



# 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*

**Ruby Textile Mills Limited**

Show Cause Notice No. & Date: No. CSD/ARN/147/2015/320 dated June 7, 2024  
Date of hearing: August 19, 2024  
Hearing attended by: Mr. Adress Azam, CFO

### ORDER

#### Under Section 161 of the Companies Act, 2017 and Sections 169 and 479 thereof

This order shall dispose of the proceedings initiated through the Show Cause Notice No. CSD/ARN/147/2015/320 dated June 7, 2024 (**the SCN**) issued under Section 161 of the Companies Act, 2017 (**the Act**) and Sections 169 and 479 thereof against the Board of Directors and the Ruby Textile Mills Limited through its Chief Executive, hereinafter referred to as **the Respondents**.

2. The brief facts of the case are that perusal of record available with the Securities and Exchange Commission of Pakistan (**the Commission**) transpired that the Company in its Extra Ordinary General Meeting (**EOGM**) held on May 8, 2023 elected seven directors for a period of three years. Prior to that the Company's election of directors was held in EOGM of April 10, 2020. In terms of Section 161 of the Act, every listed company is required to hold election of Board of Directors after expiry of term i.e. three years. However, in case of the Company, it held last election of directors on May 8, 2023, with a delay of 27 days from the due date i.e. April 10, 2023. In case of failure to conduct election of directors on time, the Company was required to file impediment report to the Registrar under Section 158 of the Act. The Registrar vide email dated April 25, 2024 confirmed that no such report was filed with the Registrar.

3. In this regard, the Commission through its letter dated January 3, 2024 sought clarification from the Company for the cited delay. The Company through its letter dated February 9, 2024, *inter alia*, submitted that: "Regarding delay of 27 days in directors' election, this delay was a result of force majeure. It occurred due to the fact that the chairperson of the Board of Directors, Mrs. Parveen Elahi was severally ill and was hospitalized during the period from April 5, 2023 to May 7, 2023. As soon as she got out of the hospital, the election of directors was held on the very next day, without any delay. During the said time



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 1 -

*frame of 27 days, the existing directors remained operational in their official positions, serving the company with their best efforts."*

4. The said stance of the Company was not found satisfactory as every listed company is required to hold election of board of directors after every three years without any exception and the Company also failed to file the impediment report with the Registrar. In view of the aforesaid, the three years term of the directors of the Company, which was expired on April 10, 2023, and election of directors was held with a delay of 27 days, *prima facie*, contrary to the requirements of Section 161 of the Act for which penalty is provided in terms of Section 169 of the Act. Taking cognizance of the said non-compliance, the Respondents were called upon to show cause in writing, within fourteen (14) days of the date of the SCN as to why penalties may not be imposed on the Respondents for contravening the afore-referred provisions of Section 161 of the Act.

5. In this regard, the Company through reply dated June 14, 2024, *inter alia*, submitted that:

- The Company submitted a written clarification on February 9, 2024 for delay in holding the election of directors and iterated the same stance.
- It is clearly mentioned in the Act that the retiring directors shall continue to perform their duties till new directors are elected and such delay should not be more than ninety days. In case of the Company, the delay in holding the election of directors was only for 27 days. The delay occurred due to exceptional circumstances beyond the control of the Company.
- In view of the above, it is requested to withdraw the SCN.
- The Company assured to not to repeat any non-compliance in future.

6. In order to provide opportunity of personal representation, a hearing in the matter was fixed for August 19, 2024. On the date of hearing, Mr. Adrees Azam, CFO appeared on behalf of the Respondents. He was authorized in terms of board resolution dated January 1, 2024. The Authorized Representative iterated his stance as was given in writing through letter dated June 14, 2024. He informed that no impediment was filed as the Company was closed. He requested to take a lenient view.

7. At this juncture, following points need to be addressed:

- (i) Whether the continuing directors on their own can hold election of directors beyond the due date?
- (ii) Whether assurance of the Respondents of future compliance absolve them from the said non-compliance?
- (iii) Whether there is any complaint on record in the matter of election of directors:
- (iv) Whether the agenda of the extra ordinary general meeting held on May 8, 2023 contained any special business other than election of directors?
- (v) Whether the retiring directors were re-elected in the extra ordinary general meeting held on May 8, 2023?



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 2 -

8. I have reviewed the submissions made in writing and during the hearings as well as issues highlighted in the SCN. In this connection, it is stated that:

(i) **Whether the continuing directors on their own can hold election of directors beyond the due date:**

As per the available information, subsequent to the election of directors of April 10, 2020, next election of directors was held on May 8, 2023 i.e. with a delay of 27 days from the due date i.e. April 10, 2023. Moreover, as per available information, the impediment report for failure to hold the election of directors was not filed with the Registrar. In this regard, the Respondents stated that the default was due to the illness of the chairperson of the board of directors. They also submitted that the Act permits 90 days in terms of Section 158(2) of the Act when the delay is due to exceptional circumstances.

In this regard, it is observed that:

- (a) The Respondents being the continuing directors without the authorization of the registrar in terms of Section 158 of the Act, cannot extend the date of election of directors beyond the due date. Therefore, in absence of any authorization of the registrar to delay election of directors for 27 days beyond the due date, the argument of the Respondents is not cogent.
- (b) The three years term of the directors have been provided in Section 161 of the Act. Therefore, it was the fiduciary duty of the Respondents to take necessary steps to hold the election of directors on due date i.e. April 10, 2023 in given case. The delay of 27 days was observed in the election of directors from the due date. Hence, the Respondents by not ensuring that the term of its directors not to exceed three years period, are in contravention of the requirements of Section 161(1) of the Act. The arguments put forth in this regard by the Respondents are not cogent.

(ii) **Whether assurance of the Respondents of future compliance absolve them from the said non-compliance:**

In this regard, the Respondents have assured that in future no such non-compliance shall be made. However, it is stated that their assurance to comply with the given provisions of Section 161(1) of the Act does not absolve them from the statutory non-compliance of Section 161(1) of the Act. Hence, they are liable to penal action in terms of Section 169 of the Act.

(iii) **Whether there is any complaint on record in the matter of election of directors:**

It is observed that any complaint of the shareholders is not on record with regard to delay in holding the election of directors. It is the mitigating factor in the instant matter.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 3 -

- (iv) Whether the agenda of the extra ordinary general meeting held on May 8, 2023 contained any special business other than election of directors?

The agenda of the extra ordinary general meeting held on May 8, 2023 contained only special business of election of directors. The same is the mitigating factor in the instant matter as delay in holding of the EOGM was not linked with any other special business.

- (v) Whether the retiring directors were re-elected in the extra ordinary general meeting held on May 8, 2023?

The directors who were elected in terms of resolution passed by the members in the EOGM held on May 8, 2023, were are also the retiring directors and same can be verified from the precedent quarterly financial statements of the Company for the period ended March 31, 2023. Since, retiring directors were elected in the EOGM held on May 8, 2023, therefore, the same is mitigating factor in the instant matter.

9. Keeping in view, the default under Section 161(1) of the Act is evident and it persisted for 27 days from the due date of election of directors on April 10, 2023. For the cited default, I, in terms of Sections 169 of the Act, hereby, impose an aggregate penalty of **Rs. 100,000/- (Rupees One Hundred Thousand) on the Respondent Company i.e. Ruby Textile Mills Limited**. Moreover, the remaining Respondents are warned to be careful in future in ensuring compliance of the provisions of the Act.

10. It is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank/ United Bank Limited within thirty (30) days of the date of this Order and furnish receipted bank challan, evidencing payment of the same, to the Commission forthwith. In case of failure to deposit the penalties, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue. The penalties so levied are required to be deposited from the personal resources.

11. Nothing in this Order may be deemed to prejudice the operation of any provision of the Regulations/ Act providing for imposition of penalties in respect of any default, omission, violation of the Regulations/ Act.

**Shahzad Afzal Khan**  
Head of Department  
Adjudication Department-I  
**Announced: October 9, 2024**  
Islamabad