



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before Shahzad Afzal Khan - Director/Head of Department

*In the Matter of*

*Macpac Films Limited*

Number and Date of SCN: CSD/ARN/288 /2016 – 329 dated June 13, 2024

Dates of Hearing: August 20, 2024

Present: Mr. Najmul Hassan;  
Ms. Muneeza Kassim;  
Mr. Faisal Panawala; and  
Mr. Aquil A Khan.

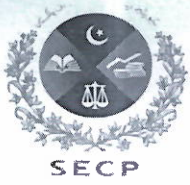
## ORDER

### UNDER SECTION 205, 207 & 176 OF THE COMPANIES ACT, 2017 READ WITH SECTION 479 THEREOF

This Order shall dispose of the proceedings initiated against the following directors (collectively referred to as the **Respondents**) of Macpac Films Limited (the **Company**) through Show Cause Notice (*the "SCN"*) dated June 13, 2024 issued under Sections 205, 207 & 176 of the Companies Act, 2017 (*the "Act"*):

Sr. #	Name of Respondent
1.	Mr. Naeem Ali Muhammad Munshi
2.	Mr. Najm ul Hassan
3.	Mr. Ehtisham Maqbool Elahi
4.	Mr. Hafsa Abbasy
5.	Mr. Shariq Maqbool Elahi
6.	Mr. Fahad Munshi

2: Brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) reviewed the audited accounts for the year ended June 30, 2023 (including quarterly accounts for the quarters ended September 30, 2022, December 31, 2022, March 31, 2023), the accounts for the quarter ended September 30, 2023 (hereinafter referred to as the Accounts), of the Company, which revealed that the Company has carried out transactions with its related parties.



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3. The Commission vide letter dated March 4, 2024 requested the Company to provide the minutes of all the board meetings in which the related party transactions were approved during the year ended June 30, 2023 and half year ended December 30, 2023.

4. The Company responded vide letter dated March 15, 2023 along with minutes of the board of directors' meetings held on October 14, 2022, February 16, 2023, April 27, 2023, September 1, 2023 and October 16, 2023, the examination thereof revealed that, *prima facie*, following common / interested directors with the associated companies did not abstain or recuse from voting on the related parties' transactions as appearing in relevant notes to the Accounts which is contrary to the requirements of Section 207(1) of the Act, punishable under Section 207 (4) thereof:

Associated Company Name	Common / Interested Directors present (as per the Accounts)	Common / Interested Directors who abstained
Toyo Packaging (Pvt) Limited	Mr. Ehtesham Maqbool Elahi Mr. Shariq Maqbool Elahi	Nil
TGA Sustainability (Pvt) Limited	Mr. Ehtesham Maqbool Elahi	Nil
Hilal Foods (Pvt) Limited	Mr. Naeem Ali Muhammad Munshi Mr. Fahad Munshi	Nil

5. The aforesaid directors, by virtue of their respective directorship were interested in the transactions with the Related Parties and failed to disclose their interest, *prima facie*, in contravention to the provisions of Section 205 of the Act.

6. Despite majority of the directors being interested in the transaction as referred in Para 4 above, were not qualified to participate and vote to approve the transaction with the Related Parties, therefore, *prima facie* the quorum of directors was not formed as stated in section 176 of the Act.

7. In view of aforesaid, the interested directors of the Company, *prima facie*, have contravened the provisions of

- (i) Sub-section (1) of section 205 of the Act by not disclosing their interest in the transactions despite being concerned and interest due to common directorships and/or shareholding.



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- (ii) Subsection (1) of section 207 of the Act as the interested directors have participated and voted to approve the transactions with the said related parties, despite being concerned and interested.

8. The Respondent Directors at S No. 1 to 5 of the Company, *prima facie*, have contravened the provisions of subsection (1) of section 176 of the Act by approving transactions with the Related Parties in the meeting held on October 14, 2022 in the absence of the quorum.

9. In view of the above, proceedings under Sections 205, 207 and 176 of the Act were initiated against the Respondents through serving the SCN requiring them to show cause in writing within ten (10) days, as to why penalty, as provided, should not be imposed on them.

10. In response to the SCN, the Company vide letter dated July 3, 2024, submitted that:

" ....

*At the outset, it is highlighted that after the inclusion of Section 208 in the Companies Act, 2017 (the Act), the compliance of Sections 205 and 207, on related party transactions, cannot be required in isolation. Related party transactions are required to be carried out in the ordinary course of business on an arm's length basis. Thus, as per the spirit of Section 208 approval of directors is not required for each and every transaction as and when it is carried out but such transactions can be carried out throughout the year in the ordinary course of business on an arm's length basis. It is interesting to note that first Proviso to sub-section (1) states that where majority of the directors are interested in any of the related party transactions, the matter shall be placed before the general meeting for approval as special resolution. However, the second Proviso, superseding the whole sub-section (1), clearly states that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business on an arm's length basis. If we read the Sub-section (1) in totality, the intent of legislature can very easily be understood that the transactions with related party, at arm's length, can be carried out without approval of shareholders even where majority of directors are interested. The legislature has very rightly treated such transactions at par with transactions carried out with rest of the customers, requiring no approval of directors/shareholders but carried out by the management as routine business. It is important to note that all the transactions with related parties are reviewed by the Board Audit Committee, the external auditor and prominently disclosed in the financial statements and these are not hidden from shareholders. The spirit behind the provisions of Section 205 and 207 is that none of such transactions should remain undisclosed or hidden and the interested director may not take undue advantage. Keeping in mind, the intent of the legislature, the applicability of Section 205 and 207 read with section 208 is restricted only to such transactions which are not carried out at arm's length*

*As regards transactions with related parties, it is clarified that all transactions were undertaken in the ordinary course of business strictly on an arm's length basis. All related party transactions are compiled and placed before the Audit Committee and the Board on a quarterly basis at the time of approval of quarterly and annual accounts. Although, the resolutions passed*



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*by the directors are consolidated resolutions showing the Audit Committee's recommendations and the Board's approval on a collective basis for all the transactions, but pre-discussion on each and every related party is held separately.*

*As per practice, every director, at the beginning of every financial year gives a general notice to the Company about his interest in related parties, in compliance of the requirements of Sub-section (3) of Section 205 of the Act which is read in the first Board meeting to ensure compliance of Sub-section (5) of the aforesaid provision of the Act.*

*It is important to highlight that during the discussion on related party transactions, the interested director(s) for a particular transaction does not participate in the discussion and leaves the room in compliance with the requirements of Section 207 of the Act. Since it is a normal practice, therefore, it is not mentioned in the minutes specifically and keeping in view the fact that recording of the same is not required under the relevant provisions of the Act. For example, while discussing transactions with Toyo Packaging (Private) Limited, Mr. Shariq Maqbool Elahi and Mr. Ehtesham Maqbool Elahi had left the room for the moment, and did not participate in the discussion, while the rest of the directors, who were non-interested in those particular transactions did participate and expressed their views. This practice not only takes care of governance and transparency but also fulfils the requirement of quorum. Similarly, in case of TGA Sustainability (Private) Limited, all directors participated in the discussion except for the two interested directors Mr. Ehtesham Maqbool Elahi and Mr. Shariq Maqbool Elahi, who left the room during the specific discussion. In the same way while discussing transactions with Hilal Foods Limited, the interested directors Mr. Naeem Ali Muhammad Munshi and Mr. Fahad Munshi left the room and abstained from participating in such discussion while these transactions were considered by the remaining five (05) directors which very much fulfils the requirement of quorum.*

*In light of the above discussion, it is humbly submitted that the observation of the Commission regarding the non-compliance of Section 176 of the Act, for not observing the quorum for the Board meetings, is not correct. All the Board meetings were duly conducted in the presence of quorum even after non-participation of the interested directors, for the specific agendas, which may be seen from the details provided in Annexure A. There is an inadvertent omission in one of the agenda items in one meeting only, held on October 14, 2022 which may please be ignored keeping in view of the past track record of the Company."*

11. To provide opportunity of personal representation, hearing in the matter was fixed for August 20, 2024, wherein Mr. Najmul Hassan - Chief Executive Officer, Mr. Aquil A Khan - Company Secretary, Ms. Muneeza Kasim and Mr. Faisal Panawal appeared before the undersigned on behalf of the Respondents as their Authorized Representatives (the **Representatives**) and reiterated the submissions made vide letter dated July 3, 2024.



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12. Sections 205, 207 and 176 of the Act are reproduced as hereunder:

• **“205. Disclosure of interest by director. – (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board:**

• **Provided that a director shall be deemed also to be interested or concerned if any of his relatives, is so interested or concerned.**

• **(6) Any contravention or default in complying with requirements of sub-sections (1) or (2), shall be an offence liable to a penalty of level 1 on the standard scale.**

• **207. Interested director not to participate or vote in proceedings of board. – (1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void:**

• **Provided that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered.**

• (2) ....

(3)...

• **(4) Any contravention or default in complying with requirements under this section shall be an offence liable to a penalty of level 1 on the standard scale.”**

• **“176. Proceedings of the board. – (1) The quorum for a meeting of board of a listed company shall not be less than one-third of number of directors or four, whichever is greater and the participation of the directors by video conferencing or by other audio visual means shall be counted for the purposes of quorum under this sub-section:**

• **Provided that if at any time, there are not enough to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.**

• **(4) If a meeting of the board is conducted in the absence of a quorum or a meeting of board is not held as required by sub-section (3), the chairman of the directors and the directors shall be liable-**

(a) if the default relates to a listed company, to a penalty of level 2 on the standard scale;

(b) ... .”



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13. I have gone through the facts of case and considered both the written and verbal submissions of the Representatives in light of the relevant provisions of the law and state as under:

- (i) **Interested director not to participate or vote in terms of Section 207 of the Act:**  
*Section 207(1) of the Companies Act, 2017 prohibits directors from voting or participating in the decision-making process of transactions where they have an interest due to directorship in related companies.*

*The minutes of the board meetings show that the directors with interests in the related parties participated in the approval of related party transactions. The absence of any abstention, constitutes a clear breach of Section 207(1).*

*By not abstaining from the agenda item in question despite being interested due to their common directorship, the Respondents in Para 4 above, have contravened the provisions of Section 207 (1) of the Act.*

- (ii) **Disclosure of interest by Director in terms of Section 205 of the Act:**  
*Section 205(1) of the Act requires directors to disclose their interest in any transaction, arrangement, or contract where they hold interest due to common directorship.*

*In this case, the common directors failed to disclose their interest during the board meetings. This failure is in contravention of Section 205, which mandates that directors must disclose such interests.*

*By not disclosing the nature of their concern despite being interested due to their common directorship, the Respondents in Para 4 above have contravened the provisions of Section 205 (1) of the Act.*

- (iii) **Insufficient Quorum in terms of Section 176 of the Act:**  
*Section 176 of the Companies Act, 2017 requires that a valid quorum must be present for board meetings, and interested directors cannot count towards the quorum for decisions involving related party transactions.*

*The record reveals that the quorum in the meeting held on October 14, 2012 was inquorate for approval of transactions with related parties as only two out of five present directors were allowed to participate and vote as per Section 207 (1) of the Act and remaining three present directors did not count for the purpose of quorum. Therefore, the directors of the company present in the meeting conducted the aforementioned meeting without quorum, in contravention with the provisions of Section 176 of the Act.*



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*The Representatives also admitted that there has been an oversight regarding the absence of the quorum in the meeting held on October 14, 2024 and requested to condone the negligence. The Representatives further added that the non-compliance was not willful, therefore, requested to condone the inadvertent omission.*

14. In view of the foregoing, I hereby conclude on the following:

**(i) Legal Presumption of Accuracy in Corporate Records:**

The Act mandates that minutes of board meetings serve as the formal record of decisions and proceedings, including any disclosures of interest made by directors. In the absence of such records, the presumption is that the disclosures were not made. Corporate governance principles rely on accurate and complete minutes, and failure to document disclosures creates a prima facie inference that no such disclosures occurred.

If directors claim that disclosures were made verbally but not recorded, this indicates a failure to comply with procedural safeguards, as oral disclosures are insufficient without formal documentation.

**(ii) Burden of Proof:**

The responsibility to ensure that disclosures are properly made and recorded lies with the directors themselves. The failure to ensure that disclosures are reflected in the minutes shifts the burden onto the directors to provide clear and convincing evidence (beyond mere assertions of leaving the meeting room / not part of the discussion etc.) that such disclosures were made.

Without documented evidence, the argument that the disclosure was made but not recorded becomes speculative and unsubstantiated.

**(iii) Governance and Fiduciary Obligations:**

Directors, as fiduciaries, are expected to exercise a duty of care, which includes ensuring that all disclosures are properly recorded. If the minutes do not reflect such disclosures, it demonstrates a lack of compliance with their governance responsibilities under the Act. Proper documentation of disclosures is part of fulfilling their fiduciary duty of transparency.

Failure to ensure the accuracy of minutes further compounds the governance breach, as it undermines accountability and transparency, which are central to corporate governance practices.



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(iv) **Corporate Governance:**

The law require that the minutes of board meetings accurately reflect all decisions and any disclosures of interest. Non-compliance of the same cannot be excused by claiming that disclosures were made but simply not part of the minutes.

(v) **Pattern of Non-Compliance:**

If the minutes of multiple meetings (in this case, five meetings over the course of the year) consistently fail to reflect disclosures, it suggests a systematic failure in governance, rather than a one-time omission. This pattern reinforces the view that proper disclosures were not made, rather than merely overlooked during the preparation of minutes.

In summary, the lack of documentation of disclosures in the minutes is a significant default under the Act and the argument that disclosures were made but not recorded fails to meet the legal and governance requirements of transparency, accountability, and compliance.

15. In view of the foregoing, I hereby conclude that with respect to the transactions executed by the Company with the Associates, the Respondents have contravened the provisions of Section 205, 207 and 176 of the Act and, therefore, are liable to be penalized. Therefore, taking cognizance of the aforesaid contraventions/ non-compliances, I, in exercise of the powers conferred under Section 205, 207 and 176 of the Act, hereby impose an aggregate penalty of **Rs. 65,000/- (Rupees Sixty-Five Thousand Only)** on the Respondents in the following manner:

Sr. #	Name of the Respondents	Penalty (Rs)		
		Section 205	Section 207	Section 176
1.	Mr. Naeem Ali Muhammad Munshi (being interested and present)	5,000	5,000	5,000
2.	Mr. Najm ul Hassan (being present)	-	-	5,000
3.	Mr. Ehtisham Maqbool Elahi (being interested and present)	5,000	5,000	5,000
4.	Mr. Hafsa Abbasy (being present)	-	-	5,000
5.	Mr. Shariq Maqbool Elahi (being interested and present)	5,000	5,000	5,000
6.	Mr. Fahad Munshi (being interested)	5,000	5,000	-
	<b>Total:</b>	<b>20,000</b>	<b>20,000</b>	<b>25,000</b>



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16. The Respondents are hereby, directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the *Securities and Exchange Commission of Pakistan* with MCB Bank Limited/United Bank Limited within thirty (30) days from the date of this Order and 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 penalty.

17. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondent in respect of any default, omission or violation thereof.

**Shahzad Afzal Khan**  
Director/ HOD  
Adjudication Department-I

**Announced:**  
September 26, 2024  
Islamabad

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

IN RESPONSE TO A RESOLUTION OF THE HOUSE OF COMMONS

The Commission has the honor to acknowledge the receipt of the Resolution of the House of Commons, dated the 14th day of March 1881, in relation to the subject of the Land Office, and to inform you that the same has been referred to the Commission for their consideration.

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