



Corporate Supervision Department  
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

**Al-Abbas Sugar Mills Limited**

Number and date of notice: CSD/ARN/507/2017-1948-53 dated May 25, 2018  
Date of hearing: June 28, 2018  
Representation: Mr. Muhammad Jawwad Shekha, Partner, Shekha & Mufti,  
Chartered Accountants, (Authorized Representative)

**ORDER**

**Under Section 169 read with Section 166 and Section 479 of the Companies Act, 2017**

This order shall dispose of the proceedings initiated against following directors of Al-Abbas Sugar Mills Limited (*the "Company"*) hereby referred to as Respondents against whom proceedings were initiated vide Show Cause Notice dated May 25, 2018 (*the "SCN"*) under the provisions of Section 169 read with Section 166 and Section 479 of the Companies Act, 2017 (*the "Act"*):

1. Mr. Zakaria Usman
2. Mr. Muhammad Iqbal Usman
3. Mr. Asim Ghani
4. Ms. Asma Aves Cochinwala
5. Ms. Darakhshan Ghani
6. Mr. Rafay Akbar Rashidi

2. Brief facts of the case are that the Commission received a complaint dated April 17, 2018 from Mr. Suleman Lalani director of the Company (*the "Complainant"*) that Mr. Zakaria Usman has been appointed as independent director in the board of directors (*the "BOD"*) meeting held on January 26, 2018 and that the Company Secretary informed in the meeting that Mr. Zakaria Usman has declared himself as an independent director. The Complainant also informed that Mr. Zakaria Usman was the Chief Executive of ACME Mills (Private) Limited (*"ACME"*) and he was also a major shareholder having 525,000 shares (30% of equity) in ACME till May 15, 2015. As per Form-A (made up to October 31, 2014) filed by ACME, the BOD of ACME comprised of two



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members i.e. Mr. M. Iqbal and Mr. Zakaria Usman. As per above Form-A, Mr. M. Iqbal held 875,000 shares of ACME (50% of equity). Mr. M. Iqbal is also Chairman and director of the Company and therefore by virtue of common directorship of Mr. M. Iqbal in the Company and ACME, the two companies become associated companies.

3. Sub-section 2(b) of section 166 of the Act requires that no director shall be considered independent if he is or has been the Chief Executive Officer of an associated company in the last three years period. In the instant case, as Mr. Zakaria Usman was the Chief Executive of ACME up till May 15, 2015, the three years period was not completed on the date of his appointment as independent director of the Company on January 26, 2018. However, the minutes of the BOD meeting of the Company held on January 26, 2018 reveal that Mr. Usman has declared himself as an independent director as required under the law. The aforesaid minutes further revealed that:

*"the chairman asked to cast vote on the appointment of Mr. Zakaria Usman as director in place of resigned director – Mr. Rafay Akbar Rashidi. Mr. Iqbal Usman, Mr. Asim Ghani, Ms. Asma Aves and Ms. Darakshan Ghani casted their vote in favor while Mr. Suleman Lalani and Mr. Irfan Nasir Cheema recorded their dissent."*

It was thus observed that the provisions of sub-section 2(b) of section 166 of the Act were, *prima facie*, violated in the appointment of Mr. Zakaria Usman as independent director.

4. Subsequently, the SCN was issued to the respondents wherein they were called upon to show cause in writing as to why penal action may not be taken against them. Mr. Muhammad Jawwad Shekha, Partner, Shekha & Mufti, Chartered Accountants (the "Authorized Representative") submitted reply on behalf of the respondents. The relevant parts of the reply are reproduced hereunder:

*"At the outset we wish to highlight that Mr. Rafay Akber Rashidi had resigned as director of the Company before the date of the meeting in which the co-option of Mr. Zakaria Usman took place. Accordingly, he is not a respondent in the instant matter.*

*We wish to now submit our para wise reply as under:*



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- a. *That it is a fact that the appointment of Mr. Usman as independent director of the Company was made in the board meeting held on January 26, 2018. The appointment was made with all good intentions to utilize his vast experience and profile for the benefit of the Company and to create value for shareholders. We have submitted a detailed reply (vide letter dated May 15, 2018) to your letter reference EMD/233/348/2002-1248 dated April 20, 2018 issued in connection with Mr. Suleman Lalani's complaint .*
- b. *That Mr. Usman resigned as director of ACME and transferred his shareholding on May 15, 2015 and since ACME is no more an associated company.*
- c. *That it was simply an error in calculation of the cooling off period of 3 years as required under Section 166 (2) b, at the time of providing consent and undertaking by the appointee. It was due to the fact that neither the Company nor Mr. Usman has ever had any business relationship with the Company, either directly or indirectly as director or shareholder of ACME, which is engaged in an entirely different business. The Board of Directors voted in favour of the resolution for appointment of Mr. Usman as independent director, only considering his profile and strong credentials.*
- d. *That due to Mr. Usman's profile and in the absence of any business relationship, he can be reasonably perceived as being able to exercise independent judgement without being subservient to any form of conflict of interest. We understand that the cooling off period defined under clause (b) of subsection 2 of Section 166 could not be achieved completely but was short of four months only. For this we requested to condone the period from the date of his appointment till May 15, 2018 which also is the date of our reply and on which date only the desired three years get complete. We understand our explanation and request was not considered by your office as this SCN has no mention of our reply.*
- e. *That Mr. Usman's appointment as independent director of the company was made purely in the best interest of the company and there was no adverse intention or*



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*conflict of interest of any Board member. We therefore request you to take a lenient view of the situation, condone the shortfall in the cooling off period and do not impose any penalty. We also request you to provide us an opportunity of hearing to explain the subject matter in person as well.*

*However, even after our earlier letter, this reply and the personal hearing, the Commission does not consider our condonation request, then on the behalf of the respondent Directors we submit that Mr. Usman shall only continue as non-executive director of the company and the Board of Directors, within 90 days of the hearing, will create space for the appointment of any other eligible person as independent to fulfill the requirement of Section 166 of the Companies Act, 2017.*

5. In order to provide opportunity of personal hearing, the case was fixed on June 28, 2018. The authorized representative appeared on the date of the hearing and reiterated the stance as earlier taken in the submissions made in the written reply. The authorized representative further submitted that the Commission may condone the default and he further submitted that if the default cannot be condoned, Mr. Usman will continue as a non-executive director and a new independent director will be appointed to the board.

6. Before proceeding further, it is necessary to revert to the relevant provisions of section 166 and 169 of the Act which provide that:

*"For the purpose of this section, an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest:*

*Provided that without prejudice to the generality of this sub-section no director shall be considered independent if one or more of the following circumstances exist —*

*(b) he is or has been the chief executive officer of subsidiaries, associated company, associated undertaking or holding company in the last three years;*



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Section 169 of the Act provides that:

*"Penalties. — Whoever contravenes or fails to comply with any of the provisions of sections 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years."*

7. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 169 of the Act have been delegated to the Executive Director (Corporate Supervision Department).

8. I have analyzed the facts of the case, provisions of Sections 166 of the Act, arguments put forth in writing and during the hearing by the authorized representative. I have observed that default under section 166 of the Act has been committed by the respondents while appointing Mr. Zakaria Usman as an independent director in the BOD meeting dated January 26, 2017 who declared himself to be eligible as per law although he had held the position of CEO in ACME within the last three years. The Company and ACME are associated due to the common directorship of Mr. Muhammad Iqbal Usman. The stance of the Company in the written response that after the resignation of Mr. Zakaria Usman on May 15, 2015, ACME is no more an associated company in not cogent as per record of the Commission since Mr. Muhammad Iqbal Usman is and has been a common director in both the companies. Further, the time period of three years after the resignation of Mr. Zakaria Usman on May 15, 2015 ended on May 15, 2018 whereas he has been appointed as independent director on January 26, 2018 that is prior to the completion of the mandatory period of three years as prescribed in law.

9. Independent directors act as a guide to the company. Their roles broadly include improving corporate credibility and governance standards functioning as an overseer and playing a vital role in risk management. Independent directors are an important part of various committees set up by company to ensure good governance. Independent directors are expected to play an active role in the audit committees of listed companies to oversee the financial reporting process and disclosure of the company's financial information, ensure compliance with listing and other legal requirements, disclosure of related party transactions and qualification in the draft audit report, among other



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things. To elucidate the role of an independent director further, it may be noted that chairman of the audit committee shall be an independent director as per Regulation 28(b) of the Listed Companies (Code of Corporate Governance) Regulations, 2017 (*the "Regulations"*). The role of independent director is crucial for the working of a BOD in the best interest of all shareholders especially the minority shareholders. The office of independent director is of prime importance with respect to the need for transparency and protection of minority shareholders among other areas of good governance. The spirit of the law is to ensure that independent directors who are not closely related to the company or the majority shareholders are present on the BOD of a company to serve as a first line of scrutiny for the BOD decisions and to assert the interest of minority shareholders. It may be mentioned that for the foregoing reasons, provisions relating to independent director were included in the Act, which did not exist in the repealed Companies Ordinance, 1984. For the sake of emphasis, Regulation 6 of the Regulations is important to mention here:

*"6. Independent Director.-*

*(1) The independent directors of each listed company shall not be less than two members or one third of the total members of the board, whichever is higher:*

*Provided that for the purpose of electing independent directors, the board shall be reconstituted not later than expiry of its current term pursuant to effective date of these Regulations.*

*(2) Every independent director shall submit along with his consent to act as director, a declaration to the company that he qualifies the criteria of independence notified under the Act. Every independent director shall give such declaration to chairman of board at first meeting in every financial year as well as on an event of any change affecting his independence. "*

10. The default in the instant case has been established and accepted. The appointment of independent directors in public listed companies must be in accordance the provisions of the Act and the Regulations. Mr. Zakaria Usman did not meet the criteria for appointment as an independent director by the BOD of the Company for which he declared himself eligible as per law. In view of the foregoing, I, hereby impose a fine Rs.25,000 (Rupees twenty five thousand only) on each of the respondents at S.No. 1 to S.No.5 for the aforesaid contravention of law. The proceedings against Mr. Rafay Akbar Rashidi are closed without any adverse order as he had already resigned and did not participate in the meeting or vote for the appointment of Mr. Zakaria Usman as per the



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minutes of meeting, Mr. Zakaria Usman is further hereby warned to be careful in future while accepting position of independent director as the law imposes more responsibility on independent director as he has to file his declaration of being independent in terms of the relevant provisions of the Regulations discussed above.

The detailed breakdown of the penalty imposed is as follows:

S.No.	Name of Respondent	Penalty (Amount in Rs.)
1	Mr. Zakaria Usman	Rs.25,000
2	Mr. Muhammad Iqbal Usman	Rs.25,000
3	Mr. Asim Ghani	Rs.25,000
4	Ms. Asma Aves Cochinwala	Rs.25,000
5	Ms. Darakshan Ghani	Rs.25,000
	Total	Rs.125,000

11. Before parting with this order, I hereby invoke the provisions of section 475 of the Act and direct the BOD of the Company to undo the default and appoint the independent directors as per the provisions of law.

12. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on the Respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Abid Hussain  
Executive Director  
Corporate Supervision Department

*Announced:*  
July 9, 2018  
Islamabad