



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Fazal Cloth Mills Limited

Date of Hearing

May 20, 2020, October 7, 2020, May 24, 2021

Order-Redacted Version

Order dated October 28, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Fazal Cloth Mills Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause Notice dated April 24, 2019
2. Name of Company	Fazal Cloth Mills Limited
3. Name of Individual*	The proceedings were initiated against the Company Secretary and directors of the Company as all the members, including ***, had appointed two (2) individuals as proxies instead of one individual; and except for 2 proxy forms, none of the proxy forms were signed by the members appointing proxies. Moreover, format for proxy form used by the Company, <i>prima facie</i> , was not in accordance with the instrument of proxy as given in regulation 42 of the Regulations for Management of a Company Limited by Shares (the Company Management Regulations), provided in Table A, First Schedule of the Act.
4. Nature of Offence	Proceedings were initiated in terms of Sections 137, S 479 and S 512 of the Companies Act, 2017 (the Act) read with the Listed Companies (Code of Corporate Governance) Regulations, 2017
5. Action Taken	Key findings were reported in the following manner: At the onset, I would like to address the concerns raised by the Authorized Representative that the mentioned complaint was not dealt in accordance with applicable requirements; rather proceedings were initiated vide aforesaid SCN without deciding the complaint. In this regard, it is stated that relevant department of the Commission received the complaint dated November 14, 2018 from two of the shareholders of the Company regarding incomplete quorum of the AGM held on October 27, 2018. The said complaint was deliberated with the Company. After assessment of the Company's response, the matter was referred for initiation of adjudicating proceedings. Moreover, there is no specific provision



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

restricting initiation of proceedings on the basis of complaints and without prior consultation with the person against whom complaint is made. The complaint was not an application seeking some relief, rather the complainant, being shareholder of the Company, highlighted certain non-compliances on part of the Company. Moreover, proceedings initiated through the SCN does not by any mean be considered as an attempt to jeopardize interest of the shareholders or affect the reputation of the Company and its management.

With regard to the allegation that none of the directors or Chairman attended the AGM held on October 27, 2018, it is stated that the Company submitted requisite evidences to demonstrate reasonable cause for non-attending the AGM by the directors and the Chairman of the board which are discussed as under:

- a. For ***; the Company in support of the argument provided the copy of air ticket depicting his departure from Lahore to Paris on October 19, 2018 and arrival back to Lahore on October 30, 2018. The documents provided by the Company show that *** provided the proxy in favor of ***.
- b. For ***; the Company in support of the argument provided copy of the air ticket depicting his departure from Lahore to Doha on August 25, 2018 and arrival back to Lahore on January 24, 2019. The documents provided by the Company show that *** provided proxy in favor of ***.
- c. For ***; the Company provided copy of the medical leave certification wherein it was mentioned that he was ill with contagious nature of disease and advised three days rest from October 26 - 28, 2018. The documents provided by the Company show that *** provided proxy in favor of ***.
- d. For ***; the Company provided copy of the medical prescription dated October 25, 2018 issued by a doctor in the name of ***, mentioned pain in his chest, throat, fever and flue. The documents provided by the Company show that *** tendered his proxy in favor of ***.
- e. For ***; the Company provided copy of medical prescription dated September 11, 2018 issued by a doctor in the name of ***. The documents provided by the Company show that *** provided proxy in favor of ***.
- f. For ***; the Company submitted that he was intending to attend the meeting but upon his journey from *** to *** he suffered road side accident and he arrived at the AGM but almost at its conclusion. The documents provided by the Company show that *** provided the proxy in favor of ***.



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

- g. For ***, relevant correspondence of the *** was forwarded evidencing his heart issue and inability to travel.

I have perused the relevant record and submissions made by the Company and the Authorized Representative and observed that the Company has relied upon the relevant record of air travel and medical certificates of 6 directors to demonstrate reasonable cause of directors and Chairman of the Board for not attending the AGM and appointed proxies.

Further, from plain reading of Section 134(5) of the Act, it is apparent that participation of directors in AGM is not mandatory. It describes a clear procedure for conducting a general meeting in the absence of Chairman of the Board and directors. The said Section provides that in the absence of Chairman and the directors, the members may nominate any of the members as Chairman of the general meeting. The said sub-section (5) is reproduced as under:

“(5) The chairman of the board, if any, shall preside as chairman at every general meeting of the company, but if there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, any one of the directors present may be elected to be chairman, and if none of the directors is present or is unwilling to act as chairman the members present shall choose one of their member to be the chairman.”

Although, regulation 10(6) of the CCG Regulations requires all the directors of a company to attend general meeting(s), unless precluded from doing so, but this regulation is contradictory to the aforesaid Section 134(5) of the Act. Being subsidiary legislation, the CCG Regulations cannot override the statute. Therefore, I don't think non-compliance of any provision of a subsidiary legislation which is contradictory to a provision of the main law is violation.

With regard to the appointing two individuals as proxies instead of one, it is stated that I have reviewed 10 proxy instruments submitted by the Company. In all the 10 proxy forms, each member had appointed proxy in such manner that one individual was appointed as proxy and other was named as alternate in case the first one could not attend the AGM.

Although, Section 137 (1) (b) of the Act requires a member to appoint only one proxy for attending a meeting. However, in case if a member appoints a proxy along with its substitute and the meeting is attended by only one of the two proxies, I don't think such an act is violation of this provision.

With regard to the allegation that except for two, none of the proxy forms were signed by the members, it is stated that I have reviewed the said proxy forms and found that these were signed by the members at respective places where signatures were required to be placed, whereas in case of eight proxy instruments, the signatures were made on the adhesive stamps.



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

	<p>With regard to the allegation that the form of proxy used was not in accordance with the instrument of proxy as given in regulation 42 of the Company Management Regulations, Table A, First Schedule of the Act, it is stated that during the hearing, the Authorized Representative assured that the Respondents shall take necessary steps to update the form of proxy as per the requirements of the Act.</p> <p>Keeping in view the Respondents written responses and arguments put forth by the Authorized Representative and previous track record, I hereby close these proceedings and advise the Respondents to ensure compliance with provisions of law in letter and spirit in future.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act or CCG Regulations providing for imposition of penalties in respect of any default, omission, violation of the Act or CCG Regulations.</p>
6. Penalty Imposed	No penalty was imposed.
7. Current Status of Order	Appeal not filed.