



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Adam Sugar Mills Limited

Show Cause Notice No. & Date CSD/ARN/277/2016-336 dated May 27, 2024

Date of Hearing: September 30, 2024

Present: Muhammad Waseem FCA, Authorized Officer

ORDER

Under Regulations 6(1), 27(1)(i)&(ii) & 37 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 and Section 166(1)&(2) of the Companies Act, 2017 read with Section 512(2) of the Companies Act, 2017

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the Commission**) through Show Cause Notice No. CSD/ARN/277/2016-336 dated May 27, 2024 (**the SCN**) issued, under regulations 6 and 27 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (**the Regulations**) read with regulation 37 thereof and section 512(2) of the Companies Act, 2017 (the Act) and section 166 (2) of the Act, to Board of Directors (BoDs) of Adam Sugar Mills Limited (**the Company**), hereinafter collectively referred to as the **Respondents**.

2. Brief facts of the case are that:

(i) Review of Annual Audited Financial Statements for the year ended June 30, 2023 (the Accounts 2023), of the Company, it was noted that its auditors, in the Review Report on the Statement of Compliance with the Regulations have highlighted the following instances of non-compliances therein:

- a. the two appointed independent directors namely: Ms. Humaira Dewan and Ms. Sarah Adam neither meet the eligibility criteria of independence nor are registered in the databank of the Pakistan Institute of Corporate Governance (PICG), contrary to the requirements of Section 166(2) of the Act read with Regulation 6(1) of the Regulations.
- b. Mr. Junaid G. Adam being an executive director is member of the Board Audit Committee (BAC) and Chairman of the BAC is not an independent director, contrary to the requirements of Regulation 27(1)(i) & (ii) of the Regulations.

(ii) In view of the aforesaid, the Commission vide letter dated March 11, 2024 sought clarification from the Company to which responded vide letter dated April 30, 2024 as follows:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 1 -

"One independent director i.e. Mr. Salam Parekh has been appointed by the board in its today's meeting. Another will be appointed when we finalize from list of independent directors from databank of PICG.

The Board has reconstituted the Audit and HR & Remuneration Committee."

(iii) Further scrutiny of the reply above revealed that while the Company appointed Mr. Salam Parekh as the Chairman of the Audit Committee in April 2024, Mr. Junaid G. Adam (executive director) remained a member of BAC.

(iv) The afore-stated non-compliances attract the applicability of the penal provisions contained in Regulation 37 of the Regulations read with section 512(2) of the Act.

3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondents seeking justification for not complying with the requirements of the Act, and the Regulations. In response to the SCN, Chief Executive Officer (CEO) on behalf of the Respondents vide letter dated June 12, 2024 made written response, *inter alia*, as under:

".....

All observations highlighted by the company and its statutory auditors in the statement of compliance and review report relate to the appointment of independent directors. We clarify/submit the following:

It is the intention of the management to be fully compliant with the mandatory provision of the code of corporate governance, as soon as its practically possible. According, as a first step in this direction and as mentioned in our previous letter dated April 30, 2024, addressed to Mr. Irfan Afzal, Joint Director, we have already appointed Mr. Saleem Parekh in April 2024 as one of the independent Directors, who qualifies under section 166- of the Companies Act, 2017 and a welcome addition to the Board.

Regarding the requirement to appoint one more Independent Director, we assure you that we are actively looking for an independent director for appointment to the board as soon as possible.

The Board of Directors inadvertently appointed Mr. Junaid G. Adam as member of the Audit Committee. To comply with regulations, Mr. Junaid G. Adam has resigned from Audit Committee and has already been replaced by a non-executive director, Mrs. Humera Dewan, which shall be apparent in the next board meeting.

Further, he requested to condone the above matter, as this error / mistake was unintentionally incurred without any intention to defy or malign the law."

4. In order to provide an opportunity for personal representation, a hearing in the matter was scheduled for September 30, 2024, during which Mr. Muhammad Waseem appeared as the Authorized Representative of the Respondents (the Representative). During the hearing, the Representative reiterated the stance provided in the written reply dated June 12, 2024. However, he admitted that the aforementioned non-compliance with the provisions of the law still exists. He further informed that these violations will be rectified by December 2024.

5. Relevant provisions of the law provide that:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 2 -

Section 166 of the Act:

"(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:

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.

(2) For the purpose of this section, an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest:"

Regulation 6(1) of the Regulations:

"(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."

Regulation 27(1)(i) & (ii) of the Regulations:

"(1) It is mandatory that the audit committee shall be constituted by the Board keeping in view the following requirements, -

(i) the Board shall establish an audit committee of at least three members comprising of non-executive directors and at least one independent director;

(ii) chairman of the committee shall be an independent director, who shall not be the chairman of the Board;"

Regulation 37 of the Regulations:

"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(2) 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. I have reviewed the facts of the case, considered the written and verbal submissions made by the Respondents and their Representative in the light of the applicable legal provisions and available record. At this juncture, it is imperative to address the following:

(i) Whether an appointed independent director namely Ms. Sarah Adam, meet the eligibility criteria of independence?

No, Ms. Sarah Adam, appointed as an Independent Director, does not meet the criteria for independence as required under Section 166(2) of the Act, as she is a close relative of one of the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 3 -

Company's directors, specifically the daughter of Mr. Ghulam Ahmed Adam, an executive director.

(ii) Were the directors, namely Mrs. Humaira Dewan and Ms. Sarah Adam, selected from the PICG databank as Independent Directors?

No, Ms. Humaira Dewan and Ms. Sarah Adam, elected by the Company as Independent Directors at its Annual General Meeting held on January 27, 2023, did not meet the criteria for independence specified in section 166(1) of the Act and regulation 6(1) of the Regulations. In light of these legal provisions, the aforementioned Independent Directors were not selected from the PICG databank. However, as informed by the Representative during the hearing, this issue will be fully rectified by December 2024.

(iii) Significance of Selecting Independent Directors from PICG databank:

The significance of selecting independent directors from the PICG databank under section 166 of the Act is paramount in upholding the standards of corporate governance and regulatory compliance. This requirement ensures that independent directors are not only qualified and experienced but also vetted for their eligibility and independence. By adhering to this mandate, companies demonstrate a commitment to transparency and accountability, which are critical for maintaining stakeholder trust and confidence. Compliance with this provision of the law reflects the company's dedication to best practices in governance, ultimately fostering a culture of integrity and responsibility at the board level.

However, the Respondents as well as the Representative admitted the oversight for not selecting the independent director from the PICG databank. By not meeting the prescribed requirements, the Respondents did not comply with the regulatory standards for independent director appointments as required under section 166 of the Act.

(iv) Whether the Respondents violated Regulation 27(1)(i) & (ii) of the Regulations by appointing a non-independent director as Chairman of the Audit Committee?

Yes, the Respondents violated Regulation 27(1)(i) & (ii) of the Regulations by appointing a non-independent director namely Mr. Junaid G. Adam (executive director) as the Chairman of the Audit Committee.

Specifically, regulation 27(1)(i) requires that the Audit Committee be comprised of non-executive directors, with at least one being an independent director and regulation 27(1)(ii) mandates that the Chairman of the Audit Committee must be an independent director.

In this case, the Chairman of the Audit Committee was not an independent director and also not a non-executive director, thus violating these regulatory requirements.

(v) Importance of complying with the requirements of the Regulations:

Regulation 27(1)(i) & (ii) of the Regulations mandates that the Chairman of the Audit Committee must be an independent director, ensuring impartial oversight and enhancing investor confidence in corporate governance practices.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 4 -

8. In view of the aforesaid, it is stated that the contravention of Section 166(1) and (2) of the Act, as well as Regulations 6(1) and 27(1)(i) and (ii) of the Regulations, has been established and admitted by the Representative. Furthermore, these violations of Regulations 6 and 27 of the Regulations continue to persist as of the date of this order. Therefore, in exercise of the powers conferred upon me under Regulation 37 of the Regulations, read with Section 512(2) of the Act, I hereby conclude the proceedings initiated through the SCN by imposing an aggregate penalty of **Rs.75,000/- (Pak Rupees Seventy-Five Thousand Only)**. Additionally, I warn the remaining Respondents and advise them to ensure compliance with all regulatory laws in letter and spirit.

Sr. #	Name of Respondents	Penalty (Rs.)
1.	Ms. Humaira Dewan	25,000
2.	Ms. Sarah Adam	25,000
3.	Mr. Junaid G. Adam	25,000
Total		75,000

9. 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 Exchange and Commission of Pakistan within thirty (30) days of the date of this Order and furnish receipted bank challan, to the Commission. In case of failure to deposit the said penalty, the proceedings under section 485 of the Act will be initiated for recovery of the same as arrears of land revenue

10. 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/ Head of Department
Adjudication Department-I

Announced:
Dated: October 08, 2024
Islamabad

