



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Shah Sachal Sami Foundation

Number and date of Show Cause Notice (SCN)	SCD/ ADJ-1/40/2021 Dated January 25, 2024
Date of Hearing:	March 19, 2024
Present at the Hearing:	(i) Mr. Muhammad Umer, Chief Executive Officer (ii) Mr. Yasir Mahmood Malik, Manager Finance (Authorized Representatives)

ORDER

UNDER SECTION 282J(1) OF THE COMPANIES ORDINANCE, 1984, FOR CONTRAVENTION OF RULE 7(1)(DA) READ WITH SCHEDULE I OF THE - NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATIONS) RULES, 2003

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through the Show Cause Notice dated January 25, 2024 (the SCN) issued against Shah Sachal Sami Foundation (the Company and/or the Respondent No. 1) and the Directors of the Company/Respondent No. 1 namely Mr. Muhammad Umer (Respondent No. 2), Ms. Farzana (Respondent No. 3) Mr. Irfan Mufti (Respondent No. 4), Mr. Muhammad Rajib (Respondent No. 5), Mr. Shafique Ahmed Memom (Respondent No. 6), Ms. Shahnaz (Respondent No. 7), Mr. Zahid Ali Soomro (Respondent No. 8), Ms. Zaib Un Nisa (Respondent No. 9), hereinafter collectively referred to as (the Respondents) for contravention with the requirements of rule 7(1)(da) read with Schedule I of the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (the NBFC Rules), which attracts the applicability of Section 282J (1) of the Companies Ordinance, 1984 (the Ordinance).

2. The Company was incorporated on October 18, 2016 as a Public Company, Limited by Guarantee, not having share capital and licensed by the Commission to carry out investment



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finance services (restricted to microfinancing) on March 30, 2017 as a Non-Banking Finance Company (NBFC), under the NBFC Rules.

3. Rule 7(1)(da) read with Schedule I of the NBFC Rules provides that an NBFC shall furnish to the Commission its annual financial statements in accordance with requirements of Schedule I of the Ordinance now the Companies Act, 2017 (the Act). Clause 7 of Schedule I provides, "Submission of financial statements, as per requirements of the Ordinance". The corresponding provisions of the Act set forth the following requirements for the submission of annual audited financial statements, which are as under:

- Section 223(2) of the Act requires that; *"(2) The financial statements must be laid within a period of one hundred and twenty days following the close of financial year of a company in annual general meeting"*.
- Section 233(1) of the Act requires that; *"(1) Without prejudice to the provisions of sub-section (5) of section 223, after the audited financial statements have been laid before the company at the annual general meeting and duly adopted, a copy of such financial statements together with reports and documents required to be annexed to the same, duly signed in the manner provided by sections 226, 232 and 251, shall be filed by the company with the registrar within thirty days from the date of such meeting in case of a listed company and within fifteen days in case of any other company."*
- Section 132(1) of the Act requires that; *"(1) Every Company shall hold, an annual general meeting within sixteen months from the date of its incorporation and thereafter once in every calendar year within a period of one hundred and twenty days following the close of its financial year."*

4. In terms of aforesaid requirements, the Company was required to hold its AGM within one hundred and twenty days from the close of financial year and the Company was further required to submit its Annual Audited Accounts for the year ended June 30, 2023 by **November 15, 2023**. However, the Company failed to file its annual audited accounts for the year ended June 30, 2023 with the registrar.

5. The aforesaid contravention indicate that the Respondents had, *prima-facie*, contravened the requirements of rule 7(1)(da) read with Schedule I of the NBFC Rules, which attracts the applicability of section 282J (1) of the Ordinance. The said provisions of law is reproduced as under:



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Rule 7(1)(da) of the NBFC Rules:

"(1) A NBFC shall

(da) furnish to the Commission its quarterly and annual financial statements in accordance with Schedule 1"

Section 282J (1) of the Ordinance:

"Penalty for failure, refusal to comply with, or contravention of any provision of this Part.-

(1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or the notified entity or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules or regulations made under section 282 B or regulation, circular or directive or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed fifty million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC or the notified entity, every director, manager, or other officer or person responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence."

6. The Commission while taking cognizance of the aforementioned non-compliance served the SCN to the Respondents, requiring them to submit their written reply, as to why penalty as provided under **Section 282J(1) of the Ordinance**, may not be imposed on them for the aforementioned contravention of the law, within 14 days of the date of the SCN. However, the Respondents failed to submit reply to the SCN within the stipulated time.

7. In order to provide opportunity of personal representation, hearing in the matter was fixed for March 19, 2024 wherein Mr. Muhammad Umer, Chief Executive Officer and Mr. Yasir Mahmood Malik, Manager Finance appeared on behalf of the Respondents as their Authorized Representatives (**the Representatives**). During the hearing, the Representatives were asked to explain the reasons for the alleged non-compliance as outlined in the SCN. The Representatives stated that the delay in finalizing the financial statements was due to the resignation of the Finance Manager before year end, which impacted the finalization of annual accounts and other corporate affairs of the Company. The audited accounts of the Company were issued by the auditor on December 29, 2023 and accordingly the AGM was held on January 22, 2024. The Representatives were advised to submit the written response to the SCN.



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8. Subsequent to the hearing, the Company vide letter dated May 15, 2024 submitted written response as under:

"As the Finance Manager of the Company resigned before the year end and without closing the book of account. The Company tried its best to appoint the Competent Finance Manager on immediate basis but company not able to fill the vacancy due to non-availability of the eligible person for a long time hence the company failed to comply the section 223(2) of the Companies Act, 2017

As the Audited Accounts of the Company were issued by the Chartered Account Firm on December 29, 2023 and the Annual General Meeting of the Company held on January 22, 2024.

As the Audited Financial Statements of the company issued on December 29, 2024 and right after issuance of the audited report 21-day notice was furnished and AGM was held on January 22, 2024...."

9. I have examined the facts of the case in light of the applicable provisions of the law, evidence available on record and have given due consideration to the written as well as verbal submissions and arguments of the Respondents and their Representatives. I have observed that rule 7(1)(da) of the NBFC Rules, read with Schedule I to the NBFC Rules clearly mandate submission of annual audited financial statements within one hundred and twenty days of close of financial year of the NBFC. The questions placed before me on the basis of submissions of Respondents and their Representatives are as under:

(i) The responsibilities/obligations of the Company/Respondents in respect of holding the AGM and submission of annual audited accounts under the law

In pursuant to the provisions of the law, the Respondents were required to hold its AGM within one hundred and twenty days following the close of financial year in order to laid the financial statements in the same. Furthermore, after the audited financial statements have been laid and duly adopted at AGM, the Respondents were required to file a copy of such financial statements together with reports and documents required to be annexed with the registrar within fifteen from the date of such meeting.

In terms of aforesaid requirements, the Respondents were required to hold its AGM within one hundred and twenty days and further required to submit its Annual Audited Accounts for the year ended June 30, 2023 by November 15, 2023. However, the Respondents failed to file its annual audited accounts year ended on June 30, 2023 within the stipulated timeframe.



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(ii) **Justifications provided by the Company/Respondents in respect of delayed AGM and filing of its annual audited accounts**

The Representatives stated that the delay in finalizing the financial statements was due to resignation of Finance Manager which impacted to finalize the financial statements including other corporate affairs of the Company. The financial statements of the Company were issued by its Auditor on December 29, 2023, and subsequently, the AGM was held on January 22, 2024.

It is noted that despite the availability of option of seeking extension in holding of AGM and furnishing of audited financial statements with the Registrar, the Respondents neither applied for extension nor complied with the prescribed timelines and also failed to take necessary steps for adhering with the requirements of applicable legal framework.

(iii) **Whether the Company/Respondents adhered to the deadlines prescribed by the law for holding the AGM and filing of annual audited accounts?**

Following were the deadlines that the Company/Respondent were required to fulfil;

<i>AGM Due Date as per the Act</i>	<i>Audited Accounts filing Due Date</i>
<i>Within 120 days following the close of financial year</i>	<i>Within 15 days of AGM (November 15, 2023)</i>

The table above outlines the timeline within which the Respondents were mandated to conduct the AGM and file their annual audited accounts with the Registrar. According to the requirements of the law, the Company was obliged to hold the AGM within 120 days following the close of its financial year and submit the accounts to the registrar within 15 days thereafter, by November 15, 2023. The Respondents had the responsibility to initiate the process in a timely manner to ensure that the AGM and accounts filing occurred promptly.

Furthermore, if the Respondents encountered the aforementioned issues, they should have availed themselves of the option to request an extension/relaxation for the AGM and accounts filing, as permitted under the provisions of the law.

It is crucial to note that the law clearly specifies the timelines for holding of AGM and submission of audited financial statements with the Registrar, and also permits a one-time extension, ensuring compliance with regulatory deadlines however the Respondents neither took necessary measures to comply with the stipulated timeframe nor opted to apply for extension in holding AGM. The Respondents' failure to hold the AGM and file the annual audited accounts in a timely manner is, therefore, a contravention with the requirements of the provisions of the law.



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11. In view of forgoing and the available record, it is evident that the Respondents failed to furnish the financial statements of the Company for the year ended June 30, 2023 within the prescribed timeline i.e. by November 15, 2023 and subsequently filed the same on March 19, 2024 with a considerable delay of ninety four days hence contravention of rule 7(1)(da) read with Schedule I of the NBFC Rules is established, which attracts Section 282J (1) of the Ordinance. I, therefore, in exercise of powers conferred in terms of section 282J (1) of the Ordinance, hereby, impose an aggregate penalty of **Rs. 100,000/- (Rupees On Hundred Thousand Only)** on the Respondents on account of the aforesaid established default in the following manner:

S. No.	Name of Respondent(s)/Director(s)	Penalty (Rs.)
1.	Shah Sachal Sami Foundation	20,000
2.	Mr. Muhammad Umer, Director/ CEO	10,000
3.	Ms. Farzana, Director	10,000
4.	Mr. Irfan Mufti, Director	10,000
5.	Mr. Muhammad Rajib, Director	10,000
6.	Mr. Shafique Ahmed Memon, Director	10,000
7.	Ms. Shahnaz, Director	10,000
8.	Mr. Zahid Ali Soomro, Director	10,000
9.	Ms. Zaib Un Nisa, Director	10,000
Total		100,000

11. The Respondents are 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.

12. 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:
July 03, 2024
Islamabad