



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I Adjudication Division

Before Amir Saleem – Additional Director/Head of Wing

In the Matter of

Al- Ghazi Tractors Limited

Number and Date of SCN: CSD/ARN/386/2016-112 dated February 21, 2022

Dates of Hearing: April 14, 2022

Present: Mr. Nadeem Ahmad - Advocate High Court
(Authorized Representative)

ORDER

UNDER SECTION 237 READ WITH SECTION 479 OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings initiated against the following directors including the chief executive and chief financial officer (collectively referred to as the "Respondents") of Al-Ghazi Tractors Limited (the "Company") initiated through Show Cause Notice (the "SCN") dated February 21, 2022 issued under the provisions of Section 237 read with Section 479 of the Companies Act, 2017 (the "Act"):

S.No.	Name of Respondent
1	Mr. Bernd Erich Schwendtke – Chairman
2	Mr. Raheel Asghar – CEO
3	Mr. Sakib Eltaff – Director
4	Ms. Farah Qureshi – Director
5	Mr. Shehzad Naqvi – Director (only for periods ended 31/3/2021 and 30/6/2021)
6	Mr. Shahid Shahbaz Toor – Director
7	Mr. Andrea Trabachin – Director
8	Mr. Vincent Delassagne – Director
9	Mr. Matthieu Sejourne – Director
10	Mr. Malik Ehtisham Ikram – CFO

2. Brief facts of the case are that the Company failed to electronically transmit its interim financial statements for the following period with the Commission within the stipulated time pursuant to Section 237 of the Act read with the Commission's Circular No. 24 dated October 19, 2017.

S. No	Period ended	Filing due on
1	March 31, 2021	April 30, 2021
2	June 30, 2021	August 29, 2021
3	September 30, 2021	October 30, 2021

3. The directors, chief executive and chief financial officer of the Company, *prima facie*, contravened the provisions of Section 237 of the Act read with the Circular No. 24 of 2017 by failing to electronically transmit the afore-mentioned half-yearly and quarterly accounts with the Commission within the stipulated time. Consequently, the SCN was issued to Respondents to show cause in writing as to why penal action may not be taken against them for non-compliance of Section 237 of the Act.



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4. The Company's Authorized Representative (ORR, DIGNAM & CO. ADVOCATES) vide letter dated March 10, 2022 submitted the following written response to the SCN:

"We act on behalf of Al-Ghazi Tractors Ltd., ("AGTL") to the Directors, Chairman, CEO and CFO of which (through AGTL's Company Secretary) the Show Cause Notice was issued by you bearing reference No. CSD/ARN/386/2016-112 dated February 21, 2022 received by our Clients, AGTL, on February 28, 2022.

Pursuant to the Show Cause Notice on behalf our Clients, AGTL, through our letter bearing No. Z/N/JR/1283 dated March 4, 2022 acknowledgment of receipt of the Show Cause Notice was sent to you (with reference to the last paragraph of the Show Cause Notice) intimating also that the response would be submitted to you.

AGTL's / our Clients' submissions setting out the unavoidable circumstances which resulted in the delay in the electronic transmission of the Quarterly Accounts referred in the Show Cause Notice are set out in the Annexure 'A' to this response which position may kindly be noted.

The third quarterly financial statements, after approval by the Board of Directors of AGTL, our Clients, were duly transmitted through PUCARS, uploaded on AGTL's, our Clients' website and also physically filed with the Registrar of Companies in compliance with the legal requirements referred by your goodself, which position may also kindly be noted.

It is submitted on behalf of AGTL, our Clients, that the delay in complying with the provisions referred by your goodself in the Show Cause Notice relating to the Quarterly Accounts was not willful, intentional or with any motive by AGTL, our Clients, but due to extraneous circumstances beyond the control AGTL, our Clients, as mentioned in the Annexure "A" hereto. The submissions made by AGTL, our Clients, clearly establish that AGTL, our Clients, took every possible step to comply with the requirements related to the Quarterly Accounts in question, establishing their bona-fides.

We trust that you would find the above in order. We would, therefore, request you to kindly condone the delay arising due to the circumstances elaborated above and, in the Annexure 'A' hereto.

1st quarterly financial statements:

With respect to the financial year of the Company concluded as on December 31, 2020, the Company was required to hold its Annual General Meeting [AGM] by April 30, 2021. Prior to that the Board of Directors of the Company was re-constituted in pursuance of the election of directors held at an Extraordinary General Meeting on March 03, 2021. Therefore, with the view to enable the newly constituted Board to grasp the affairs of the Company, Securities and Exchange Commission of Pakistan was requested to extend the time to hold the AGM. Accordingly, SECP granted an extension of 30 days in time to hold the AGM.

The first quarter of the current financial year closed as on March 31, 2020 and in accordance therewith, the financial statements with respect to the said quarter were required to be transmitted and circulated by April 30, 2021. However, in view of the extension in time granted by the SECP to hold the AGM, the Commission was requested to also grant extension in time to transmit, circulate and file the financial



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statements for the first quarter ended March 31, 2021. Accordingly, SECP granted an extension of 30 days for the same.

Due to abrupt vacation of office of the Company Secretary towards the end of April 2021, coupled with imposition of lockdown and Eid holidays, it was not practically possible to prepare CDs and dispatch the same, along with the notices of AGM, to all the shareholders, within the extended timeline. Therefore, SECP was requested to give directions to hold AGM till June 15, 2021. SECP accordingly issued the said direction.

In view of the above second 'extension' granted in time to hold the AGM, it was felt appropriate that the financial statements for the first quarter of the current financial year should be circulated once the annual financial statement of the last financial year are adopted by the shareholders.

Therefore, SECP was requested to grant further extension in time for transmission, circulation and filing of financial statements for the first quarter ended March 31, 2021. However, the said request was declined by the Commission vide its letter dated June 14, 2021, citing the provisions of Companies Act, 2017 whereby SECP can grant the extension in time for a period of 30 days only in case of filing of financial statements for the first quarter, which had already been granted.

Upon receipt of the above-referred communication from SECP, we immediately made arrangements for holding meeting of the Board of Directors for approval of financial statements for the quarter ended March 31, 2021. The said statements were approved at the meeting held on June 30, 2021 which were then transmitted and filed accordingly.

1st half-yearly financial statements:

The first half of the financial year 2021 closed on June 30, 2021 and in accordance therewith, the financial statements with respect to the said first half were required to be transmitted, circulated and filed with the Registrar by August 29, 2021.

In view of the rising cases of COVID-19 emerging in the Province of Sindh during that time, a strict lockdown was imposed by the Provincial Government. Moreover, the then Chief Executive Officer was not available due to his travel plans. Because of these reasons, the process for scheduling the requisite meeting of the Board of Directors could not be completed in timely manner.

As advised, Once the said process was re-initiated towards the end of August 2021, as advised, a request was made to SECP to condone the delay in compliance of the requirements of Companies Act, 2017 with respect to transmission, circulation and filing of half-yearly financial statements, vide our letter dated August 26, 2021.

In response, however, SECP, vide its letter dated September 06, 2021 stated that in terms of section 237 of the Companies Act, 2017, extension in time to file half-yearly financial statements could not be granted. Moreover, SECP warned that the said letter was being issued with the approval of the competent authority and was without prejudice to any action that the Commission may initiate for noncompliance with the provisions of the Companies Act, 2017.



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3rd quarterly financial statements:

The third quarter of the financial year 2021 closed on September 30, 2021 and in accordance therewith, the financial statements with respect to the said third quarter were required to be transmitted, circulated and filed with the Registrar by October 30, 2021.

As advised, it had been planned to hold the requisite meeting of the Board of Directors in Karachi with all the directors present physically. Since a number of directors of the Company were and are foreign nationals stationed abroad; it would have taken some time to process visas and make travel arrangements for the same. Therefore, a request was made to SECP to condone the delay in compliance of the requirements of Companies Act, 2017 with respect to transmission, circulation and filing of Yd quarterly financial statements, vide our letter dated October 27, 2021.

In response, however, SECP, vide its letter dated November 04, 2021 stated that in terms of section 237 of the Companies Act, 2017, extension in time to file quarterly financial statements could not be granted. Moreover, SECP warned that the said letter was being issued with the approval of the competent authority and was without prejudice to any action that the Commission may initiate for noncompliance with the provisions of the Companies Act, 2017.

Agreeing on a date and time to hold a Board meeting remained a challenge during 2021. However, in the last meeting, held on February 15th, the Board has agreed on a corporate calendar for the year 2022 so as to ensure that meetings are held in timely manner to avoid non-compliances.

5. Hearing in the matter was held on April 14, 2022 wherein Mr. Nadeem Ahmad, Advocate High Court appeared on behalf of the Respondents as their Authorized Representative (the "Representative"). Over the course of the hearing, the Representative reiterated the Company's written reply quoted in Para 4 above asserting that the delay in filing of subject financials was due to change in Company's Management and that the default was neither willful nor intentional and beyond control of the Company due to extraneous circumstances.

When questioned about the status of compliance with regard to filing of the subject interim accounts, the Representative stated that the financial statements for the periods ended March 31, 2021, June 30, 2021 and September 30, 2021 have been disseminated through the PSX on July 5, 2021, September 24, 2021 and November 29, 2021 respectively. He further stated that the financial statements for the periods ended March 31, 2021 and June 30, 2021 have been filed with the Registrar via eServices on July 13, 2021 and September 28, 2021.

Moreover, the Representative were apprised of the mandatory electronic transmission of the Company's financials with the Commission through the designated e-mail address pursuant to the Commission's Circular No. 24 of 2017 and advised to file the subject financials pursuant to Section 237 of the Act read with the said Circular at the earliest and furnish documentary evidence of the same.

In conclusion, the Representative requested the Commission to condone the default and conclude the proceedings by taking a lenient view of the matter in light of the arguments set forth above and the fact that the Company has an otherwise satisfactory compliance history with respect to filing of quarterly accounts, giving a binding assurance of future compliance with all the applicable laws.



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Subsequent to the hearing proceedings; the Company vide its email dated April 19, 2022 electronically transmit its interim financial statements for the said periods with the Commission; with an inordinate delay.

6. Before proceeding further, it is necessary to advert to the relevant provisions of the law: Sub-section (1) & (2) of Section 237 of the Act read with the Commission's Circular No. 24 dated October 19, 2017 entails:

1) Every listed company shall prepare quarterly financial statements within a period of :-

- a) thirty days from the close of first and third quarters of its year of accounts; and
- b) sixty days from the close of its second quarter of its year of accounts.

2) The quarterly financial statements shall be posted on the company's website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1).

Sub-section (4) of Section 237 read with Section 479 of the Act stipulates that:

If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.

7. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Act, and the arguments set forth over the course of hearing as well as the Company's written correspondence with the Commission. The aforementioned provisions of the law are unambiguous and explicit. The fact that timing of interim financial statements is of essence, the disclosure requirements of these accounts have been kept to a bare minimum. Interim financial statements prepared accurately and in a timely manner provide to its users a reliable source of information regarding a Company's financial position and performance, besides illustrating the results of the management's stewardship of resources entrusted on to it. In order to ensure transparency, all companies must meticulously adhere to the law for preparation and circulation of interim financial statements.

Moreover, the Respondents including the CEO and CFO have fiduciary duties towards the Company and its shareholders while providing information to various stakeholders concerning their performance as to how diligently and ethically they are discharging their fiduciary duties and responsibilities. Respondents including the CEO as well as the CFO are obliged to ensure that such mechanisms are in place and appropriate actions be taken whereby financial and operational reporting of the company is timely achieved, whilst ensuring due compliance of the law. The Respondents have deprived the shareholders of their statutory right to receive the interim financial statements of the Company within the prescribed time. The preparation and circulation of quarterly accounts rests with the Respondents including the CFO of the Company who are required to take appropriate action within the time stipulated under the law.

8. In view of the preceding facts, I have concluded that the pertinent provisions of the statute have been violated, and the Respondents are liable to penal action in terms of Section 237 of the Act as a result of failing to electronically transmit the Company's interim financial statements for the periods



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ended March 31, 2021, June 30, 2021 and September 30, 2021 with the Commission within the statutory timeframes as envisaged under Section 237 of the Act read with Circular 24 dated October 19, 2017.

Therefore, in exercise of powers conferred under sub-section (4) of Section 237 of the Act, I hereby impose fines on the CEO and CFO of the Company for the afore-mentioned default periods as follows:

S.No.	Name of Respondent	Penalty Amount
1	Mr. Raheel Asghar – CEO	Rs. 15,000
2	Mr. Malik Ehtisham Ikram – CFO	Rs. 15,000
TOTAL		Rs. 30,000

The other Respondents are hereby warned to be careful and ensure compliance with the relevant provisions of the law in letter and spirit in future.

The aforementioned fines 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 receipted bank vouchers must be furnished to the Commission. In case of non-deposit of fine, proceedings for recovery of the same under Section 485 of the Act will be initiated. It may also be noted that fines have been imposed on Respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources

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

AMIR SALEEM

Additional Director/Head of Wing
Listed Companies, Adjudication Department – I

Announced:
April 21, 2022
Islamabad