ORDER	
Name of Company:	M/s. Sitara Energy Limited
Show Cause Notice No. & Date:	CSD/ARN/585/2019 dated August 09, 2024
Respondent(s):	1. Ms. Noureen Javed, Chairperson; 2. Mr. Javed Iqbal, Chief Executive; 3. Mr. Shahid Hameed Sheikh, Director; 4. Mr. Tahir Ibrahim, Director; 5. Mr. Sheikh Javed Aslam, Director; 6. Mr. Mubashir Ahmed Zareen, Director; 7. Ms. Haniah Javed, Director; and 8. M/s. Sitara Energy Limited.
Date(s) of Hearing(s):	January 22, 2025
Case represented by:	Mr. Rashid Sadiq, RS Corporate Advisory (*As Authorized Representative*)
Provision of Law involved:	Section 199 of the Companies Act, 2017 read with Section 479 thereof.
Date of Order:	September 30, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the "Commission"**) through the Show Cause Notice No. CSD/ARN/585/2019 dated August 09, 2024 (**"SCN"**) in the matter of M/s. Sitara Energy Limited (**the "Company"**) and its Board of Directors (**the "BOD"**) including the Chief Executive Officer, hereinafter collectively referred to as the **"Respondents"** issued under Section 199 of the Companies Act, 2017 (**the "Act"**) read with Section 479 thereof.

2. The provisions of sub-section (2) of Section 199 of the Act requires that; "*the company shall not invest in its associated company or associated undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall inter-alia include the terms and conditions specifying the nature, purpose, period of the loan, rate of return, fees or commission, repayment schedule for principal and return, penalty clause in case of default or late repayments and security, if any, for the loan in accordance with the approval of the members in the general meeting*". Moreover, proviso to sub-section (2) of Section 199 of the Act further provides that; "*the return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis in accordance with the terms of the agreement, failing which the directors shall be personally liable to make the payment.*"

3. The brief facts of the case are that review of the Audited Financial Statements for the year ended June 30, 2023 (**the "Accounts"**) of the Company revealed that as per Note 18 of the Accounts, the Company had provided interest free loan to its subsidiary namely; M/s. Sitara International (Private) Limited (**the "SIL"**) amounting to Rs. 611 million. Furthermore, it was also observed that the said loan is outstanding and receivable from the SIL with negligible progress made for recovery of the said loan.

4. In order to probe the matter, the Commission vide letter dated January 22, 2024 sought explanation from the Company. In response, the Company through its reply dated May 09, 2024 *inter alia* submitted that:

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"the management of the subsidiary company is trying its level best to sell out the properties along with maximum capital gain and repaying loan to the holding company to discharge its rescheduled facilities in due course of time and in the best interest of the company."

5. The aforesaid reply clearly reflects that the Company, while advancing interest free loan to its subsidiary, i.e., SIL, had failed to comply with the requirements of Section 199(2) of the Act, which attract the penal provisions of Section 199(6) thereof; reproduced for ease of reference as under:

"199. Investments in associated companies and undertaking.- *(6) Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 3 on the standard scale and in addition, shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section."*

6. Having not being satisfied with the explanation/clarification provided by the Company, cognizance in the matter was taken and SCN was issued to the Respondents to show the cause in writing as to why penal action may not be taken against them for non-compliance of the requirements of sub-section (2) of Section 199 of the Act.

7. In response to the SCN, Mr. Rashid Sadiq, RS Corporate Advisory, on behalf of the Respondents as their Authorized Representative (**the "Authorized Representative"**), vide letter dated September 19, 2024, *inter alia,* submitted the following:

"...
With regard to charging of interest on loan of PKR 611 million provided to Sitara International (Private) Limited, a wholly owned subsidiary, it is submitted that an amount of PKR 625.3 million was outstanding as of June 30, 2018. The said amount was subject to SRO 704 (I)/2011 dated 13 July, 2011 which was repealed only on December 06, 2017 vide SRO 1239(I)/2017. As per Repealed SRO, the holding companies were exempt from the requirements of Section 208(1) of the repealed Companies Ordinance, 1984 which including rate of return on investments in the form of loans. Accordingly, no return was required to be charged on loans to subsidiaries.
...
Where provisions of Section 199(2) of the Act emanate directly from the restriction stipulated in Section 199(1) of the Act, the law cannot be applied in isolation. Accordingly, where provisions of Section 199(1) of the Act are not applicable to investments to be made by holding companies in their wholly owned subsidiaries, a straight and plain reading of Section 199(2) of the Act establishes that these provisions cannot be applied in isolation to a loan exempted under Section 199(1) of the Act as such an interpretation will defeat the purpose of the exemption as sanctioned through sub-section (3)(a) of Section 199 of the Act. It was therefore, submitted that Section 199(2) of the Act and its proviso are subservient to the provisions of Section 199(1) of the Act and shall become applicable only if Section 199(1) of the Act is applicable.
...
In light of the above, it was submitted that provisions of sub-section (2) of Section 199 of the Act must necessarily be read as emanating from and supplementary to provisions of sub-section (1) of Section 199 of the Act which is the first point of reference for the prohibition envisaged against investment in its associated companies by a company. Where, by operation of an exemption, the main prohibition becomes inapplicable to a company it would be illogical to require compliance with provisions of supplementary sub-sections aimed at introducing transparency measures in situations where the relationship between the subject companies, as provided under law, demands such measures. ...
...

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Clearly, where by operation of sub-section (1) of Section 199 of the Act, a company has been exempted from seeking any approval of the members in general meeting before investing in its wholly owned subsidiary on terms and conditions it deems in the best interests of the company, it would be repugnant to the scheme of law to require such company to seek shareholder approval of the terms and conditions already finalized by the company in accordance with the law.

It is further submitted that the SCN has been wrongly issued to the current directors some of whom were not directors at the relevant point in time. Additionally, the law specifies that the responsibility for compliance with provisions of Section 199 of the Act lies with the 'company' where the provisions expressly provide for investments to be made by a company.

Where the law does not provide for liability of the directors under Section 199 of the Act, issuance of the SCN violates the constitutionally guaranteed right of the directors to enjoy the protection of the law as per Article 4 of the Constitution of Pakistan, 1973 (the 'Constitution).

It may also be appreciated that where Section 199(6) of the Act speaks of penalty for default in compliance, there is no mention of penalizing the directors of a company. In contrast, one may peruse the comparative provisions of Section 208(3) of the repealed Companies Ordinance, 1984 (replaced by Section 199(6) of the Act) which expressly provided for penalizing directors of the company..

The Commission has ruled on the same point and stated that where the SCN was supposed to be issued to the company, the directors could not be made party to the proceedings and thus, could not be held liable.

It is well established that where the law requires a thing to be done in a certain manner it must be done exactly in that manner to have the force of law. Reliance is placed on SECP's Appellate Bench precedent in the matter of Appeal No. 40 of 2017 re M/s Lakhani Securities (Private) Limited vs. Executive Director (SMD-PRPD) which also underlined the importance of binding precedents of the Superior Courts and referred to the settle principle that when a thing was required to be done by law in a particular manner, it should be done in that manner or should not done at all.
..."

8. In order to provide an opportunity of personal representation to the Respondents and to meet the ends of justice, hearing in the matter was fixed for January 22, 2025 when the Authorized Representative appeared and reiterated the submissions made in the aforementioned written reply with a request for taking leniency in the matter.

9. Subsequently, the Authorized Representative vide written response dated March 24, 2025, *inter-alia*, submitted that:

"...
With regard to charging of interest on loan of PKR 611 million provided to Sitara International (Private) Limited, a wholly owned subsidiary ("SIPL") appearing in the audited financial statements of the Company for the year ended 30 June, 2023, the submissions are as under:

An amount of PKR 625.304 million was outstanding as of 30 June, 2018. Please refer note No. 17 of the annual report 2018 (Annexl) filed by the Company with the Securities and Exchange Commission of Pakistan (" SECP");

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An amount of PKR 567.845 million was outstanding as of 30 June, 2017. Please refer note No. 17 of the annual report 2018 (Annexl) filed by the Company with the SECP;

During the year ended 30 June, 2018, an amount of Rs. 57.460 million was provided to SIPL.

Since 30 June, 2018, there is reduction in the amount and as of 30 June, 2023, the amount stand reduced to Rs. 611.169 million;

For the loan appearing as of 30 June, 2017 i.e., Rs 567.845 million, there is no difference of opinion between the Company and the SECP that interest free loan outstanding as of 30 June, 2017 before promulgation of the Companies Act, 2017 read with SRO 704 (I)/2011 dated 13 July, 2011 (Annex2) now repealed ("Repealed SRO") on 06 December, 2017 vide SRO 1239(!)/2017 (Annex3) is protected, as the law cannot be applied retrospectively. This is substantiated from the fact that SECP issued show cause notice dated 13 May, 2020 (Annex4) to the Company and its directors only for an advance of Rs. 57.460 extended by the Company to SIPL during the year ended 30 June, 2016 (please refer Para 6 of the attached SCN dated 13 May, 2020).

Subsequently, an order was passed on 27 April, 2022 (Annex5) by the then HOD (Adjudication-1) imposing fine on the Chairman and Chief Executive of the Company.

The aforesaid order was assailed by the Chairman and Chief Executive of the Company before the honorable Appellate Bench of the SECP under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 and the Appeal was registered as Appeal No. 35 of 2022. The Appeal has not so far come up for hearing.

The above matter (i.e., advance of Rs. 57.460 million) cannot be taken up again as the same was adjudicated, decided and Appeal in the matter is pending before honorable Appellate Bench of the SECP as mentioned above. The above amount is included in Rs. 611 million for which SCN is issued on the basis of financial statements for the year ended 30 June, 2023.

In view of the above factual position, the SCN has been wrongly issued, without jurisdiction and contrary to the protection under Article 12 of the Constitution and the same may please be withdrawn without any further action.

10. I have gone through the relevant provisions of Section 199 of the Act and also considered the facts of the case along with the written and verbal submissions of the Respondents and available related record of the Company. I have also perused Section 199(6) of the Act, which stipulates penal provisions for contravention of the afore-referred provision of law. I have also gone through the provisions of Section 208 of the repealed Companies Ordinance, 1984 (the "Ordinance") along with SRO 704 (I)/2011 dated 13 July, 2011 which was later repealed on December 06, 2017 vide SRO 1239(I)/2017 (the "**SRO")** to give due consideration to the arguments presented in respect of the part of the loan extended during the period prior to the promulgation of the Act and SRO. At this juncture, it is important to discuss the following legal and factual elements:

(i) It is observed that sub-section (2) of Section 199 of the Act clearly stipulates that a company shall only invest in associated/subsidiary company(ies) by way of loans or advances in accordance with an agreement in writing and such agreement shall, amongst other conditions, include that the return on loan shall not to be less than the borrowing cost of the investing company or the rate specified by Commission, whichever is higher and shall be recoverable on regular basis failing which the directors shall be personally liable, and that such terms and conditions, as contained in the agreement, shall be approved by the members in the general meeting. The provisions of this sub-section are vivid and

unambiguous and require no further elaboration *per se*. In view of the aforementioned, there is no exemption or exception to the requirements of the Section 199(2) of the Act applicable on the transaction conducted between the Company and its wholly owned subsidiary.

(ii) The proviso to sub-section (2) of Section 199 of the Act is also explicit, requiring the Respondents to recover the mark-up on regular basis and any failure to do so violates the requirements as prescribed under the provisions of the law. It is observed that in the instant matter the failure to ensure periodic recovery by the Respondents has breached the legal requirement as mandated under sub-section (2) of Section 199 of the Act. Moreover, the first proviso of sub-section (2) of Section 199 of the Act read with later part of sub-section (6) thereof clearly offers that in case of any default or loss sustained by the company in consequence of any investment made without complying with the requirement of Section 199 of the Act, the Directors shall be personally liable to make the payment/reimburse, jointly and severally. This understanding gain further traction from the fact that it is essentially the directors of the investing company who are burdened with the responsibility to certify that investment is made after due diligence and that the financial health of the investee company is such that it has the ability to repay the loan as per the second proviso to sub-section (2) of Section 199 of the Act.

(iii) It is also imperative to assert that the notion of non-applicability of sub-section (2) of Section 199 of the Act on the companies that are exempted from requirements of sub-section (l) of Section 199 of the Act by virtue of notification S.R.O. 1239(1)/2017 dated December 06, 2017 (SRO) is absolutely misplaced as the exemption granted in the SRO is only to the extent of the restriction of a special resolution which requires a higher majority of votes (3/4th) of the members and other regulatory formalities. In terms of sub-section (2) of Section 199 of the Act, a company shall only invest in its associated company and/ or undertaking, including a wholly-owned-subsidiary, strictly in accordance with an agreement in writing and the terms and conditions of such agreement, which amongst others, include that the return on loan shall not to be less than the higher of the borrowing cost of the investing company or the rate specified by the Commission, subject to approval of the members in a general meeting.

(iv) Furthermore, it is important to observe that provisions of Section 208 of the erstwhile Ordinance fully compliment the provisions of Section 199(2) of the Act in respect of investment in the form of loan to the associated companies by vividly providing the requirement of *'return on investment in the form of loan shall not be less than the borrowing cost of investing company'*. Moreover, the exemption available for investment in wholly owned subsidiary from the 'restriction provided in sub-section (1) of Section 208 of the Ordinance, as envisaged in clause (a) of sub-section 2A thereof and specified vide S.R.O. 704(I)/2011 dated July 13, 2011 [Ref: clause (f)], is and can only be construed to the extent of requirement of authority of a special resolution. It is a clearly established understanding that an S.R.O. notified under a statutory provision cannot be read beyond that specific provision (i.e., clause a of sub-section 2A) which in the instant case offers exemption only from the restriction provided in sub-section (1) which in-fact is authority of a special resolution. It is also highly apt to observe that the spirit along with the objectives of Section 208 of the Ordinance relating to the requirement of charging of mark-up/return on the loan to the associated/ wholly owned company has been clearly preserved by the Act without any equivocation. Therefore, it is fully established that, despite the loan amount in the instant matter spans across the time period subjected to requirements of the erstwhile Ordinance and the Act respectively, recovery of mark-up/return on the same is a binding responsibility upon the Respondents and any understanding held contrary to the same is entirely misplaced.

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(v) Moreover, the argument presented by the Authorized Representative in respect of Commission's earlier adjudication proceedings which were initiated vide a show cause notice dated May 13, 2020 and concluded vide an order dated April 27, 2022 only catered to Rs. 57.46 million extended by the Company during the FY 2018 thereby substantially meaning that the violation of the then applicable provision of law in respect of the amounts of the instant loan extended prior to such period (i.e., FY 2018) cannot be adjudicated in the instant proceedings, fails to find any plausible legal grounds. It is pertinent to observe that the adjudication proceedings concluded through order dated April 27, 2022 only related to the non-compliance with the requirements of Section 208 of the Ordinance by the Company till FY 2018 however the said default is of continuing nature as the Respondents, despite being penalized for extending interest free loan to its subsidiary company, have neither rectified the default nor are charging any mark-up/ return on said loan till FY 2023 when the amount of loan extended by the Company to its subsidiary company has increased to Rs. 611 million. The mere fact that a penalty was previously imposed for non-compliance up to FY 2018 does not absolve the Respondents of their ongoing obligation to rectify the violation and accordingly does not restrict the Commission from undertaking the present Adjudication Proceedings against the Respondents for their persistent default of not charging any mark-up/ return on loan extended to subsidiary company. The Respondents, since the conclusion of proceedings vide order dated April 27, 2022, have not taken any steps to ensure compliance with the applicable legal framework, therefore, it is well within the jurisdiction of the Commission to initiate fresh adjudication proceedings for continued non-compliance extending beyond the period previously adjudicated and the principle of res judicata or double jeopardy does not apply in cases of continuing contraventions, where the failure to comply with legal provisions persists over multiple reporting periods.

(vi) It is also important to observe that the Respondents hold a fiduciary responsibility as agents of the shareholders of a public listed company. Such loans or advances have a direct impact upon liquidity, cash outlay and financial canvas of the Company and entering into such loan agreements whose terms are against the spirit of the law can prejudice the interest of the shareholders. The provisions of sub-section (2) of Section 199 of the Act are clear and without providing any exemption, mandate the Respondents to comply with the statutory requirements for recovery of markup within the stipulated period, and on recurring basis, regardless of the financial condition of the associated/subsidiary company. The law does not allow for exceptions based on financial distress of the associated company and instead, imposes an outright responsibility on the directors themselves to conduct due diligence and ensure 'beforehand' that the financial health of the borrowing company is such that it has the ability to make repayments as per the agreement. Hence, the Respondents cannot absolve themselves from their obligations under the Act and are to be held liable for non-recovery of the mark-up.

(vii) In 2024 CLD [Appeal No. 79 of 2023, decided on March 26, 2024], the respondent company had not recovered accrued mark-up/ interest receivable from associated companies. It was held by the Appellate Bench of the Commission that *"Contention of the appellant did not absolve it from committed violations as the recovery of interest/mark-up periodically and on regular basis was a mandatory requirement under S. 199 of the Companies Act, 2017, read with Regulation 5(6) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017, and any agreement between the appellant and its associated companies could not override the explicit dictates of legal provisions---Appellate Bench also considered that the interest and trust of shareholders had been violated---Appellate Bench found*

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no reason to interfere in the impugned order and dismissed the Appeal, filed by company."

(viii) The assertion that penal provisions of Section 199 of the Act should be applied strictly after proving willful default on part of the Respondents is not plausible. It is pertinent to mention here that the penal provision invoked under the instant proceedings i.e. Section 199(6) of the Act plainly relates to any **contravention or default** to comply with the invoked provisions of the Act – the said provision nowhere establishes a burden for determination of 'willfulness' for such a contravention or failure being adjudicated by the Commission. It is noted that besides acknowledging the principle of strict interpretation of law, it is also imperative to ensure that the statutory requirements are strictly adhered to. The failure to recover mark-up on a regular basis, despite absolute regulatory requirements, clearly establishes the non-compliance of sub-section (2) of Section 199 of the Act.

(ix) The Authorized Representative has referred a case laws cited as 2011 PLD 778 to build an argument that before proceeding in the instant matter, the Commission was required to establish substantial findings of guilt against the Respondents. It is observed that the referred case law and its facts are substantially different from the instant matter as there was requirement to establish a willful default under Section 224 of the Ordinance, in the referred case law, however, no such requirement is applicable in this case. Accordingly, cited facts are also not relevant to this case, therefore, the same are not applicable.

(x) The references of judgements by other courts quoted by the Authorized Representatives are not relevant in the instant matter as the requirements prescribed under sub-section (2) of Section 199 of the Act are unambiguous and clearly required the Respondent to recover mark-up on loans on a regular basis as periodicity in such agreements cannot be left open as they are directly linked with the determination of mark-up liability and determining its aging/ past due date for each payback. Moreover, every case has distinct facts and circumstances, therefore, decision in one case may not be treated as binding precedent for other cases. Furthermore, in the recent judgement of the Islamabad High Court in the case of PKP Exploration Limited vs Federal Board of Revenue (PTD 2021, 1644), it was held that decisions of quasi-judicial forums in one case are not binding for other similar cases before such tribunal. For reference, relevant abstract of the judgement is reproduced below:

"13.....Given that it is an adjudicatory forum of a quasi-judicial nature established by statute, it is vested with no inherent power. .....The consequences of the decision of the Tribunal are limited to the case it decides and do not travel beyond the four corners of the subject-matter before it in appeal. In other words, neither the Constitution nor any statue envisages a law-declaring function for the Tribunal. ***Its decision do not become binding precedents.*** *The reasoning of the Tribunal in one case could be treated by tax authorities as a persuasive precedent in a subsequent case where the subject-matter is the same or similar. But the persuasive quality or cogent reasoning of a decision of the Tribunal does not transform it into a legally binding precedent for officials exercising executive or adjudicatory authority under tax, statutes, just as the most compelling and potent decisions of District Courts do not make such decisions binding precedents."*

It is evident from the aforesaid that the precedents may be considered as reference but are not binding for the competent forum and accordingly each case decided on its merits and peculiar facts.

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(xi) The referred case laws of K-Electric Limited and Agritech Limited in the context of against whom the adjudication proceedings were initiated are not applicable in this case as the same are persuasive in nature and were superseded by another order of the two-member Appellate Bench in the matter of Paramount Spinning Mills Limited Order. Therefore, case laws referred by the Authorized Representative are neither mandatory nor are binding precedent.

(xii) It has also been observed that during the SCN proceedings, no discrimination has been made and the Respondents were provided adequate opportunity of hearing and were treated in a fair, transparent manner and strictly in accordance with the applicable laws. Hence, no violation of Articles 4 and 10A of the Constitution of 1973 and Section 20(6) (c) of the SECP Act, 1997 may be attributed in reference to instant proceedings.

(xiii) The Authorized Representative has also relied upon previous cases in which penalties were not imposed. In this regard it is important to understand that every case has its own peculiar facts and circumstances, and each case has been decided on its own merit and circumstances of the default.

11. In view of the aforesaid, I am of the well-considered view that contravention of the requirements of sub-section (2) of Section 199 of the Act has been established beyond doubt which attracts penal action in terms of sub-section (6) of Section 199 of the Act. I have also given due attention to the grounds presented by the Authorized Representative to the said non-compliance, however, none of the grounds seems to justify the non-adherence of the mandatory provisions of law. I, therefore, in exercise of the powers conferred upon me under sub-section (6) of Section 199 of the Act read with S.R.O. No. 1545(I)/2019 dated December 06, 2019, hereby conclude the proceedings initiated through SCN by imposing an aggregate penalty of **Rs. 150,000/- (Rupees One Hundred and Fifty Thousand Only)** on the Respondents in the following manner:

Sr. #	Respondents	Penalty (Rs.)
1.	Ms. Noureen Javed, Chairperson	15,000/-
2.	Mr. Javed Iqbal, Chief Executive	15,000/-
3.	Mr. Shahid Hameed Sheikh, Director	15,000/-
4.	Mr. Tahir Ibrahim, Director	15,000/-
5.	Mr. Sheikh Javed Aslam, Director	15,000/-
6.	Mr. Mubashir Ahmed Zareen, Director	15,000/-
7.	Ms. Haniah Javed, Director	15,000/-
8.	M/s. Sitara Energy Limited	45,000/-
	Total	**150,000/-**

12. Furthermore, in exercise of powers conferred under Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 6, 2019, the Company is DIRECTED to account for the full amount of mark-up due on the loans to the aforesaid subsidiary in its books of accounts; and proceed with recovery thereof. The Company is further DIRECTED to modify the relevant loan agreement to ensure comprehensive compliance with the applicable provisions of the Act, including but not limited to incorporation of a clear schedule of repayment for recovery of total principal and the mark-up accrued/due going forward. The Company is further DIRECTED to provide an auditor's certificate verifying the computation and recovery of the mark-up along with the compliance report of these directions to the Commission duly approved by the Board of Directors of the Company.

13. The Respondents are hereby further DIRECTED to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to 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 fines as arrears of land revenue pursuant to provision of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.

14. Without prejudice to the above, in case the Respondents are aggrieved by this Order may, within thirty days of the Order, prefer to file review application in terms of Section 32B of the Securities and Exchange Commission of Pakistan Act, 1997 (**SECP Act**) or may file an appeal to Appellate Bench of the Commission in terms of Section 33 of the SECP Act in accordance with the procedure for filing an appeal as laid down under the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003.

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(Sohail Qadri)
Director/ Head of Department
Adjudication Department-I

Announced:
September 30, 2025
Islamabad.