

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Azgard Nine Limited

Dates of Hearing

July 21, 2020, December 16, 2020

Order-Redacted Version

Order dated January 14, 2021 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Azgard Nine Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated September 6, 2019
2. Name of Company	Azgard Nine Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. Azgard Nine Limited
4. Nature of Offence	Violations under Section 134 & SRO 423(I)/2018 read with Section 510 and section 479 of the Companies Act, 2017
5. Action Taken	<p>Key findings of default were reported in the following manner:</p> <p>I have gone through the facts of the case, correspondence of the Company, given requirements of the Act, and submissions made by the Authorized Representative during the course of the proceedings. A brief of the matter is summarized as below:</p> <p>(i) As per notice dated July 9, 2019 of EGM of the Company, which was scheduled to be held on July 30, 2019, the following special business was proposed: <i>"In pursuance of the Honorable Lahore High Court's order dated July 08, 2019 in the case titled Al Baraka Bank (Pakistan) Ltd etc. Vs. Azgard Nine Limited etc. (CO No. 133794/2018); to consider and approve the sale of two units of the Company as per the Creditors' Scheme of Arrangement for restructuring of the Company's liabilities dated 01.01.2018 that is pending adjudication before the Honourable Lahore High Court". Moreover, a copy of order dated July 8, 2019 of the honorable Court in case of C.O No. 133794/2018 has been placed in terms of which it was, inter alia, stated: "During the course of arguments learned counsel for the applicant raised objection regarding non-fulfillment of the provision of section 183(3) of the Companies Act, 2017. Learned counsel for the company undertakes that a meeting of the shareholders shall be called and approval of not only scheme but sale of the assets shall also be sanctioned in that meeting of the shareholders before the next date of hearing."</i></p>

Perusal of the aforesaid information, it is clear that special business to seek sanction of members of the Company in terms of section 183(3) of the Act, as per order of the Court, was required. As per the order of the Court, the aforesaid sanction was in addition to the approval of creditors' scheme of arrangement. I, am of the view that while seeking approval of members in terms of section 183(3) of the Act, complete information as per requirements of the Act and of SRO was required to be disseminated in the statement of statement of material facts along with the notice of EGM.

(ii) It is also relevant to highlight that in terms of clause (5) of part B of the SRO, for disposal of sizeable undertaking, following relevant disclosures were required to be made in the statement of material facts: *"In case of sale, lease or disposal of sizeable part of undertaking: (i) Detail of assets to be sold, leased or disposed of shall include the following: (a) Description/Name of asset; (b) Acquisition date of the asset; (c) Cost; (d) Revalued amount and date of revaluation (if applicable); (e) Book value; (f) Approximate current market price/fair value; (g) In case of sale, if the expected sale price is lower than book value or fair value, then the reasons thereof; (h) In case of lease of assets, tenure, lease rentals, increment rate; mode/basis of determination of lease rentals; and other important terms and conditions of the lease; (i) Additional information in case of disposal of land: (i) Location; (ii) Nature of land (e.g. commercial, agriculture, etc); and (iii) Area proposed to be sold. (ii) The proposed manner of disposal of the said assets. (iii) In case the company has identified a buyer, who is a related party the fact shall be disclosed in the statement of material facts. (iv) Purpose of the sale, lease or disposal of assets along with following details: (a) Utilization of the proceeds received from the transaction; (b) Effect on operational capacity of the company, if any; and (c) Quantitative and qualitative benefits expected to accrue to the members. In case of sale or disposal of the undertaking of the company that may lead to closure of business or winding up of a company, the following information shall be provided in addition to the information as required in Para I above: (i) A brief containing all the necessary details of viable alternate business plan duly authenticated by the board; including total cost of the proposed future business plan and means of financing; (ii) Expected time of completion of the proposed project; and (iii) The mode of disposal in this case shall be through tender in news.*

The aforesaid material information relating to sale of two units of the Company was not disclosed in the statement of material facts annexed with the notice dated July 9, 2019 of the EGM. Pursuant to advice of the Commission vide letter dated July 26, 2019, the Company vide its letter dated August 5, 2019 informed that the information as per requirements of SRO was disseminated to (i) PSX vide letter dated July 2, 2019, (ii) was placed on website of the Company and was (iii) published in daily business recorder in its publication of July 27, 2019. Moreover, during the course of the proceedings, the Authorized Representative, also placed reliance on the said documents as evidence of compliance in terms of section 134 and relevant SRO. Considering all the relevant available record, I, am of the view that in terms of section 134 of the Act, the statement of material facts containing relevant information as per requirements of the Act and of the SRO was required to be annexed. On receipt of the notice of EGM the Commission found the information

	<p>provided in statement of material facts was deficient in terms of SRO, the Company disseminated through newspaper publication, PSX, by placing on website and stated that it has circulated the deficient information to every member attending the EGM. It was never denied that complete information as per requirements of SRO and of the Act was not disseminated in the statement of material facts as annexed with the notice of EGM, and rather the required information was disseminated as addendum to the notice of the EGM. Had the Commission not drawn attention to this deficiency, the shareholders were at the risk to be deprived of material information about the sanction seeking approval of members for sale of two units of the Company, which in terms of section 183(3) of the Act was required.</p> <p>(iii) I, am of the view that the Respondents showed negligence by not providing complete information in the statement of material facts, as per requirements of the Act and of SRO, as annexed along with the notice dated July 9, 2019 of EGM. Hence, the aforesaid does not exonerate the Respondents that action may not be taken for default of the requirements of SRO and section 134(3) of the Act.</p> <p>2. In view of above, I am of the considered view that the Respondents have not complied with the requirements stipulated in terms of section 134 of the Act and of the SRO, hence, liable for penal action.</p> <p>A penalty of Rs. 80,000/- only (Rupees eighty thousand) was on the Respondents (Rs. 10,000 per Respondent).</p> <p>Penalty order dated January 14, 2021 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A penalty of Rs. 80,000/- (Rupees eighty thousand only) was imposed on the Respondents.
7. Current Status of Order	Appeal has been filed.