



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 96 of 2019

1. Mr. Adnan ^{Asdar} Ali
2. Mr. Rashid Abdulla
3. Mr. Husain Lawai
4. Mr. S Nadeem Ahmed
5. Mr. Zubair Palwala
6. Mr. Ayaz Abdulla
7. Mr. Shahid Abdulla
8. Mr. Arshad Anis
9. Mr. Mufti Zia Ul Islam

...Appellants

Versus

Executive Director, Corporate Supervision Department

...Respondent

Date of hearing:

10th April, 2025

Present:

For the Appellants:

Mr. Yawar Burki

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, (Adjudication Division, SECP)
2. Mr. Rizwan-ul-Haq, Additional Joint Director (Adjudication-I, SECP)
3. Mr. Ehtesham-ud-din, Deputy Director, (Adjudication-I, SECP)

ORDER

1. This Order shall dispose of Appeal No. 96 of 2019 filed by the Chairman, Chief Executive Officer and Directors ("the Appellants") of Searle Company Limited ("the Company") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated November 15, 2019 (the "Impugned Order") passed by the Executive Director (Corporate Supervision Division) ("the Respondent") under Sections 160, 196



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and 208 of the Companies Ordinance, 1984 ("the Ordinance") read with Section 476 of the Ordinance, 1984 and Regulation 3 of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012 ("the Regulations").

2. The brief facts of the case are that the Company is a pharmaceutical company incorporated under the Ordinance. An examination of the annual audited accounts of the Company for the financial year ended June 30, 2016 ("the Accounts") revealed that the Company acquired 70.34% of the total share capital in its associated company, Nextar Pharma (Private) Limited ("NPL"). In the annual general meeting held on October 24, 2014 ("the AGM"), the shareholders had resolved to acquire 25% shares of NPL and the CEO was authorized to determine the price at which the securities were to be acquired. Subsequent to the AGM, the Company held an Extraordinary General Meeting on February 16, 2016 ("the EOGM") and passed a special resolution to further acquire a further 1,000,000 shares of NPL, the price of which shall again be determined by the CEO. In view thereof, contrary to the requirements of Section 208 of the Ordinance, the Company had acquired 0.34%, i.e. 16900 ordinary shares in excess of the authorized limit.
3. Moreover, perusal of the Notices issued for the AGM and the EOGM revealed that the same were materially deficient in terms of disclosure of the maximum price at which the securities were to be acquired, which violated section 160(1)(b) of the Ordinance read with Regulation 3 of the Regulations.
4. Furthermore, the company acquired the shares at a higher price than the fair market and breakup values mentioned in the AGM and EOGM notices and approved by the shareholders. In the AGM notice the fair market and breakup value was stated to be Rs. 104.52 per share; however, shares were acquired at the price of Rs. 150 per share. Whereas, fair market value and breakup value mentioned in the EOGM notice was Rs. 117.49 per share, however, the Company acquired the securities from NPL at prices ranging from Rs. 175 per share to Rs. 210 per share. The acquisition of NPL shares was over and above the fair market and breakup value of the shares, thereby *prima facie* causing loss to the shareholders, which is liable to penal action under sub-section 2(e) of Section 196 of the Ordinance.



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5. In view of the above non-compliances, the Respondent issued a show-cause notice dated September 26, 2018 ("the SCN"). Reply to the SCN was submitted on November 01, 2018. Considering the reply to the SCN, a hearing in the matter was held on December 17, 2018, which was attended by an Authorized Representative of M/s. Mohsin Tayebaly. During the hearing proceedings, the Authorized Representative iterated the arguments as submitted in reply to the SCN. The Authorized Representative was advised to provide the following information:

- Minutes of board meetings wherein the board accorded the approval for the purchase of shares of NPL, indicating purchase price per share, quantity and share price computation methodology;
- NPL's share price Valuation Report adopted for the purchase of said shares; and
- Share Purchase Agreement for purchase of NPL shares.

6. In this regard, no information was provided by the Authorized Representative. The matter was then fixed for hearing on March 27, 2019 and during the hearing proceedings, the Authorized Representative was advised to provide the above-mentioned information. which was also solicited vide letter dated April 02, 2019 However, despite an extension of time and several reminders, the requisite information was not provided till the date of the Impugned Order. In view thereof, the Respondent concluded the SCN proceedings and due to established violations of Section 160 of the Ordinance read with Regulation 3 of the Regulations, as well as Sections 196 and 208 of the Ordinance, imposed a penalty in the following manner;

S.No.	Name of Appellant	Penalty (Rs)			Total
		Sec. 208	Sec. 196	Sec. 160 read with Regulation 3	
1	Mr. Adnan Asdar Ali, Chairman	100,000	50,000	10,000	160,000
2	Mr. Rashid Abdulla	100,000	50,000	10,000	160,000



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3	Mr. Husain Lawai	100,000	50,000	10,000	160,000
4	Mr. S. Nadeem Ahmed, CEO	100,000	50,000	10,000	160,000
5	Mr. Zubair Palwala	100,000	50,000	10,000	160,000
6	Mr. Ayaz Abdulla	100,000	50,000	10,000	160,000
7	Mr. Shahid Abdulla	100,000	50,000	10,000	160,000
8	Mr. Arshad Anis	100,000	50,000	10,000	160,000
9	Mr. Mufti Zia Ul Islam	100,000	50,000	10,000	160,000
Total		900,000	450,000	90,000	1,440,000

7. The Impugned Order also directed the board of directors in terms of Section 475 of the Companies Act, 2017 to compensate the loss suffered by the Company due to the purchase of 3,516,900 NPL shares at a price above book value. The CEO was directed to submit a compliance report, supported by an auditor's certificate and evidence of recovery, within sixty (60) days of the Impugned Order, failing which action under Section 499 of the Act would be initiated against the Appellants.
8. The Appellants have preferred this Appeal on several grounds, including the assertion that the Impugned Order lacks proper appreciation of the relevant law and facts of the matter. It was contended by the Authorized Representative for the Appellants that during the hearing before the Respondent, all requisite disclosures were made, including notices of general meetings, statements of material facts, board meetings, acquisition details and records of shareholder authorization; however, the Respondent proceeded to pass the Impugned Order.
9. The Appellants submitted that as per the approval of the shareholders in the EOGM, the Company was authorized to hold up to 71% of the shareholding of the NPL by acquiring further 20% shares of the NPL within the investment amount limit of Rs. 205 million. The Appellants contended that the findings of the Respondent are based on an erroneous



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interpretation of Section 208(1) of the Ordinance. The Appellants iterated that in compliance with the requirements of Section 208(1) of the Ordinance, the Company obtained prior approval of the shareholders through a special resolution for investment in NPL within the investment limit of Rs. 205 million. The Appellants stated that the total investment in NPL was of Rs. 195.7 million, which is within the approved investment amount limit of Rs. 205 million; therefore, no loss was caused to the Company or its shareholders, rather the said transaction resulted in financial savings. Moreover, it was asserted that the shareholders had expressly authorized the Company's Chief Executive Officer to determine the price at which the securities were to be acquired; therefore, difference in fair or acquisition values of shares may not be termed as a violation of Sections 160, 196 and 208 of the Ordinance.

10. The Appellants further submitted that neither Section 208 of the Ordinance nor the Regulations preclude shareholders from authorizing the CEO/management to determine the acquisition price, provided the investment remains within the approved amount. It was stated by the Appellant that the purpose of the law is to ensure transparency and protection of shareholder interests, both of which were meticulously followed in the instant case. It was stated that the Company had acted in accordance with the decision of the shareholders, and thereby had not violated the provision of Section 208 of the Ordinance since the statement provided the maximum investment to be up to 20%.

11. It was also submitted that in compliance with the requirements of Section 160(1)(b) of the Ordinance the statement of material facts was annexed with the AGM and EOGM notices and all material facts, including the investment amount and CEO's authorization to determine the acquisition price of shares, were duly shared with the shareholders. It was asserted that at the time of acquisition of shares, the management was unsure with regard to the exact number of securities that were to be acquired, hence, the flexibility in determining the exact number of securities and the precise investment amount of Rs. 205 million was mentioned in the statement of material facts. It was further argued that no loss was caused to the Company or its shareholders as a result of the investment, and that the transaction was beneficial from both a commercial and governance standpoint. The Appellants submitted that the marginal excess in the number of shares acquired, i.e. 0.34% was incidental and it was contended that the excess was due to the nature of the share sale



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transaction, which occurred in fixed lots offered by sellers and a refusal to these lots could have jeopardized the entire transaction.

12. Lastly, the Appellants submitted that the Respondent failed to exercise discretion reasonably or equitably and did not provide cogent reasons in the Impugned Order to justify the imposition of a penalty of Rs. 115,000/- per Appellants. In view thereof, the Appellants prayed to set aside the Impugned Order. The Authorized Representative of the Appellants reiterated the grounds of Appeal during the hearing before the Appellate Bench.
13. In response, the Respondent countered the grounds of the Appeal and proffered arguments by emphasizing that the Impugned Order was not only issued in strict accordance with the law but also after thorough consideration of the facts presented in the matter. The Respondent submitted that the Company exceeded the authorized investment limit by acquiring 70.34% shareholding in NPL, an excess of 0.34%, i.e. 16,900 shares above the 70% limit approved by shareholders in the EOGM held on February 16, 2016. It was emphasized that this fact was acknowledged by the Company itself in its letter dated March 10, 2017, thereby constituting an admission of breach of members' approval obtained under Section 208 of the Ordinance.
14. The Respondent further argued that the statements issued to shareholders under Section 160(1)(b) of the Ordinance and accompanying notices of AGM and EOGM failed to disclose the maximum price at which the Company intended to acquire the NPL shares, in contravention of Regulation 3 of the Regulations. Instead, the Company merely stated that the price "shall be determined by the Chief Executive Officer", thereby depriving shareholders of material information necessary for informed decision-making. Non-disclosure of maximum price of shares is a clear violation of the applicable legal requirements, therefore, the Appellants stance that the CEO was empowered by the members to determine the maximum share acquisition price is against the spirit of law, hence, void.
15. Additionally, the Respondent contended that the NPL shares were acquired at significantly higher prices ranging from Rs. 150 to Rs. 210 per share as compared to the then-prevailing fair or break-up value which ranged from Rs. 104.52 to Rs. 117.40. Despite this disparity,



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no justification or valuation report was provided to shareholders at the time of seeking their approval, nor was any such report shared with the Commission, even after repeated demands made before and after the issuance of the SCN. In light of these continued non-compliances, the Respondent asserted that this demonstrated not only a failure to fulfil disclosure obligations but also a disregard for regulatory oversight.

16. It was submitted by the Respondent that the Impugned Order was passed after affording multiple opportunities of hearing, and the Appellants' failure to comply with mandatory requirements under Sections 160(1)(b), 196, and 208 of the Ordinance and Regulation 3 of the Regulations was established on the basis of admitted facts. The Respondent emphasized that the default in question was not trivial. The lack of pricing transparency and excess share acquisition resulted in a significant loss to the Company, as the investment was made at a value materially higher than the recorded fair value. The computation of this loss has been provided in detail in paragraph 11 of the Impugned Order.
17. Addressing the Appellants' reliance on shareholder approval, the Respondent submitted that such approval does not validate a non-compliant or misleading disclosure process. Regulation 3 of the Regulations requires disclosure of the maximum price, and failure to do so renders the approval procedurally defective and substantively deficient. Finally, the Respondent rejected the contention that the Impugned Order was arbitrary or harsh. It was argued that the penalty imposed Rs. 160,000/- per Appellant, totaling Rs. 1,440,000/- was justified in light of the multiple, admitted violations and the resulting financial prejudice to the Company and the shareholders. The Respondent further submitted that the Impugned Order was passed with due application of mind, supported by legal reasoning, and in accordance with Section 24-A of the General Clauses Act, 1897. In light of the foregoing, the Respondent prayed for dismissal of the appeal and upholding of the Impugned Order in its entirety.
18. The Bench has examined the record and heard the detailed submissions of both, the Appellants and the Respondent. The Bench notes that the core issue arises out of the acquisition of 70.34% shareholding in the NPL, whereas the special resolution passed by the shareholders authorized the acquisition of a maximum of 70% of NPL's share capital. The acquisition of an additional 0.34%, equivalent to 16,900 shares, was acknowledged by



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the Appellants as having occurred in consequence of the share lots offered by the sellers. This constitutes a deviation from the shareholder-approved limit, and violation of Section 208 of the Ordinance stands established .

19. Moreover, in determination of the fact whether the Appellants have breached the permissible shares acquisition limit, the Bench has perused the statements of material facts annexed with the AGM and EOGM notices. In examining the statement of material facts annexed to the respective AGM notices, the Bench notes that the Notice for the AGM of 2014 specified, *inter alia*, that: "... (iii) the maximum acquisition amount would be approximately Rs. 200 million; (iv) the price at which the securities were to be acquired would be determined by the CEO; and (v) the acquisition would be limited to 25%, cumulatively amounting to 51% of NPL's shareholding". Similarly, the Notice for the AGM of 2016 set forth: "... (iii) a maximum investment limit of Rs. 205 million; (iv) the acquisition price to be determined by the CEO; and (v) a maximum acquisition of up to 20% of NPL's shares". While these resolutions provide a blanket approval to delegate authority to the CEO, certain boundaries were not strictly observed.
20. Evidently, the maximum price per share was not expressly disclosed in either notice or in the statements of material facts. The shareholders' authorization to allow the CEO to determine the acquisition price was against the spirit of Section 160(1)(b) of the Ordinance and in violation of Regulation 3 of the Regulations. The deviation from book value, coupled with the failure to disclose the basis of valuation and the specific pricing mechanism, reflects a lapse in the completeness of disclosure. Furthermore, acquisition of shares over and above the fair market or book value mentioned in the AGM and EOGM notices and in the statements of material facts cannot be ignored. The Bench is of the view that members' authorization did not waive the obligation to ensure full and transparent disclosure of all material facts. As required under Regulations 3 of the Regulations, the Appellants were required to disclose the maximum share acquisition price in the Notices; however, instead of complying with the requirements of law, the determination of maximum price was left at the discretion of the CEO. The impact of this violation could have an adverse impact on the rights of minority shareholders. Therefore, the Appellants should have followed the requirements of law in *letter and spirit*.



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21. The Bench has also considered the Respondent's contention that the securities of the NPL were acquired over and above the disclosed book value. The lack of a valuation report and the non-disclosure of pricing differentials to shareholders are valid regulatory concerns. The Appellants' explanation that the valuation was based on projected profitability and discounted cash flows is not plausible, as no valuation report was shared with the members/shareholders and the Respondent. Furthermore, the Appellants' explanation does not negate the underlying failure to adhere to disclosure and procedural requirements under the applicable regulatory framework.
22. In light of the above, the Bench is of the view that regulatory breaches have been committed by the Appellant, particularly in relation to Sections 160, 196 and Section 208 of the Ordinance. The Appellants, while exercising their powers under Section 196(2)(e) of the Ordinance, decided to invest in the NPL, and in this regard, members' approval was obtained under Section 208 of the Ordinance. However, the Appellants failed to exercise their powers with due care and in the interest of the Company and its members. The Bench is of the view that the Appellants did not use their powers under Section 196(2)(e) of the Ordinance in a proper manner and members' approval was not as per the requirements of Sections 160(1)(b) and 208 of the Ordinance read with Regulations 3 of the Regulations. The Appellants are not entitled to any relief. The Bench believes that because the Company is listed, the Respondent ought to have imposed a harsher penalty in response to the infractions committed by the Appellants. The Bench has, however, decided to exercise restraint and not increased the penalty's amount.
23. In view of the above facts and circumstances, the Impugned Order is upheld and the Appeal is dismissed without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on:

11 JUL 2025