



Corporate Supervision Department Company Law Division

Before Abid Hussain – Executive Director

In the Matter of

K-Electric Limited

Number and date of SCN: CSD/ARN/413/2016-1716-28 dated April 23, 2018

Date of Hearing: May 14, 2018

Present: Mr. Rashid Sadiq, CEO - RS Corporate Advisory
(Authorized Representative and Legal Counsel)

ORDER

UNDER SUB-SECTION (3) OF SECTION 245 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the following directors including the chief executive officer ("*Respondents*") of K-Electric Limited (*the "Company"*) through show cause notice (*the "SCN"*) dated April 23, 2018 issued under the provisions of Section 245 read with Section 476 of the Companies Ordinance, 1984 (*the "Ordinance"*):

S.No.	Board of Directors
1	Mr. Waqar Hasan Siddique (Chairman)
2	Mr. Muhammad Tayyab Tareen (CEO)
3	Mr. Khalid Rafi
4	Mr. Aamer Ahmed
5	Mr. Muhammad Anwer Shaikh
6	Mr. Muhammad Zubair Motiwala
7	Mr. Omar Khan Lodhi
8	Mr. Shan A. Ashary
9	Mr. Mubasher H. Sheikh
10	Mr. Nayyer Hussain
11	Mr. Frederic Sicre
12	Mr. Aziz Moolji
13	Mr. Ch. Khaqan Saadullah Khan

2. Brief facts of the case are that the Company failed to file its interim financial statements for the following periods with the Commission within the time stipulated pursuant to Section 245 of the Ordinance:

Quarter ended	Filing due on
December 31, 2016	February 28, 2017
March 31, 2017	April 30, 2017

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3. The chief executive and the directors of the Company had, *prima facie*, contravened the provisions of sub-section (3) of Section 245 of the Ordinance by not filing the aforementioned quarterly accounts with the Commission within the stipulated time.

4. Consequently, the SCN was issued to Respondents to show cause as to why penal action may not be taken against them for failing to conform to Section 245 of the Ordinance with hearing scheduled for May 14, 2018. The Company, through its legal counsel (also the authorized representative) submitted a written response dated May 11, 2018 affirming that:

"As has been informed to the SECP in the previous communications, NEPRA has determined an integrated Multi Year Tariff (hereinafter the "MYT") for a seven year period (July 1, 2016- June 30, 2023) for the Company on 20 March, 2017, however, because the Company had serious reservations about the MYT not reflecting ground realities, a review application was filed wherein Company's viewpoint was presented highlighting the serious repercussions the current NEPRA's MYT 2017 was likely to cast over K-Electric viability and sustained operational capability as well as over Karachi based industries & consumers and national economy.

However, NEPRA's decision dated 09 October 2017 on KE's review petition did not address genuine and critical concerns of the Company and did not provide any significant relief ensuring operational and commercial viability of the Company. The Ministry of Energy (Power Division) taking note of the situation and in view of the Company's letter 12 October 2017 has filed a 'Reconsideration' request with NEPRA dated 26 October 2017 under Section 31(4) of the NEPRA Act 1997 to reconsider afresh its earlier determination.... Accordingly, a final determination by NEPRA on the MYT is awaited before the requisite any quarterly or annual accounts may be issued, since the estimates and judgements to be applied in the accounts will need to take reference from the tariff that is finally approved and notified by GoP based on final determination by NEPRA.

Given that the final determination of the MYT is beyond the control of the Company and the accuracy of the content of any interim accounts to be produced by the Company is dependent entirely on the figures finally determined by NEPRA as the MYT. You will note that without a final determination on the MYT, the quarterly accounts for the period ended 31 December 2016, 31 March 2017 and 30 September 2017 cannot be finalized. In the absence of final determination of MYT, the profit and loss and balance sheet figures to be applied in the quarterly accounts would merely be provisional figures which may change materially once the MYT is finalized.

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The fundamental reason for delay in releasing interim accounts is that the Company does not have a valid tariff for the year starting July 01, 2016 and cannot just prepare the financial statements on the basis of estimation in the absence of basic topline revenue number, accordingly, the annual financial statements of the Company are pending and therefore, interim accounts cannot be prepared by the company. It would be entirely irresponsible of K-Electric to release its interim financials without receipt of final tariff from NEPRA and holding of AGM, accordingly.

In light of the above submissions we respectfully pray that the SECP condone the delay in preparation and filing of interim accounts till such time that a final determination on the MYT is available with the Company. We assure the SECP of the Company's continued endeavours to remain compliant with the requirements of the law and further assure the SECP that the requisite interim accounts will be prepared and issued after notification of the revised MYT as soon as practicable after complying with other relevant formalities related to the approval of the interim accounts."

5. Hearing in the matter was held before the undersigned on May 14, 2018. Mr. Rashid Sadiq, CEO of RS Corporate Advisory (Private) Limited appeared on behalf of Respondents as their authorized representative. Over the course of the hearing, Mr. Sadiq reiterated the written response submitted previously by the Company, asserting that the delay in filing of the interim financial statements was the result of unresolved tariff determination by NEPRA. Further, he indicated that his clients are law-abiding individuals, which can be validated by the Company's otherwise exceptional compliance history by virtue of its continued commitment to complying with the law.

6. The Commission vide directive dated April 25, 2018 advised the Company to hold its past due AGM within three months from the date of the directive and lay therein the annual audited financial statements for the year ended June 30, 2017. Subsequent reminders dated June 25, 2018 and July 9, 2018 were issued to the Company to act in accordance with the Commission's directive. In addition, the Company was apprised of NEPRA's feedback vide letter No.NEPRA/TRF-362/K-Electric-2016/9411 dated June 19, 2018 relating to preparation of financial statements in the absence of a valid tariff:

"It may be noted that determination of the Authority in the matter of K-Electric's Multi Year Tariff Petition for the period starting from July 01, 2016 was issued by the Authority vide decision dated March 20, 2017. Subsequently, K-Electric filed a Motion for Leave for Review against the aforementioned determination of the Authority, which was decided by the Authority vide decision dated



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October 09, 2017. Both the aforementioned decisions were forwarded to the Federal Government for notification in the official gazette vide Section 31(4) of NEPRA Act, 1997. The Federal Government, however, filed a Reconsideration Request under the first proviso to Section 31(4) of the NEPRA Act, 1997, which is under consideration of the Authority.

Tariff of K-Electric as mentioned above for the tariff control period i.e. FY 2016-17 to FY 2022-23 has been determined by the Authority which may be used for preparation of the Financial Statement. If needed, Financial Statement can add a note regarding Reconsideration Request being under consideration of the Authority."

7. In response, the Company submitted the following through its letter dated July 27, 2018:

"Based on the objective analysis of cumulative impact of NEPRA's determined tariff, the Company is of the considered view that in its current form, the determined tariff is detrimental to the interest of its customers and other stakeholders...the Company had no choice but to seek the legal recourse and, therefore, the Company approached the honourable Sindh High Court at Karachi against the NEPRA's decision on Reconsideration Request dated 05 July 2018 ("DRR") and the honourable Court was pleased to pass an add interim order with the following direction to the Ministry of Energy, GOP; NEPRA; and Appellate Tribunal, Ministry of Energy, GOP:

"Be that as it may, let notice be issued to defendants as well as Deputy Attorney General for the next date of hearing. In the meantime, no adverse action without due process of law shall be taken by the defendants against plaintiff in respect of impugned DRR."

8. It is, however, pertinent to note that the abovementioned ad interim order of the Sindh High Court does not debar the Commission from taking action vis-à-vis violations of the provisions of the Ordinance; this was also communicated to the Company through video conference held on October 1, 2018 and vide the Commission's letter of the same date. Moreover, the electric power sector's apex regulator, NEPRA, has evidently stated that no impediment exists, which would preclude the Company from adhering to the legal framework with prudence, i.e., tariff control period FY 2016-17 to FY 2022-23 has been determined by the Authority, hence, the same may be used by the Company for preparation of its financial statements with additional disclosures.

9. Before proceeding further, it is necessary to advert to the relevant provisions of the law:



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Sub-section (1) of Section 245 of the Ordinance read with the Commission's Circular No. 9 dated March 19, 2003 entails:

Every listed company shall:—

(a) within one month of the close of first, second and third quarter of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that quarter, whether audited or otherwise; and

(b) simultaneously with the transmission of the quarterly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Commission such number of copies thereof, not being less than three, as may be prescribed.

Sub-section (3) of Section 245 read with Section 476 of the Ordinance stipulates that:

If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues.

10. In terms of the Commission's Notification S.R.O. 751(I)/2017 dated August 2, 2017, the powers to adjudicate cases under Section 245 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

11. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, and arguments set forth over the course of the hearing as well as the Company's subsequent written correspondences with the Commission. The aforementioned provisions of the law are unambiguous and explicit. The fact that timing of interim financial statements is of essence, the disclosure and audit requirements of these accounts have been kept to a bare minimum. Interim financial statements prepared accurately and in a timely manner not only provides to its users a reliable source of information regarding a company's financial position and performance, but also shows the results of the management's stewardship of resources entrusted to it. In order to ensure transparency, all companies must meticulously adhere to the law for preparation and circulation of interim financial statements. Moreover, in addition to their responsibilities of overseeing and managing the affairs of the company, the directors also have fiduciary duties towards the company and its shareholders. Thus, they are liable to a higher level of accountability, which requires them to be vigilant and perform their duties with utmost care and prudence. It is the directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of the law. In



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this context, Respondents cannot absolve themselves from their statutory duties pertaining to preparation and filing of annual and quarterly accounts in a timely manner as stipulated under the law.

12. It is pertinent to note that Respondents have deprived the shareholders of their statutory right to receive the quarterly accounts of the Company within the prescribed time. The preparation and circulation of quarterly accounts rests with the directors of the Company who are required to take appropriate action within the time stipulated under law. As stated earlier, since NEPRA has determined the tariff control period FY 2016-17 to FY 2022-23, it may well be used by the Company for preparation of its financial statements with additional disclosures in light of NEPRA's letter dated June 19, 2018 as quoted in Para 6 above.

13. In view of the foregoing, I have come to the conclusion that the pertinent provisions of the law have been violated and deem it appropriate to render Respondents liable to penal action in terms of Section 245 of the Ordinance as a result of failing to file the Company's interim financial statements for the quarters ended December 31, 2016 and March 31, 2017 with the Commission as stipulated under the law. Therefore, in exercise of powers conferred under sub-section (3) of Section 245 of the Ordinance, I, hereby impose a fine of Rs. 5,000 per quarter on each Respondent aggregating to Rs. 130,000 as per the following particulars:

S.No.	Board of Directors	Amount in Rupees
1	Mr. Waqar Hasan Siddique (Chairman)	10, 000
2	Mr. Muhammad Tayyab Tareen (CEO)	10, 000
3	Mr. Khalid Rafi	10, 000
4	Mr. Aamer Ahmed	10, 000
5	Mr. Muhammad Anwer Shaikh	10, 000
6	Mr. Muhammad Zubair Motiwala	10, 000
7	Mr. Omar Khan Lodhi	10, 000
8	Mr. Shan A. Ashary	10, 000
9	Mr. Mubasher H. Sheikh	10, 000
10	Mr. Nayyer Hussain	10, 000
11	Mr. Frederic Sicre	10, 000
12	Mr. Aziz Moolji	10, 000
13	Mr. Ch. Khaqan Saadullah Khan	10, 000
TOTAL		130, 000



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The aforementioned fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the *Securities and Exchange Commission of Pakistan* within thirty days from the receipt of this Order, and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fines, proceedings for recovery of the same as arrears of land revenue will be initiated. It may also be noted that the fines have been imposed on Respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
December 3, 2018
Islamabad

