



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/413/2016-1729-41 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 SECTION 132 READ WITH SECTION 479 OF THE COMPANIES ACT, 2017

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 132 read with Section 479 of the Companies Act, 2017 (*the "Act"*):

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 was required to hold its annual general meeting (*the "AGM"*) for the financial year ended June 30, 2017 within a period of one hundred and twenty days following the close of its financial year pursuant to sub-section (1) of Section 132 of the Act. Though the Company was granted extension until November 27, 2017 to convene its past due AGM



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vide the Commission's directive dated October 9, 2017, review of Company records revealed that it failed to hold its AGM as advised through the aforementioned directive.

3. The chief executive and the directors of the Company had, *prima facie*, contravened the provisions of Section 132 by failing to convene the AGM as stipulated under the law.

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 132 of the Act 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 AGM is held, the major component for which is presentation of the annual accounts for approval of the shareholders....

Given that the final determination of the MYT is beyond the control of the Company and the accuracy of the content of any accounts to be produced by the Company and presented at the AGM is dependent entirely on the figures finally determined by NEPRA as the MYT, practical difficulties arise in holding the AGM.



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It is respectfully submitted that we have time and again reasoned that circumstances exist which are likely to give rise to the dissemination of misinformation through financials of our client if accounts are prepared and Annual General Meeting for approval of premature financial statements is held. The SECP is more than aware, as is evident from communications between the SECP and K-Electric that without a final decision on the tariff by NEPRA on reconsideration request filed by the GoP, K-Electric is not in a position to provide accurate information to its shareholders.

Had the matter of holding an AGM been a simple formality, you will kindly appreciate that no delay could have occurred. However, the significance of holding an AGM has to be appreciated as the intent behind holding AGMs is to ensure that a forum is provided to shareholders to discuss and approve business of a company. The responsibility of accurate representation of the financials of a company rests with the management of the company. Such responsibility cannot be taken lightly especially given that financials of a company are the backbone of a company and the main motivation for investment in such company and being listed could have negative or positive impact on the share price and the investors. This also has been recognized by the honourable SECP in its order dated 09 June, 2017 while adjudicating delay in holding of AGM for the year 2016 by the Company and it was ruled that the delay was caused none other reasons except the delay in determination of tariff by NEPRA.

It would be entirely irresponsible of K-Electric to invest resources of the company to arrange an AGM only to leave matters unresolved due to the impossibility of presenting financials as a result of the delay in the final tariff.

In light of the above submissions we respectfully pray that the SECP condone the delay in holding the AGM 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 AGM will be held after notification of the revised MYT...."

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 holding of AGM was the result



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of unresolved tariff determination by NEPRA. Further, he indicated that his clients are law-abiding individuals that can be validated by the Company's otherwise exceptional compliance history by virtue of its continued commitment to complying with the legal framework.

6. Pursuant to Section 147 of the Act, the Commission vide directive dated April 25, 2018 advised the Company to hold its past due AGM at the earliest possible time but no later than three months from the date of the direction. Subsequent reminders dated June 25, 2018 and July 9, 2018 were issued to the Company to act in accordance with the Commission's directive, i.e., hold the AGM and lay therein annual audited financial statements for the year ended June 30, 2017. 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 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



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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 Act; 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, may 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.

9. Before proceeding further, it is necessary to advert to the relevant provisions of the law: Sub-section (1) of Section 132 of the Act stipulates that:

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.

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

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.

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 132 of the Act 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 Act, and arguments set forth over the course of the hearing as well as the Company's subsequent



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written correspondences with the Commission. The aforementioned provisions of the law are unambiguous and explicit. A company is required to hold its AGM within four months from the close of its financial year. Holding of the AGM is a vital statutory event in that it provides an opportunity to the shareholders to participate in the discussion and voting on agenda items of the AGM which includes consideration and approval of the company's financial statements, which not only shows its financial position and performance, but also shows the results of management's stewardship of resources entrusted to it. 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 the AGMs. 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. Hence, 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 this context, Respondents cannot absolve themselves from their 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. 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, and subsequently hold the Company's AGM.

12. 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 132 of the Act as a result of failing to hold the Company's AGM for the financial year ended June 30, 2017 as stipulated under the law. Therefore, in exercise of powers conferred under sub-section (5) of Section 132 of the Act, I hereby impose a fine of Rs. 50,000 on each Respondent, as per the following particulars:



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S.No.	Board of Directors	Amount in Rupees
1	Mr. Waqar Hasan Siddique (Chairman)	50,000
2	Mr. Muhammad Tayyab Tareen (CEO)	50,000
3	Mr. Khalid Rafi	50,000
4	Mr. Aamer Ahmed	50,000
5	Mr. Muhammad Anwer Shaikh	50,000
6	Mr. Muhammad Zubair Motiwala	50,000
7	Mr. Omar Khan Lodhi	50,000
8	Mr. Shan A. Ashary	50,000
9	Mr. Mubasher H. Sheikh	50,000
10	Mr. Nayyer Hussain	50,000
11	Mr. Frederic Sicre	50,000
12	Mr. Aziz Moolji	50,000
13	Mr. Ch. Khaqan Saadullah Khan	50,000
TOTAL		650,000

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

