



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Through Courier

Before

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

In the matter of

Show Cause Notice issued to Mr. Danish Elahi, Substantial Shareholder of M/s Tariq Corporation Limited
Under Regulation 3(1) and 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 and Section 101(2)(a) and 103 read with Section 106(2)(a) of the Securities Act, 2015

Number and date of Show Cause Notice (SCN)	2(244) SMD/Adj-1/2023-370 dated November 07, 2023
Date(s) of Hearing:	December 14, 2023
Present at the Hearing(s):	Ms. Hamna Faruqui, Advocate High Court (Authorized Representative)

ORDER

This Order shall dispose of the proceedings initiated against Mr. Danish Elahi (the “Respondent”) being the substantial shareholder of M/s. Tariq Corporation Limited (the “Company”) for his alleged failure to file the disclosure regarding change of his beneficial ownership on Form-2 to the Company and on Form-6 to the Commission, respectively in terms of Section 101(2)(a) and 103 of the Securities Act, 2015 (the “Act”) read with Regulation 3(1) and 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 (the “Regulations”) within 07 days from the date of such change.

2. Brief facts of the case are that the trading data received from the relevant department of the Securities & Exchange Commission of Pakistan (the “Commission”) revealed that the Respondent executed trades in the shares of the Company during the period from February 04, 2022 till February 09, 2022, being the substantial shareholder of the Company. The Respondent was required to comply with the afore-referred disclosure requirements for filing of Form-2 and Form-6 within the prescribed time. The relevant provisions of Section 101(2)(a) & Section 103 of the Act, Regulation 3(1) & 3(4) of the Regulations and the penal provisions of Section 106(2)(a) of the Act in case of contravention of Section 101(2)(a) and 103 are reproduced as under:

Section 101(2)(a) of the Act:

“101. Duty of directors and others to disclose shareholding in listed company.—... (2) A

SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

director, executive officer or substantial shareholder of a listed company shall give notice in writing to the company of any of the following events, namely:

(a) any change in beneficial ownership mentioned in sub-section (1) and the notification shall state the number, amount and description of securities involved...

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

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.” (emphasis added)

Regulation 3(1) and 3(4) of the Regulations:

“3. Reporting of Beneficial ownership in listed equity securities under section 101 to section 103 of the Act:-...

(1) Any person who becomes a director, executive officer, or substantial shareholder of a listed company shall give notice in writing to the company in Form 1 of his beneficial ownership in the equity securities of the company and in Form 2 for any subsequent change therein...

(4) The directors, executive officer and substantial shareholder 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.” (emphasis added)

Section 106(2)(a) of the Act:

“106. Directive by the Commission.—... (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,—



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

(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.”

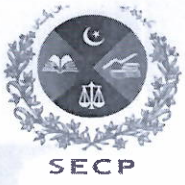
3. The record available with the Securities & Exchange Commission of Pakistan (the “Commission”) transpired that the Respondent failed to comply with the aforesaid requirements of the Act and the Regulations within the given timeframe. Accordingly, the relevant department of the Commission requested clarification/ explanation from the Respondent on August 02, 2023 followed by reminder letters dated September 06, 2023 and September 26, 2023. Subsequently, the Respondent reportedly filed Form-6 with the Commission on October 17, 2023 with a delay of 608 days. Furthermore, the Respondent allegedly failed to file Form-2 with the Company and has not rendered any clarification/explanation on non-filing of the same in his response letter dated October 17, 2023.

4. Considering the above-mentioned facts and the *prima-facie* delay or failure in filing of relevant form(s), a Show Cause Notice dated November 07, 2023 was served upon the Respondent for contravention of Regulation 3(1) and 3(4) of the Regulations read with Section 101(2)(a) and 103 of the Act under the penal provisions of Section 106(2)(a) of the Act.

5. The Respondent vide letter dated November 21, 2023 requested for an extension to submit its reply to the SCN by November 27, 2023. Subsequently, a response letter dated November 27, 2023 was submitted by the Respondent, the relevant extracts of which are reproduced hereinbelow:

“I, Danish Elahi, am in receipt of your Show Cause Notice... wherein you have sought clarification as to why the trading in the shares of M/s. Tariq Corporation Limited (“Company”) undertaken by myself between 04.02.2022 and 09.02.2022 was not reported to the Company and the Commission in accordance with the... Regulations, 2015... At the outset, I would like to inform you that I hold all my statutory compliances in the highest regard and have always strived to ensure that I do not fall short of making compliances stemming from the law to maintain utmost transparency between myself and the relevant regulatory authority, which includes the Securities and Exchange Commission of Pakistan (“SECP”). As such, I have been confronted with an alleged failure by myself to make compliance with Regulation 3 (1) and (4) of the Regulations pursuant to which, any substantial shareholder is required to intimate the company by filing a Form 2 and intimate the Commission by filing a Form 6 in case of change in ownership of the securities held by such person, which intimation is required to be made within 7 days from the date of such change.

In this respect, it is most respectfully submitted that this matter has already been raised previously wherein I had, through my letter dated 17.10.2023, duly clarified that I have been making all compliances as far as the Regulations are concerned, while admitting that the Form 6 filed by myself with the Commission for trading of shares between 04.02.2022 and 09.04.2022 was delayed due to a bona fide mistake and an inadvertent error without any deliberate or malicious intent. As far as your concerns regarding filing of Form 2 are concerned, please find attached herewith a copy of the Form 2 filed by myself with the Company as of 11.02.2022 duly intimating the Company



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

of my change in shareholding. In view of the above, it is most respectfully submitted that while I did not make timely compliance by filing the Form 6 with a slight delay, all other compliances have been made by myself in a timely manner and hence, I have made substantial compliance of the provisions of the Regulations.

It is trite law that where substantial compliance has been made, no penalty against the same is leviable as the intention behind requiring such compliance to be made has been complied with. Without prejudice to the above, it is submitted that it is trite law that for levy of fine or penalty, the person levying the penalty needs to be satisfied that there existed a wilful default on the part of the non performing party. The Honorable Supreme Court of Pakistan in the case cited as PLD 2016 Supreme Court 620, by the use of various authorities and references, defined the word "wilful default". The Apex Court of this country, in the case quoted supra was of the opinion that mere default i.e. mere violation of a provision or an obligation would simply constitute a default and not a wilful default. For a default in compliance of an obligation to be considered wilful, the same needs to follow a more stringent criteria, where it needs to be shown that not only was there a default in compliance of an obligation but such default was also intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing there from.

It is submitted, as is clear from a perusal of my responses provided to you, the delay in filing of Form 6 was purely an inadvertent error and a bona fide mistake, therefore it is submitted that any actions or default arising out of an error that is wholly unintentional and has been rectified without causing any harm or loss to a third party by making substantial compliance cannot constitute or be deemed to form a wilful default and therefore no penalty can be levied. We hope that our above explanations to your highlighted alleged violations would suffice for the purpose. Therefore, we request that the SCN may be withdrawn."

6. In order to meet the ends of justice and provide an opportunity of being heard to the Respondent, a hearing was held on December 14, 2023, which was attended by Ms. Hamna Faruqui, Advocate High Court, being the Authorized Representative of the Respondent. During the course of hearing, the Representative reiterated the written submissions, admitted the inadvertent non-compliance of law and requested for a lenient view considering no intentional or willful default on part of the Respondent. The Authorized Representative was inquired as to whether the Respondent has duly filed the Form-2 with the Company, to which the Representative responded affirmatively. Subsequent to the hearing, the Representative vide email dated December 14, 2023 shared a copy of Form-2 dated February 11, 2022 (reporting the change in securities beneficially owned by the Respondent owing to purchases made by him between February 04, 2022 and February 09, 2022). The said Form was duly acknowledged/stamped by the Company.

7. I have gone through the relevant provisions of law and the submissions made by the Respondents through their Authorized Representative. I have observed that the contention of the Respondent that the Commission was required to establish willfulness of the default for the questioned contravention is misconceived and not aided by any legal provision of law. I have also perused Section 106(2)(a) of the Act,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

which stipulates penal provisions for contravention of Section 101(2)(a) & Section 103 of the Act. It is eminent to mention here that the penal provision invoked under the instant proceedings i.e. Section 106(2)(a) of the Act plainly relates to any **contravention or failure** to comply with the invoked provisions of the Act – the said provision nowhere establishes a burden for determination of ‘willfulness’ for such a contravention or failure being adjudicated by the Commission – however, an absence thereof may result in leniency of the punitive action taken against a non-compliant company.

8. The Section 101(3) & 103(2) of the Act read with Regulation 3(1) & 3(4) of the Regulations clearly mandate fulfilment of the reporting requirements before the expiration of a period of seven (07) days beginning from the day on which the requirement first arises. It is evident from the documentary evidence submitted that the requisite Form-2 was filed by the Respondent with the Company within the prescribed timeline. As far as filing of Form-6 with the Commission is concerned, the Respondent, on account of admittance of a *bona fide* omission, has duly filed the same, though with a considerable delay, and has demonstrated his commitment to adhere to all applicable laws in a timely manner in the future.

9. In view of the above-stated facts and circumstances and submissions made by the Respondent, I have hereby decided to impose a **penalty of Rs.50,000 (Rupees Fifty Thousand) only on the Respondent**. The Respondent is directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited, within a period of thirty (30) days from the date of this Order, and furnish receipted voucher issued in the name of the Commission for information and record. The Respondent is also directed to ensure meticulous and timely compliance of applicable laws in true letter and spirit in future.

10. This order is being issued without prejudice to any other action(s) that may be initiated/taken against the Respondent, the Company and/or its officers responsible for the violations of the aforesaid provisions of the law, accordingly.

(Shahzad Afzal Khan)

Director/Head of Department
(Adjudication Department-I)

Announced:

December 20, 2023
Islamabad

