



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

*Before*

**Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)**

*In the matter of*

**AA Gold Commodities (Pvt.) Limited**

Number and date of Show Cause Notice (SCN)	2(377)SMD/Adj-1/2022-927 Dated May 11, 2023
Date(s) of Hearing(s):	June 12, 2023; October 02, 2023; and February 13, 2024

### **ORDER**

#### **UNDER SECTION 502 READ WITH SECTION 170(1) OF THE COMPANIES ACT, 2017**

This Order shall dispose of the proceedings initiated against AA Gold Commodities (Pvt.) Limited (**the Company**) through Show Cause Notice No. 2(377)SMD/Adj-1/2022-927 dated May 11, 2023 (**the SCN**) issued under Section 502 of the Companies Act, 2017 (**the Act**) on account of alleged contravention of Section 170(1) of the Act.

2. Brief facts leading to this case are:

- a) An investigation was initiated against the Company vide order dated July 15, 2022 to investigate any violations of the Act along with the rules and regulations and to inspect the books and records of the Company.
- b) The investigation report was issued on January 27, 2023 from which it is observed that the Company recorded payment of salary expense amounting to Rs. 100,000/- each for year ended June 30, 2022 to the non-executive directors namely Mr. Azam Anwar Khan and Ms. Kulsoom Younus. Payment recorded as remuneration of the directors was made without any determination and approval in the annual general meeting/extra ordinary general meeting of the member of the Company.

3. In terms of Section 170(1) of the Act, the remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the board or the Company in general meeting. The Said Section 170(1) of the Act is reproduced as under:

***“170. Restriction on director's remuneration. —(1) The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the board or the company in general meeting, as the case may be, in accordance with the provisions in the company's articles.”***

4. In view of the aforesaid, the Company, *prima facie*, has violated the provision of Section 170(1) of the Act, which attracts applicability of the penal provisions i.e. Section 502 of the Act, which is reproduced as under:

***“502. Penalty where no specific penalty is provided.—If a company or any other person contravenes or fails to comply with any provision of this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition,***



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*direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of level 3 on the standard scale."*

5. Accordingly, the Commission while taking cognizance of the aforementioned non-compliance served the SCN upon the Company, requiring it to submit its written reply within 14 days of the date of the SCN.

6. In response to SCN, the Company vide letter dated May 25, 2023 submitted as under:

*"As per the reference to the subject I would like to inform you that we had called the Extra Ordinary General Meeting on 15th February 2021 to decide the authorization and approval of payments and remuneration of all staff of AAGC including Directors and Non-Executive Directors (EOGB meeting minutes attached) and for the record we are paying the salary from last 1.5 years to our other Non-Executive Director Mrs. Sumaira Asif as well for her services to the company but her name is not mentioned in the SCN. I would further like to inform you that during the course of investigation conducted by SECP Team no one has asked us to provide the EOGM meeting minutes regarding the authorization and approval of payments and remuneration of all staff of AAGC including Directors and Non-Executive Directors. Therefore, would like to request you to set-aside the Shove Cause no.2(377)SMD/Adj-1/2022-927 issued by the yourself in the interest of justice."*

7. In order to provide the Company an opportunity of personal representation in the matter through its Chief Executive Officer (CEO), hearing in the matter was fixed for June 12, 2023, which was not attended by the Company or its Authorised Representative (**the Representative**). Another hearing in the matter was fixed for October 02, 2023, which was adjourned on the request of the Company vide email dated September 25, 2023 due to the medical condition of the CEO. Therefore, final hearing in the matter was fixed for February 13, 2024. The Company did not respond or appear in the final hearing opportunity as well.

8. **Interpretation of Section 170(1) of the Act in light of evidence provided by the Company:**  
According to Section 170(1) of the Act, the board or the company in a general meeting is required to determine the remuneration of directors for performing extra services, including the holding of the office of chairman.

However, the Company in response to the SCN, has provided the extract of an earlier EOGM minutes dated February 15, 2021 in which the company decided to authorize certain individual to determine the remuneration or salaries of executive directors, non-executive directors, and any employees to be employed and further authorized them to pay non-executive directors as per their services to be obtained in the future, without explicitly fixing the remuneration for non-executive directors for their extra services.

It needs to be noted that; *"It is a settled principle of law where a law requires doing of something in a particular manner it has to be done in the same manner and not otherwise."* Reliance in this respect is place upon the cases of **Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189)**.

In view of forgoing and available record with this office in light of the applicable provisions of the law, I am of the considered view that the Company was required to determine the fixed amount of remuneration of non-executive directors for their extra services in EOGM, however, the Company did



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not explicitly determine the fixed amount of remuneration of non-executive directors for their extra services during the EOGM as required under the provisions of the law, which establishes the contravention of Section 170(1) of the Act. Therefore, in exercise of the powers conferred upon me under Section 502 of the Act, I hereby impose a penalty of **Rs.200,000/- (Pak Rupees Two Hundred Thousand Only)** on the Company on account of the aforesaid established default.

9. The Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record.

10. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

**(Shahzad Afzal Khan)**  
Director/ Head of Department  
(Adjudication Department-I)

**Announced:**  
March 11, 2024  
Islamabad

