



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Hum Network Limited

Date of Hearing November 9, 2020; May 4, 2021; and May 31, 2021

Order-Redacted Version

Order dated October 13, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Director of Hum Network Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause Notice dated October 2, 2020
2. Name of Company	Hum Network Limited
3. Name of Individual*	The proceedings were initiated against the Chairman/director of the Company i.e. Hum Network Limited
4. Nature of Offence	Proceedings were initiated in terms of Section 134, 143, 144, 145, 479 of the Companies Act, 2017 (the Act) read with the Companies (Postal Ballot) Regulations, 2018 (the Regulations) for non-compliances of aforesaid.
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have gone through the facts of the case, reply furnished in writing and arguments advanced during the hearing by the Authorized Representative and state that:</p> <p>(i) In terms of Section 134(9) of the Act, on a poll, votes may be casted either personally or through video-link, or by proxy or through postal ballot in a manner and subject to the conditions as may be specified. In this context, the Commission under Section 512 of the Act read with Section 134 thereof has notified the Regulations vide SRO No. S.R.O. 254 (I)/2018 dated February 22, 2018. The Postal Regulations under Chapters II and III specify procedure for e-voting and voting through post, respectively. Further, the Postal Regulations requires the Company to send complete information to the members in term of Regulation 4 of the Postal Regulations and in term of Regulation 8 of the Postal Regulations, to publish the ballot paper in English and Urdu language newspapers having nationwide circulation and upload the same on its website for the information of members of the</p>



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	<p>company. Regulations 8 and 9 of the Postal Regulations provide mechanism for ensuring that the ballots received through post are duly recorded.</p> <p>(ii) It is stipulated in the minutes of the EOGM dated August 22, 2020 that:</p> <p><i>“Before or on the declaration of the result of the voting on the above resolution by a show of hands, Mr. ***** holding 24.3% shares of the Company demanded a poll through secret ballot on agenda item No. 3 in terms of Section 144 of the Act. The other members also seconded the demand of Mr. ***** and asked for the secret poll to be conducted”.</i></p> <p>In furtherance to the above, it is important to point out that Mr. *****, through his complaint dated August 24, 2020, <i>inter alia</i>, stated that:</p> <p><i>“The Chairman ordered for the poll and announced that all the members will receive the ballot paper shortly. Many shareholders (including myself who collectively represented well over 10% shareholding/ voting power in the Company) strongly objected to this and reminded the Company Secretary and the Chairman of the responsibility of the Company under regulation 4(2) and regulation 8 of the Companies (Postal Ballot) Regulations, 2018 (“the Regulations”) that the Company has to publish the ballot paper in the newspaper first and therefore, the said balloting could not happen instantly.</i></p> <p>The aforesaid reveals that the poll was demanded in the EOGM by shareholders holding at least 24.3% shares/voting power as compared to the minimum requirement of holding 10% shares/voting power as mentioned in Sections 143 and 144 of the Act and attention of the Chairman of the EOGM was drawn towards compliance with the requirements of the Postal Regulations.</p> <p>However, minutes of the EOGM reveals that <i>“On the request of the members, the Chairman of the Board ordered a secret ballot to be conducted. The Company Secretary informed the members that a poll will be conducted and a ballot paper will be provided by the registrar to all the members present in the meeting to cast their vote.”</i></p> <p>(iii) In this regard, attention is drawn to the Postal Regulations which prescribe the procedure to conduct the poll through postal ballot and electronic voting. On demand of poll, complete information is required to be furnished to the members within the prescribed time period and manner, for casting vote, in a specified manner. Moreover, it requires to ensure that postal ballots are duly recorded and enjoins the</p>
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duty on the company to publish the ballot paper in English and Urdu language newspaper having nationwide circulation and also to upload the same on its website for information of its members. With regard to e-voting; relevant information is required to be provided including web address, login details, password, date of casting e-vote and other necessary details through email; security codes through SMS from web portal of e-voting service provider; or electronic signature. In addition, agenda items for which poll was demanded is required to be correctly uploaded in the web portal of e-voting service provider and shall resolve any grievances of members to enable them to cast vote through e-voting.

In view of the above, it is abundantly clear that on demand of poll, there has to be a future date fixed within the fourteen days of such demand, which will enable the members to cast vote through ballot in accordance with the procedure and modes as specified in the Postal Regulations. The Respondent, however, has failed to comply with provisions of the Postal Regulations.

(iv) The Authorized Representative in his written arguments submitted that the Company through its notice of EOGM provided the option to the members for voting through ballot, however, none of the members requested such facility. In this context, I would like to mention here that during the meeting certain shareholders having requisite shareholding in term of Section 143 and 144 of the Act demanded the poll, which triggers applicability of the Postal Regulations read with Section 134(9) of the Act. Therefore, it was the responsibility of the Chairman of the EOGM to comply with the applicable requirements of the Postal Regulations.

(v) The Authorized Representative argued that:

- *Section 145 of the Act provides maximum time during which such poll is to held and not a mandatory minimum time for providing the ballot papers to the members;*
- *The said Section also does not require that meeting must be adjourned for taking a poll;*
- *under Section 145 of the Act, discretionary powers have been given to the Chairman of the meeting; and*
- *it is, therefore, clear that the Chairman has the power under Section 145 to decide the time for taking the poll.*

I have considered the arguments of the Representative and of the view that these arguments are not tenable. The matters that are to be taken forthwith in general meetings are specifically mentioned in Section 145 of



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	<p>the Act and these are (i) election of the chairman of the meeting; and (ii) question of adjournment of general meeting. Except for the aforesaid two matters, all other matters are required to be taken at such time, not more than fourteen days from the day on which it is demanded, strictly in compliance with the provisions of the Postal Regulations. In case, ballot on any other question/matter, including question of appointing new share registrar was required to be taken forthwith, the same should also have been specifically mentioned in Section 145 of the Act. The fact is that beside the two matters mentioned above, no other matter is specified in the Section 145 of the Act to be taken forthwith.</p> <p>(vi) The Respondent being Chairman of the EOGM, did not take into account that on a poll, votes may be given either personally or through video-link, or by proxy or through postal ballot in a manner and subject to the conditions as specified in Section 134 of the Act and the Postal Regulations. Regulation 3 of the Postal Regulations provides that right of vote through postal ballot shall be provided to the members subject to the requirements of Sections 143 and 144 of the Act. The Respondent, however, deprived shareholders from their right to cast vote on the said agenda item No. 3 of the said EOGM and contravened the requirements of the Postal Regulations. Section 134(9) of the Act provides that: <i>“On a poll, votes may be given either personally or through video-link, or by proxy or through postal ballot in a manner and subject to the conditions as may be specified.”</i> The manner and condition for conducting ballot have been specified in the Regulations. This means, that Section 145 has to be followed and complied with in conjunction with Section 134 of the Act and the Postal Regulations.</p> <p>(vii) The Authorized Representative is of the view that even if the requirements of the Postal Regulations were complied, the resolution proposed by the ***I could not have been passed. In this regard, it is to be pointed out that the issue does not relate as to whether the said resolution needed to be passed or not; but the matter is that applicable requirements of the Act and the Postal Regulations had been complied with or not, while transacting such business.</p> <p>(viii) The Authorized Representative argued about applicability of Section 136 of the Act. In this regard, it is hereby pointed out that it is the prerogative of the shareholders having requisite shareholding in term of Section 136 of the Act to request the honorable Court to declare proceedings of a general meeting as invalid;</p>
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which is not the matter of the present proceedings. It is hereby reiterated that the aforesaid proceedings relate to the matter of compliance with the regulatory requirements for a special business which was transacted in EOGM of August 22, 2020 and poll was demanded in the said meeting. Therefore, the argument put forth by the Authorized Representative does not relate to the current proceedings and not tenable.

- (ix) With regard to the submission that the complaints were forwarded to the Company instead of the Respondent, it is pointed out that the complaints received from various members were forwarded to the Company in order to seek relevant information regarding EOGM held on August 22, 2020. It may be pointed out that in term of Section 134(5) of the Act, chairman of the board presides as chairman at every general meeting of the company. Moreover, chairman of the meeting is obligated to take poll on demand made in that behalf by the members in the manner as specified in the Postal Regulations. The Respondent was chairman of the EOGM held on August 22, 2020, therefore, the proceedings were initiated against the Respondent only, being Chairman of the EOGM who was responsible for carrying out the business of the EOGM, as per the requirements of the Act.
- (x) I am of the considered view that the requirements of the Act and requirements of the Postal Regulations are in harmony and are not in conflict with each other. Therefore, the stance of the Authorized Representative that the Act and the Regulations are in conflict with each other does not hold merit.

In view of the above, it is abundantly clear that on demand of poll, there has to be a future date fixed within the fourteen days of such demand, which will enable the members to cast vote through ballot in accordance with the procedure and modes as specified in the Postal Regulations. The Respondent, however, has failed to comply with provisions of the Postal Regulations.

In view of the given facts, I have observed that the Respondent, by conducting poll on the Agenda Item i.e. agenda item No.3 of the EOGM, in the same EOGM in which poll was demanded i.e. EOGM held on August 22, 2020 has violated and failed to comply with the requirements of Section 134 of the Act and Regulations 3, 4 and 8 of the Postal Regulations, therefore, is liable for penalty in term of Section 134 of the Act. I, therefore, in terms of Section 134 of the Act, hereby impose a penalty of **Rs. 1,500,000/- (Rupees One Million Five Hundred Thousand only)** on the Respondent.



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	<p>The Respondent is hereby directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the <i>Securities Exchange and Commission of Pakistan</i> with MCB Bank Limited within thirty (30) days of the date of this Order and furnish receipted bank challan, evidencing payment of the same, to the Commission forthwith. In case of failure to deposit the penalties, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue. It may please be noted that the penalty on the Respondent has been imposed in personal capacity; therefore, he is required to pay the said penalty from his personal resources.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.</p>
6. Penalty Imposed	A Penalty of Rs. 1,500,000/- (Rupees One Million Five Hundred Thousand only) was imposed on the Respondent.
7. Current Status of Order	Appeal 116/2021 was filed before Appellate Bench of the Commission.