



# Securities and Exchange Commission of Pakistan

Adjudication Division  
Adjudication Department-I

*Before*

**Amir M. Khan Afridi - Director/ Head of Department**

**In the matter of Show Cause Notice issued to Zahur Cotton Mills Limited**

Dates of Hearings

October 20, 2021

## **Order-Redacted Version**

Order dated December 29, 2021 was passed by Head of Department (Adjudication-I) in the matter of Zahur Cotton Mills Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated September 1, 2021
2. Name of Company	Zahur Cotton Mills Limited
3. Name of Individual*	The proceedings were initiated against the Company and its directors
4. Nature of Offence	<p>Proceedings were initiated Under Section 166 of the Companies Act, 2017 and Sections 169, 479, 512 thereof read with regulation 27 (1)(ii) of the Listed Companies (Code of Corporate Governance) Regulations, 2019 and regulation 37 thereof.</p> <p>Brief facts of the case are that review of annual report for the year ended June 30, 2020 of the Company transpired that independent directors namely *** and *** were serving on the Board of Directors (<b>the Board</b>) of the Company for more than three consecutive terms, which <i>prima facie</i>, was contrary to the requirements of Section 166(2)(g) of the Act. Moreover, it was also noted that ***, chairperson of the Board Audit Committee (BAC) was not an independent director, which <i>prima facie</i>, was contravention of regulation 27(1)(ii) of the Regulations.</p> <p>Keeping in view the above, the Company, <i>prima facie</i>, has failed to: (i) appoint independent directors on its Board which is non-compliance of Section 166 of the Act, and (ii) appoint an independent director as chair of the BAC which is contravention of regulation 27(1)(ii) of the Regulations. The aforementioned non-compliances attract applicability of the penal provisions of Section 169 of the Act and regulation 37 of the Regulations. Hence, proceedings were initiated through the SCN and the Respondents</p>



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	<p>were advised to furnish reply within 14 days of the date of the SCN. The Respondents, however, did not furnish reply to the SCN.</p>
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the facts of the case, submissions made in writing as well as during the hearing and the relevant legal provisions and state that:</p> <p>(i) it is mandatory to have at least two independent directors out of seven on the Board of the Company as per requirements of regulation 6(1) of the Regulations. Moreover, in terms of Section 166(2)(g) of the Act, a director is not considered independent if he has served on the board for more than three consecutive terms from the date of first appointment, provided that such person shall be deemed independent director after lapse of one term. The two mentioned directors namely *** and *** were acting on the Board of the Company for more than three consecutive terms. Moreover, M/s Anwar, Tariq &amp; Company, Chartered Accountants, in their review report on SOC for the year ended June 30, 2020, highlighted that: <i>"independent directors are serving on the board for more than three consecutive terms"</i>. The Chief Executive admitted default and informed that independent directors as per the given requirements were not willing to come on the board of the Company due to financial health of the Company. In this regard, I am of the considered view that the Respondents are non-compliant with the requirements of regulation 6(1) of the Regulations read with Section 166(2)(g) of the Act.</p> <p>(ii) With regard to the appointment of independent director as chairperson of BAC; it is observed that *** is not independent director and she is acting as chairperson of BAC. M/s Anwar, Tariq &amp; Company, Chartered Accountants, in its review report on SOC for the year ended June 30, 2020, also highlighted that: <i>"Chairperson of Audit committee is not an independent director"</i>.</p> <p>I am of the view that BAC plays important role and provides an independent assessment to board of directors. In case of the Company, the role of BAC was compromised as chairperson of BAC was not an independent director contrary to the requirements of the Regulations. Hence, the Respondents, by not having</p>



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	<p>an independent director as chairperson of BAC have violated the requirements of regulation 27(1)(ii) of the Regulations for which penalty is provided in terms of regulation 37 of the Regulations read with Section 512(2) of the Act.</p> <p>(iii) The Respondents are of the view that an application seeking relaxation from the requirements of the Regulations has been submitted to the Commission. In this regard, I am of the view that contraventions in terms of regulation 6(1) of the Regulations read with Section 166(2)(g) of the Act and regulation 27(1)(ii) of the Regulations have already been made for which penal action is provided in Section 169 of the Act and regulation 37 of the Regulations read with Section 512(2) of the Act. Hence, making application subsequent to issuance of SCN; cannot absolve the Company from the cited defaults. Hence, I am of the view that stance taken for non-compliances with the aforesaid requirements of the Regulations and Section 166 of the Act is not acceptable as default persisted till the date of the SCN. I, therefore, in terms of powers conferred under Section 169 of the Act and Section 512(2) of the Act, impose penalty of <b>Rs. 50,000/- (Rupees Fifty Thousand only)</b> on the Respondent Company and also warn the directors to be careful in future.</p> <p>It is hereby directed to deposit the aforesaid amount of penalties in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from 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.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Regulations or the Act providing for imposition of penalties in respect of any default, omission, violation of the Regulations or the Act.</p>
6. Penalty Imposed	<b>Rs. 50,000/- (Rupees Fifty Thousand only)</b>
7. Current Status of Order	Penalty was deposited.