I have following questions posed before me to take a decision in the matter

1. What is the requirement of laws regarding the number of directors of a company?

Section 154 of the Act, provides the minimum number of directors of a company and in terms of sub-clause 1(c) thereof, notwithstanding anything contained in any other law for the time being in force, a public company other than a listed company, shall have not less than three (3) directors. Thus, the Company/Respondent No 1, being a public unlisted company is required to have at least three (3) directors on its Board. However, subsequent to the resignation by an independent director of the Company on May 4, 2023, the Company is being operated with only two (2) directors on its Board, contrary to the requirement of Section 154(1)(c) of the Act.

2. Whether or not the Company contravened the requirements of Section 154(1)(c) of the Act?

Apart from being a public unlisted company, the Company/Respondent No 1 is also a licensed NBFC under the NBFC Rules and the NBFC Regulation, which requires approval of the Commission for fit and proper of the directors of an NBFC before their appointment on the Board. Accordingly, the Company was required to apply to the Commission for the fit and proper approval of the proposed independent director, within 10 days of the occurrence of a casual vacancy of an independent director (i.e. May 4, 2023). The Company applied for the appointment of Ms. Samar Masood to fill the casual vacancy of independent director in June 2023, after reviewing the fit and proper application of Ms. Samar Masood, the Commission in September 2023, advised the Company, to replace the candidate with the new individual, who fulfills the criteria of independence. However, since then (i.e. September 2023), the Company has not proposed any new candidate for appointment as independent director, and the size of the Company's board has remained below the minimum number of directors required under Section 154(1)(c) of the Act.

The Respondents also accepted the fact that the Company has only two directors on its board, which is contrary to the requirement of Section 154(1)(c) of the Act, and now to rectify the said non-compliance (i.e. not having a minimum three (3) directors), they decided to appoint Ms. Samar Masood as a nominee director to represent special interests of Orient Swiss SA, the major shareholder of the Company. Accordingly, they applied to the Commission on February 28, 2024, for the Fit and Proper approval of Ms. Samar Masood for her appointment as a nominee director. The said application for the appointment of Ms. Samar Masood as a nominee director is presently under consideration by the Commission and is waiting for approval. Once the approval for fit and proper of Ms. Samar Masood as a Nominee Director is granted, the Company will be able to file returns for the appointment of a new director to make the size of its board to a minimum of three directors as required under the Law. Thus, the Company is still operating with only two directors in contravention of Section 154(1)(c) of the Act.

8. It is pertinent to mention that in **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Ors., AIR 1991 SC 1206**, the Supreme Court of India held that when the law prescribes a particular manner for doing a thing, it must be done in that manner or not at all. This principle emphasizes the importance of strict compliance with statutory requirements, which

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is directly relevant to the requirement for having a minimum number of directors under Section 154(1)(c) of the Companies Act. Similarly in **Ashok Leyland Finance Ltd. v. R. S. Towers (P) Ltd., 2001 104 Comp Cas 731 (Mad.)**, the Madras High Court reinforced that compliance with statutory provisions is mandatory, and any failure in this regard can attract penalties and sanctions as prescribed by the law. Moreover, in **Re City Equitable Fire Insurance Co Ltd [1925] Ch 407**, the UK Court of Appeal established that directors must adhere to the statutory requirements governing their conduct and the company's operations. Failure to comply with these requirements can result in penalties and disqualification from holding directorship positions. Furthermore, in **Bairstow v. Queens Moat Houses plc [2001] 2 BCLC 531**, the Court of Appeal reiterated that directors have a duty to ensure compliance with all statutory requirements, and any breach can lead to significant legal consequences, including financial penalties and director disqualification. These cases underscore the necessity for strict adherence to statutory requirements by directors and companies, reinforcing the decision to impose penalties for non-compliance in the present matter.

9. In view of the above stated facts, circumstances, and submissions made by the Respondents, I am of the considered view that the provisions of Section 154 (1) (c) of the Act have been breached by the Respondents, which is liable to be penalized under Section 169 read with Section 479 thereof. Therefore, in exercise of the power conferred under Section 169 read with Section 479 of the Act, I hereby, impose a fine of **Rs.50,000/- (Rupees; Fifty Thousand Only)** on Respondent No. 1/Company, on account of the aforesaid established and conceded non-compliance. The Respondents are also advised to ensure meticulous compliance with all applicable laws in true letter and spirit, henceforth.

10. The Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the 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.

11. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)
Director/ Head of Department,
Adjudication Department-I

Announced:
Dated: May 31, 2024
Islamabad