



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 89 of 2020

M/s. Frontier Oil Company 1 (Private) Limited

Appellant

Versus

Head of Department, Adjudication-II SECP, Islamabad

Respondent

Date of hearing:

April 29, 2021

Present:

For Appellant:

1. Mr. Ameer Ali Jaffery, Company Secretary
2. Mr. Habib Alam, Chief Financial Officer
3. Mr. Sufian Habib Idreesi-Director Tax and Legal, Yousuf Adil, Chartered Accountants
4. Syed Masud-ul-Hassan Rizvi-Manager Tax & Legal, Yousuf Adil, Chartered Accountants

For Respondent:

Mr. Abdul Qayyum, Joint Director, Adjudication-II, SECP.

## ORDER

1. This Order shall dispose of Appeal No. 89 of 2020 filed by M/s. Frontier Oil Company 1 (Private) Limited (the Appellant) against the Order dated April 20, 2020 (Impugned Order) passed by the Head of Department, Adjudication-II, SECP (Respondent) for violations of the Public Sector Companies (Corporate Governance) Rules, 2013 (the Rules) read with section 508(2) of the Companies Act, 2017 (Act).



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2. The brief facts of the case are that Appellant is a public sector company and was required to file the statement of compliance (SOC) for the year ended June 30, 2018, along with the annual report, however, it failed to comply with the requirement under Rule 24(1) of the Rules. The Respondent issued a show-cause notice dated July 17, 2019 (the SCN) and the Appellant submitted its written reply to the SCN vide letter dated December 26, 2019 and hearing in the matter was held on, February 24, 2020. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 175,000/- (Rupees one hundred and seventy Fifty thousand) on the Appellant and issued a warning to its chief executive officer and directors.
3. The Appellant filed this Appeal *inter alia* on the grounds that the Impugned Order is bad in law and facts of the case, as the Appellant had complied with the requirement of the Rules before issuance of the Impugned Order. The Appellant further stated that it is a subsidiary of Frontier Works Organization (FWO) and since its incorporation, FWO's staff was given an additional charge to look after its affairs. The Appellant stated that it has hired proper staff after initiation of its projects. The Appellant also relied upon a case decided by the Bench in the matter of Pakistan Tourism development Limited versus Commissioner CCD (PTDC Case), whereby the Bench converted the penalty into a warning.
4. The Respondent has rebutted the Appellant's arguments vide written comments dated September 17, 2020 and stated that the Appellant has failed to explain that how the Impugned Order is bad in law and facts of the case. The Respondent stated that it has been categorically admitted by the Appellant in para 3(ii) of the Appeal that it violated requirement of Rule 24 of the Rules and failed to file the SOC. The Respondent stated that the Appellant committed a violation of law and was accordingly penalized. The Respondent submitted that each case has to be decided on a case-to-case basis depending upon the facts and circumstances, therefore, the case law mentioned by the Appellant is not relevant in this case.
5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representative reiterated their grounds of Appeal and rebuttal thereof. The Bench is of the view that the Appellant had failed to meet the requirement of Rule 24 of the Rules and had not filed the SOC, therefore, any subsequent compliance, does not exonerate the Appellant from the consequences of such non-compliance. The Bench has observed that in certain cases, subsequent compliance has been considered as mitigating circumstances by the Bench and



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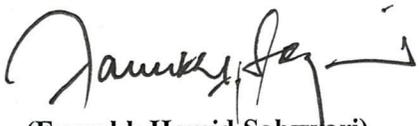
thereby, penalty imposed in such case has been converted into a warning. However, the Bench has no doubt that this principle is not *ipse facto* applicable on all cases because every case has distinct facts and peculiar circumstances, therefore, is to be adjudged on its own merits and facts. The Bench has reviewed the PTDC Case, which has been relied by the Appellant, however, facts of PTDC Case are entirely different from the case in hand because in the PTDC Case, due to the 18<sup>th</sup> constitutional amendment, the subject “tourism” had been abolished from the concurrent list and the Inter Provincial Coordination Division had suggested that PTDC should be wound up and its assets be transferred to the provinces. Furthermore, in March, 2015 the National Accountability Bureau, Rawalpindi has taken into custody PTDC’s record, therefore, its Audit and filing of SOC was delayed. In view thereof, the Bench is satisfied that the Appellant’s reference to the PTDC Case is not relevant, because such circumstances do not exist.

6. In view of the forgoing, the Bench finds no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.



(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)



(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on: **10 JUN 2021**