



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

Say No to Corruption

*Before*

**Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)**

*In the matter of*

**Muhammad Veqaruddin Arif (Director of Archroma Pakistan Limited)**

Number and date of Show Cause Notice (SCN)	2(413)SMD/Adj-1/2023-902 Dated May 03, 2022
Date of Hearing:	June 05, 2023
Present at the Hearing:	(i) Mr. Muhammad Veqaruddin Arif, Director (ii) Mr. Irfan Lakhani, Company Secretary (Authorized Representatives)

### **ORDER**

#### **UNDER SECTION 106 OF THE SECURITIES ACT, 2015**

This Order shall dispose of the proceedings initiated against Mr. Muhammad Veqaruddin Arif, (the Respondent), Director of Archroma Pakistan Limited (the Company) through Show Cause Notice No. 2(413)SMD/Adj-1/2023-902 dated May 03, 2022 (the SCN) issued under Section 106 of the Securities Act, 2015 (the Act) on account of alleged contravention of Section 103 read of the Act read with regulation 3(4) of the Reporting and Disclosure of (Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 (the Regulations).

2. Brief facts of the case are that the Respondent was appointed as Director of the Company on April 01, 2021.

3. In terms of Section 103 of the Act read with regulation 3(4) of the Regulations, the Respondent was required to file Form 5 with the Commission, within 7 days of becoming the director of the Company. However, the record available with the Securities and Exchange Commission of Pakistan (the Commission) transpires that no compliance was made by the Respondent.

4. The relevant provisions of the law are reproduced as under:

#### **Section 103 of the Act:**

##### ***"103 - Notification to the Commission of directors and others' interest***

*(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form -*

- (a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;*
- (b) the particulars of any change in the interest aforesaid; and*
- (c) any change in his position.*

*(2) The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises."*

#### **Regulation 3(4) of the Regulations:**





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**"3 – Reporting of Beneficial ownership in listed equity securities under Section 101 to Section 103 of the Act ...**

**(4) The directors, executive officers and substantial shareholders of the equity securities in a listed company shall in accordance with section 103 of the Act submit statement of Beneficial ownership in Form 5 and report any subsequent change therein or position to the Commission on Form 6."**

### **Section 106 of the Act:**

**106. Directive by the Commission.—(1) ...**

**(2) where any person who contravenes or fails to comply with any provision of sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct,—**

**(a) in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees and to a further sum which may extend to one thousand rupees per day for every day during which the default continues;"**

5. The Commission vide letter dated February 06, 2023 sought explanation from the Respondent with respect to its alleged failure to file Form 5. The Respondent responded vide letter dated February 09, 2023, which was not satisfactory as it is an explicit requirement and the responsibility of each director to file Form 5 regarding the beneficial ownership within seven days of becoming director of the Company under Section 103 of the Act read with regulation 3(4) of the Regulations.6. However, in the instant case, the Respondent filed Form 5 on December 19, 2022 **with delay of 620 days.**

6. In view of the above, the Respondent, *prima facie*, has violated Section 103 of the Act read with regulation 3(4) of the Regulations which attracts applicability of the penal provision of Section 106(2)(a) of the Act. Accordingly, the Commission while taking cognizance of the aforementioned non-compliance served the SCN upon the Respondent, requiring him to submit his written reply within 14 days of the date of the SCN.

7. In response to SCN, the Respondent vide letter dated May 11, 2023 submitted his reply as under:

*"...Regarding the alleged non-compliance of Section 103, I genuinely understood that since I did not hold any beneficial ownership, I was not required to file Form 5. My understanding was based on the following factors:*

*Section 103 (1) provides that "every director, executive officer or substantial shareholder of a listed company shall submit to the commission in the prescribed form:*

- (a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;*
- (b) the particulars of any change in the interest aforesaid; and*
- (c) any change in his position. "*

*The title itself of Regulation 3 of the Regulations suggests that Regulation 3 would only apply to those directors who hold beneficial ownership. Regulation 3 is worded in the following manner:*

*"Reporting of beneficial ownership in the listed equity securities under section 101 to 103 of the Act".*

*Even the Chapter under which Regulation 3 falls is called "Substantial Shareholding Disclosure".*

*Both Forms 5 and 6 are titled as "RETURN CONTAINING PARTICULARS OF BENFICIAL OWNERSHIP OF LISTED SECURITIES AS AT-----"*

*The title itself explains beyond doubt that only those directors who hold beneficial ownership must file these Forms.*





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*Clarification dated 20.04.2022 bearing reference #SD/MIS.BO/2022/415 ("Clarification") was issued by the Commission regarding applicability of Section 103, stating that the requirement to file Form 5 applies to directors who do not hold shareholding.*

*The need for the Commission to issue the Clarification itself indicates that there was confusion and difference of understanding of the intent of the language of Sections 101-103 earlier. I filed Form 5 once I became aware of the Clarification along with the proper filing fee in pursuance of SRO no. 568(1)2022 dated April 28, 2022. I genuinely understood that since I did not hold any beneficial ownership, I was not required to file Form 5. It is pertinent to point out that actually I am not the beneficial owner of any shares of the Company and there was no intention to conceal this information from the Commission at any time of for any reason. In light of the same, I most respectfully request that the SCN issued against me may kindly be withdrawn in the interest of justice and equity."*

8. The Respondent was provided opportunity of personal representation and the hearing was fixed in the matter for June 05, 2023 which was attended by Mr. Muhammad Veqaruddin Arif, Director and Mr. Ifran Lakhani, Company Secretary (the Representatives) before the undersigned. During the course of hearing, the Representatives were advised to explain the reasons for the alleged non-compliances, as narrated in the SCN. The Representative reiterated the written arguments and submissions made in the written reply and admitted occurrence of delay in filing Forms 5. They further submitted that the delay occurred due to their understanding that directors having Nil beneficial ownership are not required to file Form 5. Moreover, they also added that after receiving of Clarification dated April 20, 2022 from the Commission related to filing of prescribed Forms, the Respondent faced issue while creating ID for the submission of Form 5 and submitted Form 5 via courier. However, subsequently, Form 5 has been filed by the Respondent. The Representative requested that a lenient view may be taken in the matter.

9. Subsequent to hearing, the Respondent vide letter dated June 14, 2023 submitted his additional reply as under:

*"...My understanding was the Clarification dated 20.04.2022 bearing reference #SD/MIS.BO/2022/415 ("Clarification") applied prospectively. As the Clarification did not direct directors to file Form 5 if the change in position had occurred prior to issuance of the Clarification. The change in my position occurred in 2021 i.e., prior to issuance of the Clarification, therefore, it did not apply to me.*

*I was unable to file form electronically. As I remained company secretary for almost 20 years and was having electronic ID on behalf of company. When I tried to create ID of my own, system was giving continuous error that "Record already exists". Finally, I filed Form-5 manually which is in record of commission. During the course of my longstanding career of 35 years, I had not even received any show cause notice from the commission in relation to compliances of statue.*

*The delay in filing occurred UNINTENTIONAL without any shadow of doubt and is purely because of the misunderstanding and confusion related to NIL shareholding in the company. I assure you of taking extra care in future.*

*Taking into consideration my early submission and the above facts I sincerely request the commission to condone the delay occurred in filing of form and the show cause notice be withdrawn."*

10. I have gone through the facts of the case and considered the submissions of the Representatives both written and verbal in light of the applicable provisions mentioned in the preceding paras and the





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available record and noted that the Respondent was required to file his returns of beneficial ownership on Forms 5 within seven (07) days of becoming director of the Company as required under Section 103 of the Act read with regulation 3(4) of the Regulations. Further, the admission made by the Respondent in late filing of the required returns on Form 5 to the Commission, is on the record. As per the record, the Respondent filed Form 5 after a substantial delay of 620 days i.e. on December 19, 2022.

11. In view of the foregoing and the verbal submission made by the Respondents, non-compliance/contravention of the provisions Section 103 of the Act read with regulation 3(4) of the Regulations has been established and same has also been admitted by the Representative. Therefore, in exercise of the powers conferred upon me under Section 106(2)(a) of the Act, I hereby impose a penalty of **Rs. 10,000/- (Pak Rupees Ten Thousand Only)** on the Respondent.

12. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained with the designated branches of MCB Bank Limited, within a period of thirty (30) days of the announcement of this Order, and furnish original Deposit Challan to this office.

13. 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 07, 2023  
Islamabad