



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan - Director / Head of Department

In the Matter of

Chenab Limited

Number and Date of SCN: CSD/ARN/516/2017-63 dated May 19, 2023
Dates of Hearings: July 20, 2023 and August 07, 2023
Present: Mr. Rashid Sadiq and Mr. M. Azeem Rashid, Advocate

ORDER

UNDER SECTION 132 OF THE COMPANIES ACT, 2017 READ WITH SECTION 479 THEREOF

This Order shall dispose of the proceedings initiated against Chenab Limited (the Company), its Board of Directors and its Chief Financial Officer/Company Secretary (collectively referred to as the Respondents) through Show Cause Notice CSD/ARN/516/2017-63 dated May 19, 2023 (the SCN) issued under Section 132 of the Companies Act, 2017 (the Act) read with Section 479 thereof.

2. Brief facts of the case are that in terms of sub-section (1) of Section 132 of the Act, the Company was required to hold its Annual General Meeting for its financial year ended June 30, 2022 (the AGM) within a period of one hundred and twenty (120) days following the closure of the said Financial Year (FY).

3. As per the record, the Company had failed to hold its AGM within the afore-stated time period. The Company's failure to hold the said AGM within the stipulated time period attracts applicability of the penal provisions of sub-section (5) of Section 132 of the Act read with Section 479 thereof. Therefore, taking cognizance of the alleged non-compliance, proceedings were initiated against the Respondents through serving the SCN requiring them to show cause in writing, as to why action, as provided in the aforesaid section may not be taken against them:

4. To provide the opportunity of personal representation, a hearing in the matter was fixed for July 20, 2023, however, the hearing was adjourned. Subsequently, the hearing was fixed for August 07, 2023, wherein, Mr. Rashid Sadiq and Mr. M. Azeem Rashid, Advocate appeared before the undersigned on behalf of the Respondents as their Authorized Representatives (the Representatives) and submitted that:

- 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.



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- 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 to 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.
 - Commission through its directive dated June 27, 2023 u/s 147 of the Act advised the Company to hold its AGM for FY2020 by July 17, 2023.
 - The audits for FY 2021 and FY 2022 are in its final stage, and the Company also intends to seek direction u/s 147 of the Act to hold its AGMs for FY2021 and FY 2022.
 - Requested to condone the proceedings in the light of the afore narrated facts giving a binding assurance to future adherence to all the applicable laws.
5. Subsequently, the Representatives through letter dated August 28, 2023 *inter alia* also submitted as follows:

- *Securities and Exchange Commission of Pakistan (the Commission) is fully aware that a petition was filed by Saudi Pak Industrial and Agricultural Investment Company Limited in the Lahore High Court, Lahore (hereinafter the Court) for winding up of the Company.*
- *By 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 the 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 duty of the liquidator to hold annual general meetings and present the audited accounts of the Company consisting of statement of financial position and the receipt and payment accounts, auditor's report and the liquidator report on the acts, dealing and the conduct of the Company's winding up till the assets and record of the Company are handed over to the management.*
- *The Company was partly in control of the management and partly with the liquidators for the year ended June 30, 2022 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 presented in the annual general meeting.*



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- *Current management took possession of the Company in November, 2021 from the liquidators. Since then, the Respondents have taken the following measures / actions with respect to holding of 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 the order of the Commission dated June 27, 2023.*
- *The Commission has written to the liquidators vide letter dated September 16, 2021 inquiring status of pending accounts for the years ended June 30, 2017, 2018, 2019 and 2020. However, the accounts remained pending till recalling of the winding up order by the Court on October 29, 2021.*
- *The audit of the accounts for the years ended June 30, 2021 which was the responsibility of the liquidators, is in progress and the same is expected to be finalized shortly. The audit of the accounts for the years ended June 30, 2022 will be finalized, thereafter.*
- *The company has already filed application to the SECP for a direction under Section 147 of the Act for holding of annual general meeting for the years 2021 and 2022 which is pending consideration of the Commission.*
- *The Company has been facing unprecedented challenges with regard to pending accounts which were the responsibility of the liquidators as well as organizing the documents and information retrieved from the custody of the liquidator.*
The above are the justified reasons for not holding the annual general meeting for the year 2022. It is beyond the control of the Respondents to hold its annual general meeting for the year ended June 30, 2022 in the circumstances narrated above.

6. Relevant provisions of the law are reproduced hereinunder:

Sub-section (1) of Section 132 of the Act:

"Every company, shall hold, an annual general meeting within sixteen months from the date of its incorporation and thereafter once in every calendar year within a period of one hundred and twenty days following the close of its financial year. –

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, shall be held by a period not exceeding thirty days."



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Sub-section (5) of Section 132 of the Act:

"Any contravention or default in complying with requirement of this section shall be an offence liable: –

(a) in case of a listed company, to a penalty of level 2 on the standard scale."

7. I have considered the facts of the case in light of the relevant provisions of the Act, and the information available on record and state that:

- (i) Holding of AGM is a vital statutory requirement as it provides opportunity to the members to participate in the discussion and vote on agenda items of the general meeting which includes consideration and approval of the company's financial statements;
- (ii) Non-holding of AGM deprives the members of their fundamental and statutory right, to know about the affairs of the company and participate in decision making;
- (iii) In order to ensure transparency and protect the shareholders' rights, all companies must meticulously adhere to the law by following the procedure prescribed under the Act for holding of AGMs;
- (iv) The Company cannot absolve itself from its statutory duties pertaining to holding of AGMs, preparation and filing of annual and quarterly financial statements in a timely manner as specified under the law;
- (v) The Respondents took possession of the Company in November 2021 and failed to convene its AGM for FY ended June 30, 2022 within the specified time period of one hundred and twenty (120) days following the closure of its FY;
- (vi) It is an admitted fact of the case that the Respondents took the possession of Company's affairs and assets from the liquidator in November 2021, therefore, they had twelve months (November 2021 to June 2022 and July 2022 to November 2022) to finalize the audited financial statements of FY 2021-2022 and lay them before the AGM. Therefore, the Respondents' contention that the delay in the preparation and filing of accounts by the official liquidator has caused the delay or non-holding of the AGM is neither plausible nor cogent;
- (vii) The Respondent enjoyed exclusive control of the Company and its management for seven months starting from November 2021 to the end of the financial year on June 30, 2022. Thereafter, under Section 132 of the Act, the Respondent had four months to convene the AGM. The Respondents were also entitled to seek an extension of one further month to hold the AGM, however, they failed to meet the timelines mentioned to convene the AGM;
- (viii) Furthermore, the alleged default committed by the liquidator to comply with the requirements of Sections 358 and 368 of the Act is not the part and scope of the SCN issued to the Respondents, therefore, the same may not be dealt with in this order;



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- (ix) 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 132 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 132(5) 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 132 of the Act by imposing penalty provided under Section 132(5) 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 132 and 479 of the Act does not suffer any irregularity or illegality;
- (x) The referred case laws of K-Electric and Agritech Limited are not applicable in this case. The referred case laws are persuasive in nature and were superseded by another order of the two-member Appellate Bench. Therefore, case laws referred by the Respondents are neither mandatory nor binding on the undersigned. In view of the Appellate Bench's orders, which are later in time, if the law has not specifically provided who will be responsible for violation of Section 132 of the Act, then *inter alia* others, the Company and its BOD shall be liable to the penal consequences. As per the rules of interpretation if two equal benches have rendered adverse verdicts to elaborate any legal principle or factual controversy then the decision of the bench later in time shall prevail;
- (xi) In view thereof, the undersigned is bound to follow the recent order of the Appellate Bench, while deciding the violations of Section 132 of the Act. It is important to mention here that after, the issuance of the recent Appellate bench's order under Section 132 of the Act, the undersigned has proceeded in accordance with such order, hence, the Respondents cannot allege that they have not been treated fairly and in accordance with the law. The undersigned is consistent to follow the case law developed by the Appellate bench in Appeal No. 60 of 2020, therefore, one may not allege that the undersigned is inconsistent with respect to the treatment of same violations;



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- (xii) Furthermore, during the SCN proceedings, no discrimination has been made and the Respondents were treated in a fair, transparent manner. Hence, no violation of Article 25 of the Constitution of 1973 and Section 20(6)(c) of the SECP Act may be attributed to the undersigned in reference to the proceedings of the SCN; and
- (xiii) The case law of Nishat Mills is not applicable in this case as the said case is related to the filing of delayed Form 31 and discriminatory treatment of the same offense with respect to different companies. However, in the present case, the Respondents have failed to establish that they have been treated in an unfair and discriminatory manner.

8. In view of the preceding facts, I am of the considered view that by failing to hold its AGM for the year ended June 30, 2022 within one hundred and twenty (120) days, the Company is in contravention of sub-section (1) of Section 132 of the Act, which renders it liable to penal action under sub-section (5) of Section 132 thereof. Therefore, in exercise of the powers conferred under sub-section (5) of Section 132 of the Act, I hereby impose a penalty of **Rs.100,000 (Rupees One Hundred Thousand Only)** on the Company and Warn the remaining Respondents to be careful in future with respect to the requirements of Section 132 of the Act.

9. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission 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 forthwith. 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.

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

Shahzad Afzal Khan
Director/ HOD
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Announced:
October 16, 2023
Islamabad