



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

NICL Building, 63 Jinnah Avenue, Islamabad

Before

Mahboob Ahmad - Additional Director / Head of Wing

In the Matter of

Chenab Limited

Number and Date of SCN: CSD/ARN/516/2017-64 dated May 19, 2023

Date of Hearings: July 20, 2023 and August 16, 2023

Present: Mr. Rasid Sadiq

ORDER

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

This Order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/516/2017-64 dated May 19, 2023 (the SCN) issued under Section 237 of the Companies Act, 2017 (the Act) read with Section 479 thereof against the Board of Directors and Chief Financial Officer (hereinafter collectively referred to as the Respondents) of Chenab Limited (the Company).

2. Brief facts of the case are that the Company failed to electronically transmit its interim financial statements for the following periods with the Securities and Exchange Commission of Pakistan (the Commission) within the stipulated time pursuant to Section 237 of the Act read with Circular No. 24 of 2017 (the Circular):

Sr. No.	Period ended	Transmission due on
1.	December 31, 2021	March 01, 2022
2.	March 31, 2022	April 30, 2022
3.	September 30, 2022	October 30, 2022

3. The Respondents, *prima facie*, contravened the provisions of Section 237 of the Act read with the Circular by failing to electronically transmit the aforementioned interim financial statements with the Commission within the stipulated time.

4. In view thereof, the SCN was issued to the Respondents to show cause in writing, as to why action, as provided in the aforesaid section may not be taken against them. The Respondents failed to reply to the SCN, however, in order to afford an opportunity of personal representation, the matter was fixed for a hearing on July 20, 2023, however, the hearing was adjourned on the request of Mr. Rashid Sadiq on behalf of the Respondents as their Authorized Representative (the Representative). Subsequently, the hearing was fixed for August 16, 2023, wherein, the Representative appeared before the undersigned on and submitted that:



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- The Company's winding up Order dated July 13, 2017 was overturned by the Honorable High Court Lahore in C.O. No. 43/2011 vide Order dated October 29, 2021.
- It was the responsibility of the Joint Official Liquidators to manage the Company's affairs pursuant to Section 358 of the Act until the assets were handed over the management in November 2021, however, they failed to do so.
- Subsequently the elections of directors took place on January 28, 2022, during the AGM for the year ended June 30, 2017.
- Regarding the status of compliance with respect to filing of the subject quarterly accounts, the audits for FY2021 and FY2022 are in the final stage, and the Company has sought direction under Section 147 of the Act vide application dated August 10, 2023 to hold its AGMs for FY2021 and FY2022 by November 30, 2023.
- The Company shall file its quarterly/half-yearly accounts for periods ended December 31, 2021, March 31, 2022 and September 30, 2022 subsequent to completion of audited financial statements for FY2021 and FY2022.
- Requested the Commission to condone the proceedings in the light of the afore narrated facts giving a binding assurance of future adherence to all the applicable laws.

5. Subsequently, the Representative through a letter dated September 04, 2023, *inter alia* submitted as follows:

- *Securities and Exchange Commission of Pakistan (the Commission) is fully aware that a petition was filed by Saudi Pak Industrial & Agricultural Investment Company Limited in the Lahore High Court, Lahore (hereinafter the Court) for winding up of the Company.*
- *By the order dated July 13, 2017 the Court has allowed the above petition and the Company was ordered to be wound up. The official liquidators were appointed who took over the place of the board and chief executive of the Company in terms of Section 387 of the Act.*
- *During the pendency of the above petition, a scheme of arrangement was agreed upon by contributories of the Company with the secured creditors for revival of the Company and the said scheme was sanctioned by the Court through its order dated September 14, 2021.*
- *The contributories filed an application before the Court under Section 313 of the Act seeking recall of the winding up order. The Court vide its order dated October 29, 2021 allowed the said application and recalled the order dated July 13, 2017 for winding up the Company. The Liquidators were directed by the Court to hand over the assets of the Company to the management.*
- *As per the requirement of Section 368 of the Act, it was the duty of the liquidator to prepare the annual and interim financial statements consisting of statement of financial position and the receipt and payment accounts, auditor's report and the liquidators report on the act, dealings and the conduct of the Company's winding up till the assets and record of the Company are handed over to the management.*



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- *The Company was partly in control of the management and partly with the liquidators for the quarter ended December 31, 2021 in respect of which the SCN has been issued. You will appreciate that unless liquidators prepare financial statements for the period when the Company was in their possession, the subsequent period financial statements cannot be prepared and filed.*
- *It is further submitted that interim financial statements cannot be prepared unless annual financial statements are prepared as has been held in the binding precedent of the Commission in the recent judgment in the matter of WorldCall Telecom Limited dated March 11, 2022.*
- *The liquidator was responsible for the preparation and filing of accounts till November 2021 and unless backlog of accounts is cleared, the subsequent quarterly accounts cannot be prepared by the Company which is a listed company as it will be misleading the investors/shareholders to disseminate such interim accounts in the absence of accurate opening balances. Therefore, the Respondents named in the SCN are not in any way responsible for delay in the filing of the interim accounts as alleged in the SCN.*
- *Current management took possession of the Company only in November, 2021 from the liquidators. Since then, the Respondents have taken the following measures/actions with respect to holding overdue annual general meetings and presentation of audited accounts therein, which you will appreciate was the responsibility of the liquidator:*
 - *Audit of the financial statements for the year ended June 30, 2017.*
 - *Holding of annual general meeting for the year 2017 on January 28, 2022.*
 - *Election of directors in the above annual general meeting held on January 28, 2022.*
 - *Audit of the financial statements for the year ended June 30, 2018.*
 - *Holding of annual general meeting for the year 2018 on January 28, 2022.*
 - *Audit of the financial statements for the year ended June 30, 2019.*
 - *Holding of annual general meeting for the year 2019 on January 26, 2023 within permitted date as per order of the Commission dated December 23, 2022.*
 - *Audit of the financial statements for the year ended June 30, 2020.*
 - *Holding of annual general meeting for the year 2020 on July 17, 2023 within permitted date as per order of the Commission dated June 27, 2023.*
 - *Preparation of interim financial statements during the period the Company was in control of the liquidators.*
- *Unless the accounts of the years the Company was in possession of the liquidators are prepared, subsequent accounts, annual or interim, since handing over the possession by liquidators cannot be prepared and finalized.*
- *Management has been able to regularize the accounts for the years ended June 30, 2017, 2018, 2019 and 2020 and the audit of the accounts for subsequent years will be finalized soon.*
- *The Company has made its best effort to complete its audit and hold the overdue annual general meetings as per the directions of the Commission though it was the responsibility of the liquidators.*



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- *Preparation of annual financial statements has been delayed due to circumstances beyond the control of the Respondents, it would naturally follow that the quarterly financial statements cannot be prepared and consequently cannot be transmitted electronically to the Commission.*
- *The audited accounts of the Company for the years 2021 and 2022 have not been finalized and released yet. The preparation and filling of the accounts for the period till November 2021 are the responsibility of the liquidators and not the directors who were only elected on January 28, 2022. They have made utmost efforts and cleared the backlog for 2017-2020 financial statements. They are now making efforts to finalize the audited financials of 2021 and 2022. Once the same are finalized and issued, the pending quarterly accounts can be released as being a listed company, the quarterly accounts cannot be released without issuance of audited financial statements.*

6. The relevant provisions of the Act stipulate as under:

Sub-section (1) and (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, records available with the Commission; and the aforementioned provisions of the law which are unambiguous and explicit. The timing of quarterly financial statements is of essence and the disclosure requirements of these quarterly financial statements have been kept to a bare minimum. Quarterly financial statements prepared accurately and in a timely manner not only provide to its users a reliable source of information regarding a Company's financial position and performance but also show the results of the management's stewardship of resources entrusted to it. In order to ensure transparency, the Respondents have a fiduciary duty to ensure that the Company must meticulously adhere to the law for the preparation and circulation of quarterly financial statements. Moreover, the Respondents in addition to their responsibilities of overseeing and managing the affairs of the Company, also have fiduciary duties towards the Company and its shareholders. In this context, Respondents cannot absolve themselves from their



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statutory duties pertaining to preparation and transmission of quarterly financial statements in a timely manner as stipulated under the Act.

8. It is an admitted fact of the case that the Company's winding up Order dated July 13, 2017 was recalled by the Honorable High Court Lahore vide its Order dated October 29, 2021 and the Respondents took the possession of Company's affairs and assets from the liquidator in November 2021, therefore, they had adequate and reasonable time to finalize the quarterly financial statements for the periods ended December 31, 2021, March 31, 2022 and September 30, 2022 due on March 01, 2022, April 30, 2022 and October 30, 2022, respectively.

9. The perusal of the Company's records reveals that the Respondents failed to electronically transmit the Company's quarterly financial statements for the periods ended December 31, 2021, March 31, 2022 and September 30, 2022 pursuant to Section 237 of the Act read with the Circular; hence, they not only deprived the shareholders of their statutory right to receive quarterly financial statements of the Company within the prescribed time but also violated the express requirement of Section 237 of the Act.

10. Section 479 has to be read in totality and in reference to the section providing imposition of penalty on the standard scale. The powers to take cognizance of the violations of the requirements of Section 237 of the Act has been duly delegated to the undersigned vide SRO No. 1545(I)/2019 dated December 6, 2019 (the SRO) to impose a penalty under Section 237(4) of the Act. The SRO also specifically authorized and empowered the undersigned to invoke the powers of Section 479 of the Act. The Commission has delegated its powers through Section 10 of the SECP Act, 1997 and to bring such delegation into public domain and knowledge, the delegation was notified through the SRO. Therefore, the Respondents' objection that the Commission cannot delegate its powers through a notification is without any substance. The Respondents have also misconceived Section 479(3) of the Act. In view of the applicable provision i.e. Section 479(3) of the Act, the Registrar and the Commission have concurrent powers to impose penalties, therefore, the Commission has delegated its powers to take cognizance of the violation of Section 237 of the Act by imposing penalty provided under Section 237(4) of the Act read with Section 479 of the Act. Therefore, I hereby categorically reject the Respondents' assertion that under Section 479(3) of the Act, only the Registrar was competent to impose penalties. In view thereof, delegation of powers under Sections 237 and 479 of the Act does not suffer any irregularity or illegality.

11. Every case has to be decided on its own merits and facts, therefore, the mechanical application of the precedents is neither desirable nor mandatory. In the referred case laws, the adjudicating authority decided the cases based on peculiar facts and mitigating factors placed before the adjudicating authority, therefore, not binding in the instant matter.

12. In view of the preceding facts, I have come to the conclusion that the Respondents have violated the requirement of Section 237 of the Act, therefore, are liable to penal action in terms of Section 237 of the Act. Therefore, in the exercise of powers conferred under sub-section (4) of Section 237 of the Act, I hereby impose an aggregate penalty of **Rs. 80,000/- (Rupees Eighty Thousand Only)** on the Respondents in the following manner:



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Sr. No.	Name of Respondent	Amount in Rupees
1.	Mr. Mian Muhammad Latif, Chief Executive	10,000
2.	Mr. Mian Muhammad Javaid Iqbal, Director	10,000
3.	Mr. Muhammad Naeem, Director	10,000
4.	Mr. Muhammad Faisal Latif, Director	10,000
5.	Mr. Muhammad Farhan Latif, Director	10,000
6.	Mr. Muhammad Zeeshan Latif, Director	10,000
7.	Mr. Tariq Ayub Khan, Director	10,000
8.	Mr. Muhammad Arshad, CFO	10,000
TOTAL		80,000

13. The Respondents are hereby, directed to deposit the aforesaid amount of 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 thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission for information and record. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

14. 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.

Mahboob Ahmad
Additional Director/ Head of Wing
Listed Companies, Adjudication Department - I

Announced:
October 16, 2023
Islamabad