



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

Say No to Corruption

Before

**Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)**

In the matter of

**Board of Directors of Imperial Limited**

Number and date of Show Cause Notice (SCN)	2(356)SMD/Adj-1/2022-962 Dated May 24, 2023
Date of Hearing:	July 10, 2023
Present at the Hearing:	Mr. M. Javed Panni, Corporate Consultant (Authorized Representative)

### **ORDER**

#### **UNDER SECTION 106 OF THE SECURITIES ACT, 2015**

This Order shall dispose of the proceedings initiated against Board of Directors of Imperial Limited (**the Company**) through Show Cause Notice No. 2(356)SMD/Adj-1/2022-962 dated May 24, 2023 (**the SCN**) issued under Section 106 of the Securities Act, 2015 (**the Act**) on account of alleged contravention of Section 103 read of the Act read with regulation 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 (**the Regulations**).

2. Brief facts of the case are that the following individuals (**Collectively referred hereunder as the Respondents**) were appointed as the Directors of the Company in AGM held on December 31, 2022.

S. No.	Name	Status
1	Mr. Waqar Ibn e Zahoor Bandey	Chairman & Director
2	Mr. Naveed Mughis Sheikh	CEO & Director
3	Mr. Ibrahim Naveed Sheikh	Director
4	Mr. Muhammad Tariq	Director
5	Mrs. Fakhra Chaudhary	Director
6	Mr. Najam Faiz	Director
7	Mr. Shahzad Ullah Khan	Director

3. In terms of Section 103 of the Act read with regulation 3(4) of the Regulations, the Respondents were required to file Form 5 with the Securities and Exchange Commission of Pakistan (**the Commission**), within 7 days of becoming the director of the Company. However, the record available with the Commission transpires that the Directors/Respondents have filed their respective Form 5 on March 13, 2023 with **delay of 65 days**.





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4. The Commission vide letter dated March 08, 2023 sought explanation from the Respondents with respect to their alleged failure to file Form 5. The Company on behalf of the Respondents vide letter dated March 15, 2023 submitted that delay in filing of Form 5 by each director was overlooked inadvertently which have been filed as per the requirement and requested to condone the delayed filing of Forms 5.

5. In view of the above, the Respondents, *prima facie*, have violated Section 103 of the Act read with regulation 3(4) of the Regulations, which attracts applicability of the penal provision of Section 106(2)(a) of the Act. Accordingly, the Commission while taking cognizance of the aforementioned non-compliance served the SCN upon the Respondents, requiring them to submit their written reply within 14 days of the date of the SCN.

6. In response to SCN, the Representative vide letter dated July 10, 2023 submitted the reply on behalf of the Respondents as under:

*"...On behalf of all the above-mentioned directors, combined submissions are made as under:*

*(i) Non-filing of Form-5 had come to directors knowledge when the Company sent them the Commission's letter dated March 08 2023.*

*(ii) The delay in filing of the returns has been due to untimely resignation of the Company Secretary which had held-up all statutory compliances.*

*(iii) In terms of section 102(3) of the Securities Act, 2015, the returns by the Company on Form-4 were filed on March 15, 2023*

*(iv) The election of directors was held on December 31, 2022, and Form-5 in respect of each director, were filed with the Commission (Headquarters) through Company's letter dated March 15, 2023.*

*(v) None of the directors have traded in the shares of the Company and the shares held by them are the same.*

*(vi) All the directors regret the delay in filing of Form-5. This default was not at all willful and has been due to reason beyond the control of the directors.*

*We hope that our above submissions will meet the satisfaction of the Commission. It is prayed that as the defaults were FORCE MAJEURE and not at all willful, no penal action may be taken against the directors and the Company."*

7. The Company was provided opportunity of personal representation and the hearing was fixed in the matter for July 10, 2023. The hearing was attended by Mr. M. Javed Panni, Corporate Consultant, as Authorized Representative (**the Representative**) of the Respondents. During the course of hearing, the Representative was advised to explain the reasons for the alleged non-compliances, as narrated in the SCN. The Representative reiterated the submissions and arguments made in the written reply and admitted occurrence of delay in filing of Form 5 by the Directors/Respondents. The Representative added that due to resignation of the Company Secretary, all statutory compliances were held-up as he has been looking after all the regulatory compliances. He further submitted that Forms 5 have been subsequently filed by the Respondents as soon as non-filing of the same was pointed out by the Commission vide letter dated March 8, 2023. The Representative requested that a lenient view may be taken in the matter as the default was not willful.

8. The relevant provisions of the law are reproduced as under:





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### Section 103 of the Act:

#### **"103 - Notification to the Commission of directors and others' interest**

(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form -

- (a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;
- (b) the particulars of any change in the interest aforesaid; and
- (c) any change in his position.

(2) The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises."

### Regulation 3(4) of the Regulations:

#### **"3 - Reporting of Beneficial ownership in listed equity securities under Section 101 to Section 103 of the Act ...**

(4) The directors, executive officers and substantial shareholders of the equity securities in a listed company shall in accordance with section 103 of the Act submit statement of Beneficial ownership in Form 5 and report any subsequent change therein or position to the Commission on Form 6."

### Section 106 of the Act:

#### **106. Directive by the Commission.—(1) ...**

(2) where any person who contravenes or fails to comply with any provision of sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct,—

(a) in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees and to a further sum which may extend to one thousand rupees per day for every day during which the default continues;"

9. The intent of aforesaid provisions of the law is to ensure that public shareholders of a listed company are treated fairly and equitably in relation to beneficial ownership in a listed company, thereby maintaining stability in the securities market. Well-functioning financial markets largely depend upon disclosure regime that provides transparency into the behavior of shareholders as well as the beneficial ownership and control structure of listed companies. Investors, listed issuers and other stakeholders benefit from the information disseminated through these disclosures. Therefore, timely filing of Form-5 is aimed at not only ensuring transparency in acquisition of shareholding but it serves as an instrument for providing the updated information on the beneficial ownership of listed companies to the Commission. In addition to transparency, the disclosure regime also helps in developing general market efficiency.

10. I have gone through the facts of the case and considered both written as well as verbal submissions of the Representative in light of the applicable provisions of the law and the available record and noted that the Respondents were required to file their returns of beneficial ownership on Forms 5 within seven (07) days of becoming director of the Company as required under Section 103 of the Act read with regulation 3(4) of the Regulations. Further, the admission made by the Respondents in late filing of the required returns on Form 5 to the Commission, is on the record. As per record of the Commission, the Directors/Respondents have filed their Form 5 after a **delay of 65 days** i.e. on March 13, 2023. The argument given by the Respondents that the default was "Force Majeure" and not willful is not tenable as "Force Majeure" is generally referred to as unforeseen circumstances such as





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natural causes (fire, storm, flood) or governmental or societal action (war, invasion, civil unrest, labor strikes) that prevent someone from fulfilling its obligations under a contract. However, the review of instant case shows that the Respondents have given the reason "*untimely resignation of the Company Secretary*" for delay in filing of the returns which in no way can be considered as "Force Majeure". Considering the importance of the compliance function, the Company should have made proper arrangements including but not limited to succession planning of the incumbent Company Secretary.

11. In view of the foregoing and the verbal submissions made by the Respondents, non-compliance/contravention of the provisions Section 103 of the Act read with regulation 3(4) of the Regulations has been established. Therefore, in exercise of the powers conferred upon me under Section 106(2)(a) of the Act, I hereby impose a penalty of **Rs. 35,000/- (Pak Rupees Thirty-Five Thousand Only)** in aggregate on the Respondents, in the following manner:

S. No.	Name of Director(s)	Amount of Penalty Imposed (Rs.)
1.	Mr. Waqar Ibn e Zahoor Bandey	5,000
2.	Mr. Naveed Mughis Sheikh	5,000
3.	Mr. Ibrahim Naveed Sheikh	5,000
4.	Mr. Muhammad Tariq	5,000
5.	Mrs. Fakhra Chaudhary	5,000
6.	Mr. Najam Faiz	5,000
7.	Mr. Shahzad Ullah Khan	5,000
<b>Total</b>		<b>35,000</b>

12. The Respondents are directed to deposit the aforesaid penalty in the account of the Commission being maintained with the designated branches of MCB Bank Limited, within a period of thirty (30) days of the announcement of this Order, and furnish original Deposit Challan to this office.

13. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)  
Director/Head of Department  
(Adjudication Department-I)



**Announced:**  
July 18 2023  
Islamabad