



# 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*

**Sui Northern Gas Pipelines Limited**

Show Cause Notice No. & Date	No. CSD/ARN/566/2018-366 dated August 20, 2024
Dates of Hearings:	October 7, 2024
Hearing attended by:	Mr. Muhammad Ashraf Tiwana as Authorized Representative, Mr. Imtiaz Mehmood, Company Secretary, Mr. Kamran Akram CFO and Mr. Amir Tufail, MD

## ORDER

### Under Sections 148 and Section 479 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated through the Show Cause Notice number CSD/ARN/566/2018-366 dated August 20, 2024 (SCN), under Sections 148 and Section 479 of the Companies Act, 2017 (**the Act**) read with Circular No. 7 of 2024 against the Board of Directors (BoDs) and Sui Northern Gas Pipelines Limited (**the Company**), hereinafter referred to as **the Respondents**. The SCN was issued to the Respondents as per their names available in annual accounts for the period ended June 30, 2023.

2. The brief facts of the case are that the record of the Company available with the Securities and Exchange Commission of Pakistan (**the Commission**), *inter alia*, transpired that:

- The Commission based on application of the Company allowed 30 days extension to hold its AGM for the year ended June 30, 2023 till November 27, 2023;
- The Company thereafter applied to the Commission through letter dated October 30, 2023 under Section 147 of the Act to hold its overdue AGM for the year 2023 till April 15, 2024;
- The Company again applied to the Commission through letter dated March 8, 2024 for another direction under Section 147 of the Act to hold its overdue AGM till July 29, 2024.
- During the pending approval of the Company's application for another direction till July 29, 2024, the Commission issued a direction to the Company through letter dated May 27,



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2024 under Section 147 of the Act to hold its AGM for the year ended June 30, 2023 not later than July 29, 2024.

- The Company vide letter dated June 27, 2024 requested the Commission to allow exemption from the Circular 7/2024 dated March 7, 2024 (**the Circular**) and Section 147 of the Act.
- In light of the Company's request, the Commission rejected the request for exemption from Circular read with Section 147 of the Act, the decision of the Commission was communicated vide letter dated August 7, 2024.
- The Company in its announcement made through the Pakistan Stock Exchange vide letter dated July 31, 2024 published the notice of the AGM in terms of which the AGM was scheduled to be held on August 21, 2024.

3. Keeping in view the aforesaid and the Company's inability to hold the overdue AGM within the stipulated time i.e. by July 29, 2024 in non-compliance with the Commission's directions given on May 27, 2024 under Section 147 of the Act, *prima facie*, the violation of Section 147 of the Act is attracted for which penalty is provided in terms of Section 148 of the Act. Hence, the proceedings were initiated against the Respondents and they were advised to show cause within the fourteen days from the date of the SCN. In this regard, the Company Secretary, through letter dated September 2, 2024 sought an extension of three weeks to furnish a reply. The Commission through its email dated September 4, 2024 allowed to furnish a reply latest by September 16, 2024.

4. Thereafter, in response to the aforementioned SCN, a written reply dated September 16, 2024, was received from Mr. Muhammad Ashraf Tiwana on behalf of the Respondents. The said reply, *inter alia*, stated that:

- The Company is listed company as defined in Section 2(1)(38) of the Act and hence regulated under the extensive corporate and securities market regulatory framework supervised by the Commission as the apex regulator as well as Pakistan Stock Exchange, the front-line regulator.
- The Company is also a public sector company as defined in Section 2(1)(54) of the Act read with the Public Sector Companies (Corporate Governance) Rules, 2013.
- The Company is a State-Owned Enterprise (SOE) as defined in Section 2(o) of the State-Owned Enterprise (SOE) as defined in Section 2(o) of the State-Owned Enterprises (Governance and Operations) Act, 2023 (SOE Act) and hence strictly regulated thereunder read with the State-Owned Enterprise Ownership and Management Policy (SOE Policy).
- The Company is largest integrated gas company in Pakistan and is licensed under a special regulatory framework supervised by Oil & Gas Regulatory Authority (OGRA) pursuant to and under the Oil & Gas Regulatory Authority Ordinance, 2002 (OGRA Ordinance). The Company is also supervised and operated under strict scrutiny and policy guidelines of the Government of Pakistan, specifically the Ministry of Energy and the Federal Cabinet.



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- More than one month before the last day when the AGM was required to be held under Section 132, the Company vide letter dated September 25, 2023 applied to the Commission under Section 132 and 223 of the Act for an extension of 30 days to hold its AGM 2023 by November 27, 2023.
- Due to reasons beyond the control of the Company as explained herein after, the Company's AGM for a number of previous years had been delayed and the said cascading impact had resulted in the AGM for the previous financial year ending on June 30, 2022 being finally held on August 1, 2023 i.e. 32 days after the end of the next financial year ending on June 30, 2023.
- The Commission through its letter dated September 28, 2023 accepted the request for extension and allowed the Company to hold the AGM 2023 latest by November 27, 2023.
- Thereafter, the Company applied for another extension through its letter dated October 30, 2023 under Section 147 of the Act to hold AGM of 2023 by April 15, 2024. It was explained that the audit of the annual accounts was still underway. Accordingly, the Company was unable to submit its petition for Final Revenue Requirement (FRR) to OGRA as required under Section 8 of the OGRA Ordinance read with rule 4(2) and (3) of the Natural Gas Tariff Rules 2002.
- The Auditors of the Company were appointed on August 1, 2023 who immediately after their appointment commenced work of review of half yearly financial statements for the period ended December 31, 2022. The half yearly limited review was completed in early November 2023 and all three quarters including half yearly limited reviewed financial statements were simultaneously approved and issued by the Company on December 9, 2023 after completion of audit by the external auditors.
- The petition for Final Revenue Requirement (FRR) was filed by the Company on December 9, 2023 after completion of audit by the external auditors. Decision with respect to FRR was issued by OGRA on June 27, 2024. The determination on the FRR petition by OGRA was clearly beyond the control of the Company.
- The Commission through its letter dated November 15, 2023 accepted the request and issued a direction under Section 147 of the Act to hold AGM of 2023 by April 15, 2024.
- Thirty eight days before the last day when the AGM had to be held i.e. April 15, 2024, the Company through letter dated March 8, 2024 again requested the Commission for an extension under Section 147 of the Act to hold AGM of 2023 by July 29, 2024.
- While giving the decision against review of Estimated Requirements of FY 2003-04 dated March 19, 2004, the following directions were issued by the OGRA to the Company: *"Starting from FY 2003-04, petition for the determination of final revenue requirement and the prescribed prices for each category of consumers for a financial year, duly supported by the auditors' initialed accounts, must be filed with the Authority on or before*



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*August 15 of the succeeding financial year.” It was further directed that: “The annual accounts for financial year shall not be published prior to determination of revenue requirements and final prescribed prices for each category of consumers by the Authority, for that financial year.”*

- Due to cascading impact of holding delayed AGM during the past periods, the Company was able to file the petition for FY 2022-23 on December 9, 2023. After filing the petition, the Company’s representatives had a personal follow-up, the Company wrote to OGRA on April 9, 2024 requesting it to expedite the issuance of the determination citing the reason that the Commission was continuously advising the Company to meet the timelines on holding of AGM. However, OGRA took more than six and a half months for declaring FRR contrary to the maximum period i.e. 90 days allowed under the regulatory framework.
- Request was still pending the Commission issued a direction to Company through letter dated May 27, 2024 to hold AGM 2023 not later than July 29, 2024. This direction under Section 147 of the Act was apparently issued on a complaint received from a shareholder of the Company regarding the delay in holding the AGM of 2023.
- 32 days before the last day i.e. July 29, 2024, when the AGM of 2023 was required to be held as per last direction given by the Commission, the Company through letter dated June 27, 2024 requested the Commission to allow it exemption from the Circular 7/2024 and issue a fresh direction under Section 147 of the Act extending the time to hold the AGM. The request was made as determination of FRR was not made by OGRA and the Company was prevented from finalization of the Accounts for the year ended June 30, 2023.
- The Company requires 55 days time to hold AGM from the date of determination of the FRR by OGRA. Fortunately, OGRA’s determination on the FRR petition was received on the next day on June 28, 2024 and the Company set the timeline in motion. The notice of AGM was issued on July 26, 2024 to hold AGM on August 21, 2024.
- At the outset, the Respondents strenuously deny willful violation of any provision of law, specifically Sections 148 read with Section 479 of the Act as alleged in the SCN.
- The Board of Directors and the management have the highest regard for the laws of the country, especially the principles of corporate governance. The Board realizes that good business is all about corporate governance, and this is the main philosophy based on which the Company's business is being operated.
- The Board and the management are fully cognizant of their duty to protect the interest of the Company, and all stakeholders including its shareholders and customers, and remain committed to cooperating with the regulatory bodies including the Commission.



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- It is submitted that the majority of the Board members are independent directors as required by law and therefore would have no motive or personal interest in causing any delay in the preparation and finalization of the company accounts or holding the AGM.
- Similarly, directors other than the independent directors, especially the officials nominated by the Government and other institutions, as well as the Managing Director are equally professional and dedicated to their functions and duties. Being professionals of known integrity, knowledge and experience, their ethos and reputation depends upon ensuring that the Company operates strictly within the four corners of law and best corporate governance and business practices. The delay is beyond the control of the Respondents.
- The facts narrated above show that the reasons for delay in holding the AGM were beyond the control of the Respondents and, therefore, no culpability under law can be attributed to them.
- The delay in holding the AGM is caused by non-finalization of audited accounts which are to be presented in the AGM. It is the law which requires that the annual audited accounts of the company are to be prepared and finalized in accordance with the provisions of various statutory and accounting requirements and principles, and must present true and fair view of the Company's affairs. Further, it is the law, i.e. Section 223 of the Act dealing with finalization of audited accounts, which requires that the accounts must be presented in the AGM, and hence the AGM cannot be held without presenting the finalized accounts.
- Specifically, the Company is regulated by two regulators, i.e. the Commission which regulates corporate governance matters, and OGRA which regulates the Company's business and determines the Company's tariffs and revenue requirements without such determination, the accounts cannot be (legally) finalized.
- Upon completion of the financial year, the accounts of an ordinary company are audited by the statutory auditors, and the AGM is then held. However, in the case of the Company, the audited accounts are dependent on the determination of the FRR by OGRA.
- Once OGRA finalizes the FRR, the audited financial statements that present a true and fair view of the Company's state of affairs are issued. Consequently, the formalities so required to hold the AGM, such as holding a Board meeting, approving the accounts, printing of the Annual Report/financial statements, and giving 21 days' notice for the AGM require an additional 55 days or so from the date of OGRA's determination of the FRR Petition.
- The auditors submitted the initialed accounts on December 7, 2023. The FRR Petition was filed by the Company with OGRA immediately thereafter on December 9, 2023.



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OGRA conducted the hearing for the FRR Petition on April 22, 2024, and issued its determination on June 27, 2024.

- The Company further required 55 days minimum to complete its processes and hold the AGM. Upon receipt of the FRR on June 27, 2024, the Company promptly completed the formalities and conducted the AGM on 21 August, 2024.
- There is inconsistency in the relevant laws dealing with finalization of annual accounts in respect of the Company and other similarly placed companies. Section 223 requires that the audited financial statements of listed companies shall be finalized not later than 120 days of close of the relevant financial year. It only allows a further extension of 30 days maximum. Section 132 provides similar timeline for holding AGM and presenting the audit accounts therein.
- Previously, extensions were granted by the Commission under Section 147 as a special case, however now with the issuance of Circular 7/2024, the Commission has changed its view and has stopped granting any further extensions beyond the maximum 150 days, i.e. till 27 October of that financial year.
- On the other hand, as per clause 15(3) of Natural Gas Tariff Rules 2002, OGRA after review of the petition is obligated to issue a decision within three months of the date of filing of the petition.
- So, from the last date when the FRR Petition is required to be submitted by a company i.e. 15th August, OGRA is required to decide the matter by 15th November, which contradicts the timelines defined in the Act. As after the declaration of FRR, at least 55 days are required by the Company to hold its AGM i.e., by 9th January of next year. This is if OGRA follows the timeline of 90 days as per its rules.
- The 120 days period allowed by Sections 233 and 132 of the Act for preparation, audit and finalization of accounts and holding the AGM is not liberal enough to enable the Sui companies to complete this assignment months ahead of this deadline so as to file the FRR Petition much earlier.
- So even if the accounts are audited and a FRR Petition is submitted by the Company within 46 days period i.e. by 15 August which is highly unlikely, OGRA still has minimum 3 months under their law to make a determination on that FRR Petition. After the determination, the Company again needs minimum 55 days to hold the AGM and present its accounts therein.
- Therefore, under no circumstances can a company like the Company, following both the laws, finalize the accounts and present them in the AGM within the time provided by Sections 233 and 132 of the Act. The Company is therefore set to fail by this inconsistency in the law and operations of the regulator which is beyond the control of the Company and hence a *fait accompli*.



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- There is an age-old and widely accepted legal principle which provides that the act of law injures/prejudices no one (*Actus legis nemini facit injurium*).
- Similarly, there is another principle which says that an act of court shall prejudice no one (*Actus curiae neminem gravabit*). The Courts have extended this principle to other state functionaries in addition to courts of law. The Supreme Court in the latest case reported at 2022 SCMR 1546 reiterated this principle and held that, "In the case of *State V. Asif Adil and others* (1997 SCMR 209), this Court recapped the well-settled proposition of law that parties should not be made to suffer on account of an act or omission on the part of Court or other State functionaries". The Court on this principle also referred to the dictums laid down in the case of *Muhammad Hanif and others v. Muhammad and others* (PLD 1990 CS 859), *Fateh Khan v Boze Mir* (PLD 1991 CS 782), *Abdul Rashid v. Abdul Salam and others* (1991 SCMR 2012), *Sherin and 4 others v. Fazal Muhammad and 4 others* (1995 SCMR 584).
- Till the time the regulators i.e. the Commission & OGRA are able to coordinate and come up with a solution and amend the laws if need be, this inconsistency ought to be treated as a conflict of laws. In such cases, the laws dealing with specialized businesses of oil and gas supervised and enforced by OGRA being special enactments would override the general law dealing with all companies, i.e. the Act.
- Further, Section 43 of the OGRA Ordinance specifically provides that "the provisions of this Ordinance, the rules and the regulations and the licenses issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation".
- Section 6(2) of the OGRA Ordinance specifically empowers OGRA to prescribe and approve tariffs, determine reasonable rate of return & oversee capital expenditure for gas companies. These form the basis of the company's financial statements and business model.
- It is for this specific reason that Sui companies are required to file their FRR Petitions with OGRA under Section 8 of the OGRA Ordinance. In view of this conflict of laws and the overriding effect of the special laws over provisions of Act under which the SCN has been issued, it is respectfully submitted that no contravention of the laws is made out against the answering respondents.
- As mentioned at Para 11 of the SCN, the SCN has been issued for the alleged non-compliance with the last direction given by the Commission under Section 147 of the Act vide its letter dated May 27, 2024 to hold the AGM not later than July 29, 2024.
- It is an admitted position as record shows that since the AGM-2023 became due under Section 132, the Company in its submissions and requests for extension has consistently given the reason, i.e. non-finalization of the audited accounts due to the requirement of determination of FRR Petition by OGRA, which was beyond its control. These requests have been accepted and the Commission never challenged the veracity of the reason given for seeking extension in previous years as well. It is therefore inexplicable



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why the Commission would take a different view on the last request for extension, or issue a SCN alleging that answering respondents have now contravened the law when, neither have the underlying reasons changed, nor has the Commission determined that those reasons were no longer valid.

- The SCN makes no reference as to why the Commission has come to a different conclusion from previous requests and decisions which necessitates the issuance of the SCN. Section 20(6)(c) of the Securities and Exchange Commission of Pakistan Act, 1997 ("SECP Act") provides that, *"In performing its functions and exercising its powers, the Commission shall strive to achieve uniformity in how it performs those functions and exercise those powers"*.
- Additionally, the Commission's letter dated August 7, 2024 gives no reasons for rejecting the Company's application for exemption and further extension, which is contradictory to Section 22(3) of the SECP Act which states: *"The Commission shall, in adjudicating upon the rights of any person whose application on any matter it is required to consider in the exercise of any power or function under this Act, give the reasons for its decision after giving the person concerned a personal hearing, in addition to any written applications or submission which may be required to be made."*
- Thirty-two (32) days before July 29, 2024 when the AGM-2023 was required to be held as per last direction given by the Commission, the Company vide letter dated June 27, 2024 requested the Commission to allow it exemption from the Circular 7/2024 and further time to hold the AGM. This request was made for the continuing reason that the determination of the FRR Petition had not been made by OGRA. The Commission's decision on this application was given on August 7, 2024 i.e. 9 days after July 29, 2024 and 12 days after the AGM Notice had already been issued by the Company.
- No-action on the Company's application by the Commission till after July 29, 2024 created an understanding and a legitimate expectation that a consistent view has been taken by the Commission, and either the request has been accepted or a similar view would be taken.
- If the application had to be rejected it ought to have been done immediately with reasons as the Commission had already been apprised that (i) OGRA's determination had still not been received, and (ii) it would take the Company further 55 days after the determination to hold the AGM.
- The Company's decision to reject its application after passing of the last date made the alleged breach a fait accompli for the Company. This, and the issuance of the SCN despite the publication of the AGM Notice (which was provided to the Commission as well), regrettably gives an impression of an intention to take adverse action. It is respectfully submitted that any such action would be against the law, principles of justice & due process and good regulatory practice.



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- In order to apprise the Commission of the legitimate constraints that have impacted the timely holding of Annual General Meetings (AGMs) and the approval of financial statements within the statutory timelines mandated by the Act, senior officials of the Company and Sui Southern Gas Company Limited (SSGCL) met with Commission officials on August 29, 2024. Both companies outlined the FRR approval process, emphasizing the pivotal role of OGRA in determining revenue requirements and tariffs. A historical overview was provided, highlighting the time elapsed between the filing of FRR Petitions with OGRA, time taken by OGRA to issue determinations, and the subsequent dates of AGMs for the approval of accounts. In case accounts are finalized and AGM is held without waiting for FRR decision and incorporating adjustments following serious infirmities and contraventions come into play:
  - The Company's accounts would not reflect true and fair view of financial position as Return on Assets (ROA) and disallowances made by OGRA will not be incorporated which amounts to serious contravention of the Act;
  - The Company couldn't assess ROA and disallowances with precision due to various considerations incorporated by OGRA in its determinations from one period to another;
  - Revenues would either be understated or overstated and would not depict true and fair view of the financial position of the Company;
  - In case of preparing accounts without FRR decision, impact of different ROA and disallowances would be adjusted in the next year's financial statements and based on materiality the adjustments might require restatement of prior year numbers.
- The companies reaffirmed their commitment to adhere to statutory timelines for holding AGMs and obtaining account approvals.
- A catch-up plan was presented, aiming to align the holding of AGMs with statutory timelines by the financial year 2024-25, on the condition that OGRA also reduces the timeframe for determining FRRs to 30-45 days, as opposed to the current 180+ days.
- It was apprised that the Company has already held AGM on August 21, 2024 and declared results / financial statements for FY 2022-23 after determination of FRR by OGRA (received on 28 June, 2024) while FRR determination in the case of SSGCL for this year is still awaited from OGRA.
- Moreover, the Company has also declared its first quarter accounts (FY 2023-24) for the period ended September 30, 2023 along with the annual audited accounts of FY 2022-23. The half yearly accounts shall soon be declared subject to the review by the external auditors.
- The Board and its Audit Committee were also abreast with the situation for delay in holding of AGMs of the Company. The BoDs have expressed their full commitment in the holding of AGM on timely basis, and have advised the management to have vigorous follow ups with OGRA for early declaration of FRR, which will enable the company to hold its AGM in a timely manner.



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- Moreover, in line with the directions of BoDs, Company has taken up the matter again with OGRA for timely declaration of FRR in future enabling the Company to hold its AGM within the available statutory timelines.
- It is denied that the Respondents have contravened any provision of law in relation to delay in finalization of the Company's financial statements for the year ended 2023 or delay in holding of AGM or non-compliance of any of the directions given by the Commission under Section 147 of the Act including but not limited to direction issued in letter dated May 27, 2024 are attracted to them in relation to above.
- It is requested that the instant SCN may be disposed of without any adverse findings/interference, and no further or new enforcement actions may be initiated against the Respondents on these facts and complaint.

5. In order to provide opportunity of hearing, the matter was fixed for hearing to be held on October 7, 2024. On the date of hearing, Mr. Muhammad Ashraf Tiwana (**the Authorized Representative**), Mr. Imtiaz Mehmood, Company Secretary and Mr. Kamran Akram, Chief Financial Officer appeared, whereas, Mr. Amir Tufail Managing Director and Mr. Raheel Farooq (GM Accounts) joined through Zoom link. During the hearing, it was, *inter alia*, submitted by the Authorized Representative that:

- (i) Reiterated response as was given in writing through letter dated September 16, 2024.
- (ii) There was a historical cascading impact for the delay in holding of AGM of 2023. The delay in preparation of the accounts, due to FRR, which was received in June 2024, has resultantly caused delay in holding of the AGM of 2023. If accounts are prepared on estimated FRR basis (based on last annual audited accounts), it would have material difference in Earnings per Share, therefore, the accounts are prepared on actual FRR basis.
- (iii) OGRA law requires determination of FRR and preparation of accounts without determination of FRR may be misleading. The accounts for the year 2023 were prepared based on FRR except late payment surcharge. Relevant disclosures in this regard were made in the accounts.
- (iv) On August 29, 2024 a presentation was made before the officers of the Securities and Exchange Commission of Pakistan and the reasons of delay in holding the AGM were deliberated.
- (v) OGRA has given direction to file petition for FRR before August 15 and thereafter OGRA takes 90 days to determine the FRR, which may be extended to another 90 days. In the instant matter FRR was received on June 27, 2024, thereafter, audit was carried and AGM was held on August 21, 2024.
- (vi) The delay if any in non-compliance of the direction of the Commission was not willful as it takes 55 days to hold AGM after receipt of FRR.
- (vii) Next accounts and holding of AGM of 2024 would also have cascading impact, however, in 2025, the AGM would be held within the prescribed time.
- (viii) The delay in determination of FRR is beyond the control of the Company.
- (ix) The catch-up plan for the next year along with updated status of the court order shall be furnished.



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- (x) The Respondents cannot be attributed for the non-compliance in direction as the delay was due to OGRA for determination of FRR. The Company filed petition in December 2023 before OGRA, however, determination in this regard was received in June 2024 and the OGRA took extended time.
6. Subsequent to the aforesaid hearing, the Company Secretary through email dated October 8, 2024 furnished the catch-up plan and relevant order dated May 27, 2024 of the honorable Lahore High Court in case of W.P 33029 of 2024. In terms of the said order, it was stated that: *"This petition is disposed of with a direction to Respondent No. 2 to decide pending complaint of the petitioner in accordance with law and expeditiously, preferably, within a period of 30 days from the date of this order."*
7. Following are the key points to be discussed in the instant matter:
- (i) Whether cascading impact, including the delay in audit, can be considered an effective argument to violate the provision of law or directions the Commission?
  - (ii) What was the effect of direction of the Commission to convene AGM upon the application of a shareholder, during the pendency of the Respondent's request for adjournment?
  - (iii) Whether the Company was eligible for exemption from Circular No. 07/24 of the Commission?
  - (iv) What if the accounts were prepared without the determination of final FRR?
  - (v) What are the efforts made by the respondents to ensure Compliance in the instant matter?
8. I have gone through the facts of the case, replies of the Respondents and submissions made by the Respondents. The case is summarized in the following manner:

- (i) **Whether cascading impact, including the delay in audit, can be considered an effective argument to violate the provision of law or direction of the Commission?**

The Respondents in their reply dated September 16, 2024 contended that audit of the annual accounts was underway which rendered the Company unable to file petition before OGRA for the determination of FRR. It was submitted that the petition for determination of FRR for the financial year 2023 was filed before OGRA on December 9, 2023. The Respondents stated that the delay in holding of previous AGMs including for the year ended June 30, 2022 was cascading impact which resulted delay in holding the AGM for the year ended June 30, 2023. Moreover, it was submitted that OGRA further took 6 months to declare its decision which was made on June 27, 2024, and was received by the Company on June 28, 2024.

The argument presented by the Respondents highlights significant considerations regarding the cascading impact of delays in the audit and AGM processes. While it effectively illustrates how these delays contributed to the inability to file the petition before OGRA in a timely manner, it also underscores the need for the company to take appropriate measures to mitigate such issues in the future. Recognizing these challenges is important; however, to ensure that similar situations do not arise again,



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the company should implement robust planning and proactive measures to manage its timelines effectively and uphold regulatory requirements. This approach will not only enhance compliance but also reinforce accountability and transparency in its governance practices.

(ii) **What was the effect of direction of the Commission to convene AGM upon the application of a shareholder, during the pendency of the Respondent's request for adjournment?**

During the pendency of the Company's application dated April 15, 2024, the Commission vide letter dated May 27, 2024 disposed of the application of a shareholder pertaining to the holding of AGM and directed the Company to hold its AGM for the year ended June 30, 2024 latest by July 29, 2024. The Respondents have averred that the decision of the Commission with regard to the application of the Company was communicated on August 7, 2024 i.e. after the last date requested of July 29, 2024, hence, the matter stands *fait accompli*. The direction from the Commission to convene the AGM during the pendency of the Respondent's request for adjournment carries significant implications for both shareholder rights and corporate governance. While the Respondents argue that the timing of the Commission's communication rendered the matter moot, the directive issued on May 27, 2024, highlights the Commission's commitment to ensuring timely compliance with statutory requirements. This direction, stemming from a shareholder's application, underscores the importance of upholding shareholder interests and reinforces the need for the Company to adhere to its obligations. Although the Company's argument regarding the timing of communication has merit, it should not overshadow the necessity for proactive measures to ensure compliance with regulatory directives in the future. Ultimately, the Company must recognize that effective governance involves not only adhering to timelines but also fostering open communication and responsiveness to shareholder needs.

(iii) **Whether the Company was eligible for exemption from Circular No. 07/24 of the Commission?**

The Respondents' assertion regarding the Commission's approach to the Company's application for exemption from Circular No. 07/24 raises important points, but it overlooks some key aspects of the regulatory framework. The Commission has the authority to issue clarifications and directives within its jurisdiction, and after the issuance of Circular No. 07/24, the Respondents did not pursue any legal remedy regarding their concerns at the appropriate forums. Instead, they simply sought an exemption, which the Commission ultimately declined in the interest of fairness and compliance. While the Respondents' arguments reflect their perspective, it is essential to recognize the Commission's role in maintaining regulatory integrity.



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(iv) **What if the accounts were prepared without the determination of final FRR?**

In view of the Respondents, if the annual accounts for the year ended June 30, 2023 were prepared without the determination of FRR it would have the following repercussions:

- The Company's accounts would not reflect true and fair view of financial position as Return on Assets (ROA) and disallowances made by OGRA will not be incorporated which amounts to serious contravention of Companies Act;
- The Company couldn't assess ROA and disallowances with precision due to various considerations incorporated by OGRA in its determinations from one period to another;
- Revenues would either be understated or overstated and would not depict true and fair view of the financial position of the Company;
- In case of preparing accounts without FRR decision, impact of different ROA and disallowances would be adjusted in the next year's financial statements and based on materiality the adjustments might require restatement of prior year numbers.

The Commission recognizes difficulties in preparing accounts without the determination of FRR, however, these considerations do not absolve the Respondents from their responsibility to convene and hold the AGM within the timeline specified by the direction under Section 147 of the Act.

In light of the cascading effects of delays in both the audit process and AGM scheduling, it is crucial for the Company to adopt proactive measures to manage its obligations effectively. While the challenges faced are understandable, they should not overshadow the necessity for timely compliance with regulatory directives to ensure transparency and accountability in corporate governance.

(v) **What are the efforts made by the respondents to ensure Compliance in the instant matter?**

The following actions demonstrate the actions taken by the Respondents to make compliance with the relevant provision;

- On June 7, 2024, the Company wrote to OGRA that a shareholder has filed petition before honorable Lahore High Court seeking holding of AGM/finalization of Accounts for the year ended June 30, 2023. Through the said letter, the Company requested for issuance of decision on FRR.
- The overdue AGM for the year 2023 was held on August 21, 2024 and notice dated July 26, 2024 i.e. prior to the due date, was published on August 1, 2024.
- The conflict of applicable laws exists. The Respondents are of the view that the laws dealing with specialized businesses of oil and gas supervised and enforced by OGRA being special enactments would override the general law dealing with all companies i.e. the Act. Further, they have submitted that in provisions of Section 43 of the OGRA Ordinance specifically provides that: "*the provisions of*



**Securities and Exchange Commission of Pakistan**  
**Adjudication Division**  
**Adjudication Department-I**

*this Ordinance, the rules and the regulations and the licenses issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation."*

- The Board Audit Committee in its meeting held on February 29, 2024 advised the management to eliminate the delay in timely determination of FRR by OGRA.
- Subsequent to the issuance of the direction on May 27, 2024, the FRR was determined by OGRA on June 27, 2024, therefore, the delay for the aforesaid 10 days were not in the control of the Company.

9. Considering the mitigating factors outlined, it is important to recognize the context surrounding the Respondents' situation. The Company's letter to OGRA on June 7, 2024, concerning the shareholder petition for the AGM and the finalization of accounts demonstrates their proactive efforts to seek clarity on the FRR. Additionally, the timely notice for the overdue AGM, published on August 1, 2024, ahead of the meeting on August 21, 2024, reflects their commitment to compliance. The Respondents' assertion regarding the conflict of applicable laws underscores the complexities they face, particularly regarding OGRA's regulations potentially superseding the general provisions of the Act. Furthermore, the Board Audit Committee's recommendation to address delays in the FRR determination highlights their commitment to improving governance practices. It is also important to note that the FRR was finalized by OGRA just ten days after the Commission's direction, indicating that this delay was largely outside the Company's control. In light of these considerations, I conclude the proceedings with advice to Respondents to exercise greater caution moving forward and ensure compliance with all relevant legal provisions, both in letter and spirit.

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**  
HoD, Adjudication -I

**Announced:** October 12, 2024  
Islamabad