



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Abdullah Shah Ghazi Sugar Mills Limited

Number and date of notice:

No. CSD/ARN/304/2016-2349-57 dated January 13, 2017
No. CSD/ARN/304/2016-3531-37 dated May 3, 2017

Date of hearing:

June 1, 2017

Present:

Ms. Zainab Syed, RS Corporate Advisory
(Authorized Representative)

ORDER

UNDER SECTION 255(7) AND SECTION 258 READ WITH SECTION 259 AND SECTION 476
OF
THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against directors of Abdullah Shah Ghazi Sugar Mills Limited (*the "Company"*), through show cause notice dated January 13, 2017 (*the "SCN-I"*) and show cause notice dated May 3, 2017 (*"SCN-II"*) under the provisions of section 258 read with section 259 and section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that M/s Kaleem & Company, Chartered Accountants was appointed as the Cost Auditor of the Company for the year ended September 30, 2015 vide this Commission letter No. EMD/C.O.258/110/2002-712 dated February 1, 2016. M/s Kaleem & Company through their letters dated February 8, 2016 and April 24, 2016 had informed that:

"..despite every reasonable effort we had not been able to conduct cost audit of the

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captioned subject company. We would further like to submit that any delay in this regard is due to the management of the Company and also the management had not provided any satisfactory reasons for the delay."

3. Subsequently, for the year ended September 30, 2016, the Company was required to appoint cost auditor on or before November 29, 2016 in terms of Sub-rule (ii) of Rule 3 of Companies (Audit of Cost Accounts) Rules, 1998 (*the "Rules"*). It was observed that application of Company for appointment of cost auditor for the year ended September 30, 2016 was not received by the Commission and the cost auditor for the year ended June 30, 2016 was not appointed within sixty days from the close of financial year as prescribed in Rule 3(ii) of the Rules.

4. Consequently, SCN-I and SCN- II were issued to the directors of the Company for *prima facie* contravention of section 255(7), section 258 of the Ordinance and Rule 3(ii) of the Rules accordingly. The respondents did not submit reply to SCNs and a hearing was fixed on June 1, 2017 before the undersigned, which was attended by Ms. Zainab Syed, RS Corporate Advisory (*the "Authorized Representative"*) on behalf of respondents. The Authorized representative in her submission stated that as the Company could not hold the Annual General Meeting (*the "AGM"*) for the year ended September 30, 2015 despite of the four directions sought from the Commission under section 170 of the Ordinance due to various reasons including that NAB had taken away the Chief Executive of the Company for about two and a half months and FBR also raided the Company office due to which the AGM could not be held. Due to delay in holding of the AGM all the subsequent matters got delayed including the appointment of cost auditor. She also stated that in the freshly promulgated corporate law there is no requirement for cost audit therefore the Commission is requested to take a lenient in the matter.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Section 255(7) states that if any officer of a company refuses or fails, without lawful justification, the onus whereof shall lie on him, to allow any auditor access to any books and papers in his custody or power, or to give any such information possessed by him as and when required, or otherwise hinders, obstructs or delays an auditor in the



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performance of his duties or the exercise of his powers or fails to give notice of any general meeting to the auditor, he shall be liable to fine which may extend to five thousand rupees and in the case of a continuing offence to a further fine which may extend to one hundred rupees for every day after the first during which the default, refusal or contravention continues.

Section 258 of the Ordinance states that where any company or class of companies is required under clause (e) of sub-section (1) of section 230 to include in its books of account the particulars referred to therein, the Federal Government may direct that an audit of cost accounts of the company shall be conducted in such manner and with such stipulations as may be specified in the order by an auditor who is a chartered accountant within the meaning of the Chartered Accountant Ordinance, 1961 (X of 1961), or a cost and management accountant within the meaning of the Cost and Management Accountants Act, 1966 (XIV of 1966); and such auditor shall have the same powers, duties and liabilities as an auditor of a company and such other powers, duties and liabilities as may be prescribed.

Rule 5 of the Rules prescribes that whoever fails or refuses to comply with, or contravenes any provision of these rules, or knowingly and willfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the Companies Ordinance, 1984, be also punishable with fine not exceeding two thousand rupees and, in case of continuing failure, refusal or contravention, with a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues

Section 259 of the Ordinance provides that if default is made by a company in complying with any of the provisions of sections 252 to 254 or 256 to 258, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to [fifty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues].

6. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the

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powers to adjudicate cases under section 259 have been delegated to the Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the representative during the hearing. In light of the fact that the cost audit requirement for the companies has been called off in the newly promulgated Companies Act 2017, I am inclined to take a lenient view of the matter and in exercise of the powers conferred by aforesaid provision of the Ordinance, hereby, warn the respondents to ensure meticulous compliance of law in future.

Amina Aziz

Director (Corporate Supervision Department)

Announced:

August 25, 2017

Islamabad