



# 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

Show Cause Notice No. & Date CSD/ARN/284/2016-302 dated May 17, 2024

Date(s) of Hearing(s): June 24, 2024; and July 09, 2024

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

### ORDER

Under Section 166(1) of the Companies Act, 2017 and Regulation 4(7) of the Companies (Manner and Selection of Independent Directors) Regulations, 2018 read with Section 169 of the Act and Regulations 6(1), 27(1)(I) & (II) and 36(1) of the Listed Companies (Code of Corporate Governance) Regulations, 2019 read with Regulation 37 thereof and Section 512(2) of the Act

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/284/2016-302 dated May 17, 2024 (the SCN) issued, under section 166(1) of the Companies Act, 2017 (the Act) and regulation 4(7) of the Companies (Manner and Selection of Independent Directors) Regulations, 2018 (the Director's Regulations) read with section 169 of the Act and regulations 6(1), 27(1)(I) & (II) and 36(1) of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations) read with regulation 37 thereof and section 512(2) of 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:

(i) During the review of the annual audited financial statements of the Company for the financial year ended September 30, 2022 (the Accounts), it was transpired that:

Election of directors was held on April 21, 2021 in Extraordinary General Meeting (the EOGM) and the Company disclosed following two directors as independent:

1. Mr. Asif Khan Brohi; and
2. Lt. Gen (Retd) Tahir Mahmud Qazi

(ii) In this regard, the Commission vide letter dated May 31, 2023 sought clarification from the Company whether the afore-mentioned elected independent directors exist in



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the PICG database of independent directors. The Company vide letter dated June 20, 2023, *inter alia*, submitted the following reply:

*"It was only after receipt of your letter that we became aware of the mandatory nature of the provision".*

- (iii) The Company in its subsequent annual audited accounts for September 30, 2023 has highlighted the said non-compliance of directors elected as independent were not from the PICG independent directors' database. Also, the auditor in its auditor's review report has also highlighted the same.
- (iv) The aforementioned reply of the Company shows that it had not carried out any due diligence in selecting/electing the independent directors. Therefore, in light of the above, the Company has, *prima facie*, defaulted in complying with Section 166(1) of the Act and Regulation 4(7) of the Regulations.
- (v) Furthermore, the aforementioned two elected directors were also members of the audit committee. Moreover, Mr. Brohi was also the Chairman of audit committee.
- (vi) The Company in its Statement of Compliance with the Regulations for the years 2021 and 2022 expressed at Sr. No. 18 that it had complied with all the mandatory requirements of the Regulations.
- (vii) Subsequently for the year ended September 30, 2023, the Company in its Statement of Compliance with the Regulations at Sr. No 18 has removed its compliance status with Regulation 6 and also explained the nature of non-compliance. The auditor also highlighted the same non-compliance in his review report.
- (viii) Therefore, the Company/Board has, *prima facie*, not complied with the mandatory requirements of Regulation 6, 27 and 36 of the Regulations.

3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondents seeking justification for not complying with the requirements of the Act, the Director's Regulations and the Regulations. In response to the SCN, the Company Secretary on behalf of the Respondents vide letter dated May 29, 2024 requested an extension to furnish response.

4. The Company Secretary vide letter dated June 12, 2024 made written response, *inter alia*, as under:

***"A) Non-Compliance with the Election of Independent Directors:***

*While it is true that the company mistakenly overlooked the PICG database requirement in the 2021 election, it is important to note that the directors were selected by exercising due diligence based on their expertise and experience of more than 25 years in their respective fields. The*



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*company fully complied with Regulation 4(7) in the 2021 election and also submitted an undertaking on a non-judicial stamp paper. Initially, the requirement to select independent directors from the PICG database was overlooked. We fully understood and complied with all other requirements related to the selection of independent directors.*

*We regret this oversight and assure the SECP that this was an unintentional mistake. In the election scheduled for April 24, 2024, the company elected its directors from the PICG database and ensured compliance with all other requirements to the best of our knowledge and belief.*

*To reiterate, our directors were indeed independent but were not registered in the PICG database. We were fully aware of the need for independent directors but considered the PICG databank selection to be optional until clarified by the commission. Additionally, in our financial statements for September 2023, we highlighted that the independent directors were not selected from the PICG database. By this time, we had received commission letter and understood the mandatory nature of the relevant section and regulation. We explicitly mentioned that this issue would be rectified in the April 2024 elections, and when the time came, we fulfilled this commitment.*

### ***B) Non-Compliance with Listed Companies (Code of Corporate Governance) Regulations, 2019:***

*Regarding the audit committee, we appointed Mr. Asif Khan Brohi and Lt. Gen. (Retd) Tahir Mahmud Qazi as independent directors. Although Mr. Brohi was not registered in the PICG database, he met all other compliance reporting profile requirements. He having vast experience on serving the board of directors and other senior managerial designation, plus having solid finance background. Following the SECP's indication, we rectified this issue. The company committed to selecting the independent director from the PICG database in the AGM or the next election scheduled for April 24, 2024, and fulfilled this commitment.*

*Additionally, we would like to bring to your attention the unfortunate circumstances that impacted our compliance efforts. Our company secretary, Abdul Wahid Navitwala, passed away, and his successor, Mr. Shoaib ul Haq, has been severely ill for the last three years. Consequently, the company hired extra staff last year to manage compliance matters effectively. Despite these challenges, we have been diligently working to fulfill all compliance requirements, as highlighted in our previous communications. We request leniency in this matter, as the company has made significant efforts to meet all compliance requirements highlighted in your letter dated May 31, 2023, in the 2024 election.*

*We understand the importance of compliance with the mandatory requirements outlined in Regulation 6, 27, and 36 of the Listed Companies (Code of Corporate Governance) Regulations, 2019. We acknowledge the discrepancies highlighted regarding the composition of the audit committee and the provision of necessary explanations in our Statement of Compliance. Steps*



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*are being taken to address these issues and ensure full compliance with the regulations in subsequent reporting periods.*

*We assure you of our commitment to upholding regulatory requirements and maintaining transparency and integrity in our corporate governance practices."*

5. 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.

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

*"1. The crux of the subject SCN is with respect to enrollment of the following two independent directors of the Company in the PICG Database:*

- a. Mr. Asif Khan Brohi; and*
- b. Lt. Gen (Retd) Tahir Mahmud Qazi.*

*The Company submitted its reply dated June 12th 2024 before your learned authority. In this regard, the response of the Company is reiterated and is being attached and marked as Annexure A.*

*It is further submitted that Mr. Lt. Gen (Retd) Tahir Mahmud Qazi is no longer an independent director and has been replaced by Mr. Ghulam Nabi Memon [effective subsequent to year end Sept. 2023]. Both Mr. Asif Khan Brohi and Mr. Ghulam Nabi Memon are part of the PICG Database with effect from April 2024. The evidence in this regard is enclosed as Annexure B and Annexure C. This demonstrates the strong commitment of the Company toward ensuring compliance.*

*2. As far as compliance with regulation 4(7) of the Companies Manner and Selection of Independent Directors Regulations 2018 is concerned, it is most respectfully submitted that the Company did obtain the undertaking as part of the due diligence exercise from Mr. Asif Khan Brohi and Mr. Lt. Gen (Retd) Tahir Mahmud Qazi which is part of record [also being attached as Annexure D and Annexure E]. Therefore, both the directors were indeed independent and hence the non-compliances highlighted in paragraph number B of the SCN stand complied with.*

*3. Furthermore, during the period in question, unfortunately the Company had to go through the sad demise of its Company Secretary who was spearheading the compliance related matters*



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*pertaining to the Company and its directors. The matters got worse when his successor also underwent serious 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."*

7. Another hearing in the matter was fixed for July 09, 2024 wherein the Representatives appeared and reiterated the written argument submitted earlier in response to the SCN and *inter alia*, submitted that;

- The Company obtained undertaking and declaration from the independent directors;
- One of the directors are now being replaced with the PICG registered independent director and the other is also being registered with the PICG; and
- Admitted the default and assured to comply with the requirements

8. Relevant provisions of the Act, Director's Regulations and Regulations provide that:

**Section 166 of the Act:**

*"166. Manner of selection of independent directors and maintenance of databank of independent directors. – (1) An independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:*

*Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment."*

**Regulations 4(7) of the Director's Regulations:**

*"Every company shall be responsible for exercising its due diligence before selecting an individual from the databank or appointment as independent director. In particular, every company shall require such individual to submit an undertaking on a non-judicial stamp paper that he/she meets the requirement of sub-regulation (1) of this regulation along with relevant supporting information supporting the same."*

**Section 169 of the Act:**

*"169. Penalties. – Whoever contravenes or fails to comply with any of the provisions of sections 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes*



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*the penalty from becoming or continuing a director of the company for a period not exceeding three years."*

**Regulation 6(1) of the Regulations:**

*"(1) It is mandatory that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors."*

**Regulation 27(1) (i) & (ii) of the Regulations:**

*"(1) It is mandatory that the audit committee shall be constituted by the Board keeping in view the following requirements, -*

*(i) the Board shall establish an audit committee of at least three members comprising of non-executive directors and at least one independent director;*

*(ii) chairman of the committee shall be an independent director, who shall not be the chairman of the Board."*

**Regulation 36(1) of the Regulations:**

*"(1) It is mandatory that the company shall publish and circulate a statement, as given under Annexure A to these Regulations, along with their annual reports to set out the status of their compliance with the requirements of these Regulations and the said statement shall be specific and supported by necessary explanations."*

**Regulation 37 of the Regulations:**

*"Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act."*

**Section 512(2) of 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."*

9. I have reviewed the facts of the case, considered the written and verbal submissions made by the Representatives in the light of the applicable legal provisions and available record. In this regard, it is observed that.

**(i) Whether the independent directors were selected from the PICG database by the Company:**

No, the independent directors appointed by the Company were not selected from the PICG database.

**(ii) Significance of Selecting Independent Directors from PICG Database:**

The significance of selecting independent directors from the PICG database under



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Section 166 of the Act is paramount in upholding the standards of corporate governance and regulatory compliance. This requirement ensures that independent directors are not only qualified and experienced but also vetted for their eligibility and independence. By adhering to this mandate, companies demonstrate a commitment to transparency and accountability, which are critical for maintaining stakeholder trust and confidence. Compliance with this provision of the law reflects the company's dedication to best practices in governance, ultimately fostering a culture of integrity and responsibility at the board level.

However, the Company as well as the Representatives admitted the oversight for not selecting directors from the PICG database in the 2021 election. While the Company did obtain the necessary undertakings from the appointed directors, but it did not fully adhere to the required due diligence process as required under regulation 4(7) of the Director's Regulations. Due diligence involves not only assessing qualifications but also ensuring that directors are selected from the PICG databank and verifying their independence. By not meeting these requirements, the Company did not comply with the regulatory standards for independent director appointments as required under section 166(1) of the Act read with regulation 4(7) of the Director's Regulations.

**(iii) Importance of complying with the requirements of the Regulations:**

Regulations 6, 27, and 36 of the Regulations are pivotal in upholding the standards of corporate governance. Regulation 6 of the Regulations ensures that each listed company maintains a board with a significant proportion of independent directors, which enhances board impartiality and decision-making. While regulation 27 of the Regulations mandates the composition of the audit committee, requiring it to include independent directors and be led by an independent chairman, thereby reinforcing oversight and accountability in financial reporting. Regulation 36 of the Regulations requires companies to publish a statement of compliance with these regulations in their annual reports, ensuring transparency and providing stakeholders with critical insights into the company's governance practices.

However, the Company did not fully adhere to the requirements of Regulations 6 and 27 of the Regulations. The independent directors appointed were not registered with the PICG database, and the chairman of the audit committee did not meet the regulatory requirements for independence. Although the Company highlighted these issues in its statement of compliance as required under regulation 36 of the Regulations, but the Company did not comply with the requirements of regulations 6 and 27 of the Regulations, which was also admitted by the Representatives the non-compliance with these regulations. Thus, the Company contravened with the requirements of the Regulations.



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**(iv) Whether subsequent compliance with regulatory requirements absolves the Respondents from the default?**

No, subsequent compliance with regulatory requirements does not automatically absolve the Respondents from prior defaults. The Company's previous lapses, such as appointing unregistered directors and failing to meet with the requirements of the Regulations remain significant.

However, the Company has taken corrective measures by replacing Lt. Gen (Retd) Tahir Mahmud Qazi with Mr. Ghulam Nabi Memon, who is registered with the PICG database, and by also registering Mr. Asif Khan Brohi in the PICG database. The Company has provided evidence of these rectifications and assurances of future compliance that demonstrate the Company's commitment to adhering to regulatory requirements.

10. In view of the aforesaid, it is stated that contravention with section 166(1) of the Act read with regulation 4(7) of the Director's Regulations and regulation 6 and 27 of the Regulations at relevant point in time have been established and the same have also been admitted by the Representatives. However, keeping in view of the fact that the non-compliances have now been rectified, I, in exercise of the powers conferred upon me under sections 169 and 512(2) of the Act, hereby conclude the proceedings initiated through SCN with a warning to the Respondents and advising them to ensure compliance with all the regulatory laws in letter and spirit.

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

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

**Announced:**

Dated: August 05, 2024

Islamabad