



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 128 of 2020

M/s. Hyderabad Electric Supply Company Ltd. (HESCO)

Appellant

Versus

Head of Department, Adjudication-II SECP, Islamabad

Respondent

Date of hearing:

April 29, 2021

Present:

For the Appellant:

Mrs. Hina Talpur, Company Secretary

For the Respondent:

Mr. Abdul Qayyum, Joint Director, Adjudication-II, SECP.

ORDER

1. This Order shall dispose of Appeal No. 128 of 2020 filed by M/s. Hyderabad Electric Supply Company Limited (the Appellant) against the Order dated August 21, 2020 (Impugned Order) passed by the Executive Director/HoD, Adjudication-II, SECP (Respondent) in the matter of non-compliances of the Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules).
2. The brief facts of the case are that examination of the Appellant's Statement of Compliance (SOC) for the year ended June 30, 2018 revealed that the Appellant has violated requirements under Rules 5(4), 5(5)(b)(ii), 5(5)(b)(vi), 5(7), 8(2), 10, 11, 12, 13, 17, 19(4) and 21(3) of the Rules. In view of the above non-compliances, the Respondent issued a show-cause notice dated February 28, 2020 (the SCN) to the Appellant, its Chief Executive Officer and Board Of Directors. The Appellant submitted its written reply to the SCN vide letter dated June 17, 2020 and hearing in the matter was held on, June 22, 2020. The Respondent concluded the SCN proceedings



Securities and Exchange Commission of Pakistan

and imposed an aggregate penalty of Rs. 980,000/- on the Appellant and a warning was issued to its Board of Directors.

3. The Appellant filed this Appeal *inter alia* on the grounds that the Respondent has not considered the submissions and information provided during the SCN proceedings. The Appellant further stated that after detaching from WAPDA it has developed rules, policies and procedures in view of the exigencies of work in accordance with the statutory and regulatory requirements of the Securities and Exchange Commission of Pakistan (Commission). The Appellant further stated that within the shortest possible time all applicable requirements shall be fulfilled. The Appellant stated that almost all policies pointed out in the Impugned Order were already being practiced in its true spirit and in order to curb the tendency of corrupt practices, a separate surveillance and investigation unit has been established in the company to speed up the enquiry process in accordance with the law. The Appellant submitted that the code of conduct was practiced by the Appellant before issuance of the SCN. The Appellant further stated that policies and rules were under consideration of the Board of Directors, therefore, soon after issuance of the SCN, such policies and rules were approved.
4. The Respondent has rebutted the Appellant's arguments vide written comments dated September 17, 2020 and stated that the Appellant admitted violations of the Rules for year ended June 30, 2018 and during the SCN hearing, such violations were not denied by it. The Respondent stated that written and oral submissions made by the Appellant were duly considered and the Respondent also sought further information vide letter dated July 17, 2020 from the Appellant and ultimately it was established that requirements of the Rules have been violated. The Respondent stated that information provided by the Appellant in reply to letter dated July 17, 2020, also revealed that the Appellant was in violation of the Rules even in the previous regulatory regime. The Respondent submitted that it is not true that all applicable requirements were duly fulfilled by the Appellant prior to the issuance of the SCN because the Appellant has admitted in the reply to the SCN that the policy on anti-corruption and code of conduct were approved by the Board on June 8, 2020 i.e. after the issuance of the SCN.
5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representative reiterated their grounds of Appeal and rebuttal thereof. The Bench has examined the record, which revealed that out of a total of 12 violations, the



Securities and Exchange Commission of Pakistan

Appellant had admitted 8 instances of violations in its reply to the SCN, which include; Code of Conduct [Rule 5(4)], Conflict of Interest Policy [Rule 5(5)(b)(ii)], Anti-corruption Policy [Rule 5(5)(b)(vi)], Formal approval and adoption of Annual Report including Financial Statements and 16 other requirements [Rule 5(7)], Preparation of Quarterly Accounts within time [Rule 10], Terms of Reference of Audit, Risk Management/Monitoring, HR, Procurement and Nomination Committees [Rule 12], preparation of Director's Report [Rule 17] and criteria and details of the remuneration received by directors [Rule 19(4)]. The Appellant conceded to the above violations and prima facie rectified them after issuance of the SCN, therefore, the Bench has no doubt that the aforementioned 8 violations are established and the Appellant was non-compliant with the requirements of the Rules, at the time the SCN was issued by the Respondent. The Bench has also examined the following;

- i. In violation of Rule 8(2) of the Rules the Appellant has failed to prove that it has carried out annual monitoring of senior managements for accomplishing objectives and key performance indicators;
 - ii. In violation of Rule 11 of the Rules the Appellant has failed to arrange orientation course for its Board during financial year ended June 30, 2018;
 - iii. In violation of Rule 13 of the Rules the Appellant failed to appoint a chief internal auditor; and
 - iv. In violation of Rule 21(3) of the Rules the Appellant had failed to ensure meeting of Audit Committee with external auditors.
6. The Appellant did not admit to the above four violations, therefore, the Bench finds it appropriate to discuss such violations in view of the record and submissions of the parties. The Appellant had relied upon the minutes of the meeting of the Board of Directors dated December 23, 2019 (the Minutes) to prove that the Board has, time and again, reviewed performance of the senior management, however, the Minutes are silent in this regard. The Bench is of the view that the Appellant's reliance on Minutes is misconceived, therefore, violation of Rule 8(2) of the Rules is established. The Bench is of the view that the Appellant's stance that due to pre-occupation of the Board members, the orientation course was not arranged, is neither acceptable nor plausible because Rule 11 had made it mandatory for senior management to undertake the course. The Bench is also not inclined to accept the Appellant's assertion that due to COVID restrictions the orientation course was delayed or postponed, because in the post-COVID period, orientation courses and professional



Securities and Exchange Commission of Pakistan

trainings are being carried out online. Therefore, the Bench has no doubt that the Appellant could have arranged for an online orientation course for its senior management, however, it failed to do so. Therefore, violation of Rule 11 of the Rules is established. The Bench has noted that the Appellant had failed to appoint its chief internal auditor and non-appointment of chief financial auditor had also been confirmed by the SOC. Furthermore, the Appellant also failed to ensure timely advertisement of the post of chief internal auditor, therefore, violation of Rule 13 of the Rules is established. The Bench rejects the Appellant's plea that due to expiry of the Board's tenure, it failed to ensure conduct a meeting of the Audit Committee and external auditors. The Bench is of the view that the law requires that, at least once in a year, the Audit Committee and external auditors shall meet, therefore, the Appellant was required to ensure a meeting of the Audit Committee and external auditors on or before June 30, 2018. In view of the aforesaid, the Bench believes that, the Appellant's justification is not plausible, hence, violation of Rule 21(3) is also established.

7. In view of the forgoing, the Bench finds no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on:

17 JUN 2021