



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan - Director/Head of Department

In the matter of

Chashma Sugar Mills Limited

Show Cause Notice No. & Date: No. CSD/ARN/305/2016-229 dated April 24, 2024

Date of hearing: June 05, 2024

Hearing attended by: Mr. Mujahid Bashir (Company Secretary) and Mr. Qasim Siddiqui (Accounts Manager)

ORDER

Under Section 512 of the Companies Act, 2017 read with Regulation 3 & 4 of the Companies (Postal Ballot) Regulations, 2018 and Regulation 11B thereof

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through Show Cause Notice bearing No. CSD/ARN/305/2016-229 dated April 24, 2024 (the SCN) issued under section 512 of the Companies Act, 2017 (the Act) read with regulation 3 and 4 of the Companies (Postal Ballot) Regulations, 2018 (the Regulations) and regulation 11B thereof against Chashma Sugar Mills Limited (the Company) and its Board of Directors, hereinafter referred to as (the Respondents).

2. Brief facts of the case are that:

- i. Review of the annual audited accounts of the Company for the year ended September 30, 2023 (Accounts 2023) revealed that the Company held an Extra-Ordinary General Meeting on August 25, 2023 (the EOGM) and an Annual General Meeting on February 26, 2024 (the AGM) wherein special businesses were approved. It was noted that the Company did not provide the postal ballot facility for the special businesses as required under regulation 3 and 4 of the Regulations.
- ii. The Commission through letter dated March 06, 2024 sought reasons from the Company for not providing the option of postal ballot for special businesses in the EOGM. The Company was also advised to provide evidence of granting voting rights to the shareholders through postal ballot in the AGM.
- iii. The Company vide letter dated March 25, 2024, *inter-alia*, submitted that:
"We acknowledge the oversight for not providing the option for postal ballot as required under Companies (Postal Ballot) Regulations, 2018. It is important to note that this non-compliance was not intentional. The Company did not deliberately refrain from offering the postal ballot



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option as there was no election of directors or change of any director during the period that contributed to the oversight.....".

iv. In view of the aforesaid, it appears that the Company, *prima-facie*, violated regulation 3(b) and 4(1A) of the Regulations which attracts penal provision under regulation 11B of the Regulations read with section 512(2) of the Act.

3. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions.

4. In response to the SCN, the company secretary of the Company, on behalf of the Respondents through letter dated May 7, 2024 acknowledged the oversight for not providing the option for Postal Ballot and *inter-alia* submitted that:

- Non-compliance was not intentional and Company did not deliberately refrain from offering the postal ballot option and video conferencing facility was provided to shareholders for the AGM; and
- Requested to ignore the omission without any punitive action considering Company's past complaint record and its compliance by providing postal ballot option in the EOGM held on April 19, 2024 to all the shareholders.

5. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 05, 2024 wherein Mr. Mujahid Bashir - Company secretary and Mr. Qasim Siddiqui - Manager Accounts appeared on behalf of the Respondents as their Authorized Representative (AR) and reiterated their stance provided vide reply to SCN dated May 07, 2024 and while requesting lenient view, informed that the requirements relating to provision of postal ballot facility have been complied in the subsequent meetings. Further as also reported at PSX, no one applied for e-voting.

6. Relevant legal provisions under the Regulations and the Act are reproduced as under:

"The Regulations:

3. Applicability. – (b) *The right of vote through postal ballot shall be provided to members of a listed company for all business classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.*

4. Responsibility of company. – (1A) *The right to vote through electronic voting facility and voting by post shall be provided to members of every listed company for all businesses classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.*



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11B. Penalty for contravention of these regulations. – (1) *Whoever fails or refuses to comply with, or contravenes any provision of these regulations, or authorizes or permits such failure, refusal or contravention shall be punishable with penalty as provided in sub-section (2) of section 512 of the Act.*

The Act:

"512. Power to make regulations. –

(1)

(2) *Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."*

7. I have reviewed the facts of the case, considered the written and verbal submissions made by the Respondents and the AR in the light of the applicable legal provisions and available record before me. At this juncture, it is imperative to address the following:

a. **Whether provision of facility of electronic voting was required to be provided to the members of the Company for all businesses classified as special business:**

Yes, in terms of regulations 3 and 4 of the Regulations, the right to vote through postal ballot shall be provided to members of every listed company for all businesses classified as special business. Provision of the right to vote through postal ballot ensures participation of members especially where special business is being considered in the meeting. Hence, under the Regulations, it is obligatory for the Respondents to ensure provision of voting facility in the general meetings where a business is classified as special business.

b. **Whether the requirements of the Regulations are applicable where no poll was demanded in the general meeting:**

Yes, it is mandatory for all the listed companies to ensure participation of members in general meetings through electronic means with the availability of electronic voting facility as well as voting by post as a regular feature irrespective of whether a poll is demanded in the meeting or not.

In view of the requirements prescribed under the Regulations, violation by the Respondents at relevant point in time is established. The provision of electronic voting facility to the shareholders is with the objective to maximize their participation in the general meetings of listed companies. The Respondents in this regards have admitted the default and assured future compliance.

c. **Whether subsequent compliance with the provisions prescribed under the Regulations, absolves the respondents from the non-compliance made:**

No, subsequent compliance of the given requirements of regulations 3 and 4 of the Regulations does not exonerate the Respondents for the violations as stated above.

8. Keeping in view of the aforesaid, contravention of regulation 3 and 4 of the Regulations at relevant point in time is established, hence the Respondents are liable under regulation 11B



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of the Regulations read with section 512 (2) of the Act. In exercise of the powers conferred under the said provision, I hereby impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Company i.e. **Chashma Sugar Mills Limited** and warn the remaining Respondents to be careful and to ensure the compliance of applicable regulatory framework in letter and spirit.

9. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the *Securities and Exchange Commission of Pakistan* within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

10. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

Shahzad Afzal Khan
Director/Head of Department
Adjudication Department-I

Announced: July 10, 2024
Islamabad