



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- II

Adjudication Division

BEFORE

**HAMMAD JAVED, ADDITIONAL DIRECTOR / HEAD OF DEPARTMENT
(ADJUDICATION DEPARTMENT – II)**

IN THE MATTER OF

MR. MUHAMMAD USMAN (CNIC # 17301-0875334-3)

Number and date of Show-Cause Notice:	No. Adj-II/172/69/IAN-46/CRO-PSH/2023-24-955 Dated September 28, 2023	
Date on which hearing opportunities provided and persons who attended the hearing:	Date of Hearing	Attended by
	October 12, 2023	Mr. Muhammad Usman, CEO/Director
	March 5, 2024	Mr. Muhammad Usman, CEO/Director
	April 25, 2024	Mr. Muhammad Usman, CEO/Director

ORDER

UNDER SECTION 172(1) OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the '**Commission**') through show cause notice No. Adj-II/172/69 /IAN-46/CRO-PSH/2023-24-955 dated September 28, 2023 (the '**SCN**') under sub-section (1) of section 172 of the Companies Act, 2017 (the '**Act**') issued to **Mr. Muhammad Usman** (the '**Respondent**') bearing CNIC # 17301-0875334-3. The Respondent is holding position of CEO/Director in Karwan-e-Hujjaj Peshawar (Pvt.) Limited ('**Company**') registered with the Commission under the Act, 2017.

2. The facts leading to the SCN were that:

- (a) Company Registration Office, Peshawar received a letter dated September 6, 2023 from the Company along with the following Orders: -
 - i. Order dated July 31, 2018 passed by Accountability Court-IV, Peshawar in Accountability Court Reference No. 02/2015 ('**Accountability Court Order**') against you, being director of the Company.
 - ii. Order dated June 2, 2020 of Peshawar High Court, Peshawar (passed in the matter of Appeal No.36/P-2018, filed by National Accountability Bureau, Islamabad ('**NAB**') for enhancement of the sentence awarded to the Respondents), whereby the NAB's Appeal was dismissed by the Peshawar High Court, Peshawar.
 - iii. Order dated June 2, 2020 of Peshawar High Court, Peshawar (passed in the matter of Appeal No.38/P-2018, filed by the Respondent against abovementioned Accountability Court Order) whereby the Peshawar High Court upheld the conviction of the Accountability Court and dismissed Respondent's Appeal.



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(b) Accountability Court Order dated July 31, 2018 reveals that: -

- i. Complaints against the Respondents were lodged with Federal Investigation Agency (FIA) Khyber Pakhtunkhwa which were later on transferred to NAB under NAB Ordinance, 1999 with the allegation that the Respondent being Director of Company cheated/defrauded the public at large and deprived them of their hard-earned money on the pretext of sending them for performance of Hajj/ Umrah in the year 2014 and failed to send them for Hajj and Umrah.
 - ii. The Respondent was convicted and sentenced to suffer two and half year's rigorous imprisonment with fine of Rs2 million on the charge of embezzlement and cheating the public at large under section 9(a)(ix)(x) punishable under section 10 of the National Accountability Ordinance, 1999.
3. The above-mentioned facts warranted action against the Respondent under clause (a) (d) (i) and (o) of sub-section (1) of section 172 of the Companies Act, 2017 ('Act') which states as under:

172. Disqualification orders. — (1) *'In any of the circumstances stated hereunder, the Commission may pass a disqualification order against a person to hold the office of a director of a company for a period up to five years beginning from the date of order—*

(a) conviction of an offence in connection with the promotion, formation, management or liquidation of a company, or with the receivership or management of a company's property;

(d) the business of the company in which he is or has been a director, has conducted to defraud its creditors, members or any other persons or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(i) the person has been convicted of financial irregularities or malpractices in a company or

(o) that it is expedient in the public interest so to do.

4. In view of foregoing, the SCN was issued to the Respondent, calling upon him to furnish submissions in writing and to appear in person or through an authorized representative on October 12, 2023 to explain as to why disqualification order for a period of up to five years may not be passed against him under sub-section (1) of section 172 of the Act.

5. The Respondent vide letter dated October 11, 2023 filed written submissions to the SCN, relevant excerpt of which is reproduced as under:

"It has been 5 years for the NAB court order that passed on July 31, 2018, the time is barred now since 2018 till 2023 regarding my disqualification".



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The Respondent attended the hearing through Zoom on October 12, 2023 and reiterated the submissions made earlier. However, he was advised to furnish further details on the issue. He submitted vide his email dated October 12, 2023 a letter dated 12-10-2023, relevant extract of which is reproduced hereunder:

"I have been cleared by NAB after I was penalized Rupees 200,000/- and imprisonment of 30 Months."

"I have passed the duration of disqualification as company's director, as I was already banned/disqualified since 31-07-2018 till 31-07-2023 for period of five years."

This office vide email dated October 16, 2023 advised the Respondent to clarify the name of the forum through which he was disqualified as director of the Company. In response, the Respondent vide email dated February 28, 2024 furnished his reply on above query vide his letter dated 28-02-2024 stating therein that:

"Our Position of Explanation in reference and reply of above quoted paragraph is that, You have mentioned the disqualification as per Companies Act, 2017 neither the NAB court nor the Hon'ble High Court has mentioned in the judgment about my 5 years of disqualification. After mentioning your disqualification I told you that according to your law my disqualification is now over. But this as per your law started from 31st July 2018 and now it has ended on 31st July 2023."

6. In order to provide the Respondent another opportunity of being heard in the matter, a hearing was scheduled for March 5, 2024 through Zoom which was attended by him and he reiterated the same stance taken vide his above referred letters.

7. Further, to conclude the SCN, the Respondent was provided a final opportunity of hearing on April 25, 2024 where he appeared in person and contended that his conviction period declared/awarded by NAB's Court and disqualification period under section 172(1) of the Act runs concurrently. He, therefore, may not be disqualified as disqualification period is now over. His disqualification under section 172(1) of the Act will tantamount to double jeopardy.

8. In this regard, it is emphasized that "Double Jeopardy" is a procedural safeguard, which bars a second trial of an accused person, who is either convicted or acquitted after a full-fledged trial by a court of competent jurisdiction. The rule against double jeopardy originally flows from the maxim "*nemo debet bis vexari pro uno et eadem causa*" which means that no person shall be vexed twice for the same cause meaning that he shall not be again charged or tried for the same offence on the same facts. Therefore, in order to attract the protection against double jeopardy the ingredients of the offence earlier charged and offence subsequently charged should be the same, which is not the case in the instant matter. The fact is that the Respondent was found guilty of offenses covered under the NAB Ordinance, whereas the instant SCN was issued for alleged violations in accordance with the provisions of the Act, regarding director's disqualification. The conviction of the Respondent by NAB is an irrefutable and admitted fact thus the instant legal proceedings were initiated against the Respondent, as envisaged in Section 172 of the Act.



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9. In view of the circumstances elaborated hereabove, it is imperative to state that in 2022 PLD Supreme Court, Saif-ur-Rehman vs Chairman NAB, the Supreme Court of Pakistan while dismissing the petition for leave to appeal, upheld the order of High Court, stating that,

“The NAB enjoys a totally different jurisdiction, which does not overlap with the SECP and the Companies Act....”

The SECP is not a court of law, nor are the offences under the Companies Act for which it has imposed penalties on the petitioner and his companies constituted as that of the offences defined in section 9 of the NAB Ordinance as explained above. The shield of Article 13 of the Constitution is therefore, not available to the proceedings against him under the NAB Ordinance.”

10. Furthermore, in response to the contention of the Respondent regarding the completion of his disqualification period, it is stated that the period of disqualification for a director, as outlined in section 172, pertaining to circumstances explicitly specified in clauses (a), (d), (i), and (o), initiates from the date of the order issued by the Commission, rather than from any other court of law. Therefore, in light of the aforementioned circumstances, I am of the considered view that the contention of the Respondent lacks merit.

11. In view of the forgoing and in exercise of the powers delegated vide the Commission's Notification No. S.R.O. 129(1)/2020 dated February 24, 2020 read with clause (a), (d), (i) and (o) of sub-section (1) of Section 172 of the Act, I hereby disqualify **Mr. Muhammad Usman bearing CNIC # 17301-0875334-3** to hold office as director of any company formed and registered under the Act for a period of **five years (05)** commencing from the date of this order.

12. This order is being issued without prejudice to any other proceedings or action that the Commission or National Accountability Bureau or Federal Investigation Agency or any other authority, bureau, agency or institution may initiate, in accordance with relevant provisions of law, against the Respondent and any other officer of the Company in respect of unlawful/illegal deposit taking activities undertaken by them.

(Hammad Javed)

Additional Director / Head of Department
Adjudication Department-II

Announced: May 06, 2024