



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan - Director/ Head of Department

*In the matter of*

Khairpur Sugar Mills Limited

Number and Date of SCN: CSD/ARN/284/2016-303 dated May 17, 2024

Hearing Dates: June 24, 2024; and July 09, 2024

Present: Ali Lakhany, Advocate and Shehrayar Rind, Advocate;  
Reanda Haroon Zakaria Associates

## ORDER

**Under regulations 4(1), 4(2), 6(3), 6(4) and (7) of the Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020 read with Section 512(2) of the Companies Act, 2017**

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through Show Cause Notice No. CSD/ARN/284/2016-303 dated May 17, 2024 (the SCN) issued under regulations 4(1), 4(2), 6(3), 6(4) and regulation 7 of Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020 (the "Regulations") read with Section 512(2) of the Companies Act, 2017 (the "Act") to Khairpur Sugar Mills Limited (the "Company") and its Board of Directors (BODs), hereinafter collectively referred to as the Respondents.

2. Brief facts of the case are that the Commission pursuant to the requirements of Section 220(1) and 250(1) of the Act has notified the Regulations through S.R.O. 1336(I)/2020 dated December 14, 2020 (SRO). In terms of regulation 4(1) of the Regulations, the board of directors of the company are required to appoint first cost auditor within ninety (90) days from the date of the SRO and thereafter appoint cost auditor within one hundred and eighty (180) days of the commencement of every financial year of the company. Further, in terms of regulation 4(2) of the Regulations, appointment of cost auditor is also required to be notified on the prescribed form to the Commission within fourteen (14) days from the date the appointment of the cost auditor.

3. In terms of regulation 6(3) of the Regulations, the cost auditor is required to make out a report related to cost audit within one hundred and eighty (180) days of the close of financial year in the form as set out in Appendix II to the Board along with a statement in the form set out in Appendix III and simultaneously required to submit such copy to the Commission and the registrar concerned. In terms of regulation 6(4) of the Regulations, the Company is required,



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within thirty days from the date of receipt of copy of the report, furnish to the Commission full information and explanation on every reservation or qualification contained in such report.

4. During the review of cost accounts of the Company for the year ended September 30, 2022 (the accounts) in pursuant to the Regulations, it was transpired that:

- The Company vide letter dated April 27, 2022 informed the Commission that its Board has appointed the cost auditor of the Company for the year ended September 30, 2022. The last date for such appointment in accordance with the Regulations was March 30, 2022, however, the Company appointed the cost auditor with a delay of 28 days.
- Also, the cost auditor signed the cost audit report on May 09, 2023 and submitted the audited cost accounts on May 23, 2023.

5. Further, for the year ended September 30, 2023, as per the Regulations, the Company was required to appoint the cost auditor by March 30, 2023, however, till May 31, 2023, the Company had not appointed and informed the Commission about such appointment i.e. 56 days overdue till date. The Commission vide letter dated May 31, 2023 sought clarification from the Company with respect to the afore-mentioned non-compliances of the Regulations. In addition to above, the Commission vide letter dated May 31, 2023 sought clarification from the cost auditor for delay in signing of the cost accounts for the year ended September 30, 2022. The Company vide letter dated June 20, 2023 provided its comments and, *inter alia*, stated that:

- a) 30-Sept-2022 Cost Auditor Appointment: The Company regrets the oversight;
- b) 30-Sept-2023 Cost Auditor Appointment: The Company regrets the oversight in not appointing and informing the Commission about cost auditor. The delay was due to illness of Company Secretary. The Company claims that Board appointed the cost auditor in its meeting held on 14-March-2023.
- c) 30-Sept-2022 Late Signing of Cost Reports: We apologize for the delay in providing information which is due to illness of Company Secretary which led to significant delays in processing of critical communications.

6. The Cost Auditor vide letter dated June 02, 2023 provided its reply and, *inter alia*, stated that:

- Cost auditor report for the year 2021 and 2022 were submitted in time for board's approval; and
- The board approved the 2021 cost accounts on 20-April-2022 and for the year 2022 on 09-May-2023. The extract of board approval for 2021 and 2022 are also given.



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7. The Company in its reply provided a copy of its letter dated June 08, 2023 about appointment of cost auditor for the year ending September 30, 2023 in which it claims that board held a meeting on March 14, 2023 and appointed the cost auditor in it.

8. In view of the above, the reply of the Company is not found satisfactory due to the following reasons:

(i) For the year September 30, 2021:

The accounts should have been approved by the board and signed by the cost auditor within 180 days of closed up to March 29, 2022. However, the board approved the accounts on April 20, 2022 with a delay of 22 days which resulted the cost auditor to sign the cost audit report on April 20, 2022.

(ii) For the year September 30, 2022:

a) The cost auditor was required to be appointed till March 30, 2023. However, the Company appointed the cost auditor on April 27, 2022 with a delay of 28 days.

b) The cost accounts of the Company were approved by the board on May 09, 2023 which should have been approved up to March 29, 2023. The cost auditor signed the cost audit report on May 09, 2023. Therefore, a delay of 41 days.

(iii) For the year September 30, 2023:

As claimed by the Company, the board appointed the cost auditor on March 14, 2023 and the Company was supposed to inform the Company till March 28, 2023 i.e. within 14 days of appointment. However, the Company informed the Commission on June 08, 2023 with a delay of 72 days.

9. In view of the above, the Respondents, *prima facie*, contravened with the requirements of regulations 4(1), 4(2), 6(3), 6(4) of the Regulations.

10. In order to take cognizance of the aforesaid non-compliances, SCN was served on the Respondents for the aforesaid contraventions of regulations 4(1), 4(3), 6(3) and 6(4) of the Regulations. The Company Secretary vide letter dated May 29, 2024, submitted written response on behalf of the Respondents and relevant extracts thereof are provided hereunder:

*"Previously we have received notice from the commission EMD/233/340/2002/510 dated 31-05-2023 and our reply on June 20, 2023 and July 17, 2023 regarding the examination of cost accounts. Where we have provided the detailed replies to all the discrepancies which have been highlighted in that letters and in your show cause notice also.*





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*The gist of all the replies is that the discrepancies which has been highlighted were un-intentional and was due to the prolonged illness of our Company Secretary, for which we extend our sincere apology to commission, vide our all-previous letters with this reply also.*

*The Company on becoming aware of this situation regarding non-compliances and the continued illness of the Company Secretary, the Company hired another dedicated resource to address all these issues and to make the regulatory compliances process foolproof.*

*The company in all previous replies also shown its full commitment to overcome and the highlighted issues and not to repeat any of these issues and other requirement as enumerated in the (Maintenance and Audit of Cost Accounts) Regulations, 2020.*

***Compliance for 2023 and 2024:** As committed in our previous correspondence, we have ensured timely compliance for the financial year ending September 30, 2023. The cost audit report for the year ending September 30, 2023, was completed and couriered to SECP Islamabad on March 25, 2024.*

*Additionally, for the financial year ending September 30, 2024, the cost auditor was appointed on March 8, 2024, and the necessary Form (Appendix I) was couriered to SECP Islamabad on March 20, 2024. The auditor's consent was obtained on March 1, 2024.*

*Given our compliance as committed for the financial year ending September 30, 2023, and September 30, 2024, we respectfully request that the previous mistakes be considered unintentional and be condone for once."*

11. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 24, 2024 which was adjourned on the request of Mr. Ali Lakhany, Advocate and Mr. Shehryar Rind, Advocate; Reanda Haroon Zakaria Associates, the Authorized Representatives of the Respondents (**the Representatives**) vide letter dated June 21, 2024.

12. The Representatives vide letter dated July 08, 2024 made the written response, *inter alia*, as under:

*"1. The Company submitted its reply dated 29th May 2024 before your learned authority. In this regard, the response of the Company is reiterated and is being attached and marked as Annexure A.*

*2. It is most respectfully submitted that the Company has demonstrated its commitment to ensure compliance by submitting the cost audit report for the year ending 30th September 2023 on 25th March 2024. Furthermore, appointment of cost auditor for the year ending 30th September 2024 was made on 8th March 2024 and the same was informed to SECP on 20th March 2024. Both the instances are within the required timelines of the*



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3. Furthermore, unfortunately the Company had to go through the sad demise of its Company Secretary who was spearheading the compliance related matters pertaining to the Company and its directors. Subsequently, his successor, was also going through severe illness.

*In view of the above submissions and considering the demonstrated commitment of the Company to ensure compliance, it is humbly prayed before your learned authority to please take a lenient view and condone the same. It is pertinent to mention here that the delays in previous financial years were not willful."*

13. Another hearing in the matter was fixed for July 09, 2024 wherein the Representatives appeared. The Representatives reiterated the written argument submitted earlier in response to the SCN, admitting the default which occurred due to the demise of their Company Secretary. They assured to be compliant with the requirements of the law in letter and spirit and requested to condone the delay.

14. Relevant legal provisions of the Regulations and the Act are reproduced as under:

#### **"The Regulations:**

**4. Appointment of cost auditor.** - (1). *The first cost auditor shall be appointed by the board of directors of the company within ninety days from the date of this notification and thereafter cost auditor for subsequent financial year shall be appointed within one hundred and eighty days of the commencement of every financial year of the company*

(2). *Every company shall inform the appointment of cost auditor to the Commission within a period of fourteen days of the board meeting in which such appointment is made, in the Form set out in Appendix I.*

#### **6. Cost auditor's report.** -

(3) *The cost auditor shall make out a report within one hundred and eighty days of the close of the financial year to which the cost audit relates, to the board in the form set out in Appendix II along with a statement in the form set out in Appendix III and simultaneously shall submit a copy to the Commission and the registrar concerned.*

(4) *The company shall, within thirty days from the date of receipt of copy of the report, furnish to the Commission full information and explanation on every reservation or qualification contained in such report.*

**7. Penalty for contravention of these regulations.** - *Any contravention or violation of any provision of these regulations shall be liable to a penalty as provided in sub-section (2) of section 512 of the Act, notwithstanding the punishment provided under sub-section (6) of section 220 or other provisions of the Act."*

#### **The Act:**

**512. Power to make regulations.** - (2) *Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues"*.



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15. I have gone through the facts of the case, submissions made in writing, and arguments provided during the hearing by the Representatives. It is noted that the provisions of the Regulations regarding the timelines for the appointment of the cost auditor, informing the Commission of the same, signing and approving the audit report by the cost auditor, and submitting the report to the Commission by the Company are explicit. The Respondents are obligated to follow these stipulated timelines. At this juncture, it is imperative to address the following:

- (i) **Whether the Company complied with regulations 6(3) & (4) of the Regulations for the year ending September 30, 2021?**

No, the Company did not comply with regulations 6(3) of the Regulations. The cost auditor's report was required to be submitted within 180 days of the close of the financial year, by March 29, 2022. The report was signed on April 20, 2022, resulting in a delay of 22 days.

- (ii) **Whether the Company complied with regulations 4(1) & (2) of the Regulations for the year ending September 30, 2022?**

No, the Company did not comply with regulation 4(1) of the Regulations. The cost auditor was appointed on April 27, 2022 with a delay of 28 days (required to be appointed by March 30, 2022).

Moreover, the Company did not adhere to regulation 4(2) of the Regulations, as the Company was required to inform the Commission within 14 days of such appointment. However, the Company did not meet this requirement within the stipulated timeframe, which was also admitted by the Representatives.

- (iii) **Whether the Company complied with regulations 6(3) & (4) of the Regulations for the year ending September 30, 2022?**

No, the Company did not comply with regulations 6(3) & (4) of the Regulations. The cost auditor's report was required to be submitted within 180 days of the close of the financial year, by March 29, 2023. The report was signed on May 9, 2023, resulting in a delay of 41 days.

Furthermore, the Company did not meet the requirement of regulation 6(4) of the Regulations by furnishing full information and explanation within 30 days of the report.

- (iv) **Whether the Company complied with regulations 4(2) of the Regulations for the year ending September 30, 2023?**





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No, the Company did not comply with regulation 4(2) of the Regulations. The Company was required to inform the Commission about the appointment of cost auditor within 14 days of the board meeting i.e. on March 14, 2023 as required under the Regulations. However, the information was provided to the Commission by the Company about the same on June 8, 2023, resulting in a delay of 72 days.

**(v) Whether the Company complied with regulations 6(3) & (4) of the Regulations for the year ending September 30, 2023?**

Yes, the cost auditor's report for the year ending September 30, 2023, was submitted on March 25, 2024. The timeline for submission was 180 days after the close of the financial year, which would be by March 29, 2024. Therefore, the submission was made within the required timeline.

**(vi) Whether the Company's explanation for the delays, citing the illness and demise of the Company Secretary, was sufficient to justify the non-compliance with the Regulations?**

No, the Company's explanation for the delays, citing the illness and demise of the Company Secretary, does not justify the non-compliance with the Regulations. While the such circumstances may have contributed to the delays, the Regulations set explicit timelines that the Company is obligated to follow. The challenges faced do not exempt the Company from meeting these deadlines.

16. In view of foregoing, I ascertained that the Respondents have contravened the provisions of; regulations 4(1) of the Regulations by failing to appoint the cost auditor within the stipulated timeframe during FY 2022; and regulation 4(2) of the Regulations by not informing the Commission about appointment of the cost auditor within the statutory timeframes during FY 2022 and FY 2023. Moreover, the Respondents have also contravened the provisions of; regulations 6(3) & (4) of the Regulations during FY 2021 and FY 2022 by not submitting the cost auditor's report and by not furnishing full information and explanation within 30 days of the said report. The said violations have also been admitted by the Representatives.

17. I, therefore, in exercise of powers conferred under section 512 of the Act read with regulation 7 of the Regulations, hereby conclude the proceedings initiated through the SCN by imposing an aggregate penalty of **Rupees two hundred thousand (Rs. 200,000/-)** on the Company. The remaining Respondents are **Warned** to be careful in future and ensure meticulous compliance of the law in letter and spirit.



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18. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

19. Nothing in this Order may be deemed to prejudice the operation of any provision of the Regulations/Act providing for imposition of penalties in respect of any default, omission or violation of the Regulations/Act.

(Shahzad Afzal Khan)  
Head of Department  
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**Announced:**

Dated: August 05, 2024

Islamabad