



# 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/284/2016-300 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 Regulations 3(b), 4(1A) and 11B of the Companies (Post Ballot) Regulations, 2018 and Circular 4 of 2021 Dated February 15, 2021 read with Section 510(2) of the Companies Act, 2017 and Section 512(2) thereof**

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/284/2016-300 dated May 17, 2024 (the SCN) issued, under regulations 3(b), 4(1A) and 11B of the Companies (Post Ballot) Regulations, 2018 (the Regulations) and Circular 4 of 2021 dated February 15, 2021 (the Circular) read with section 510(2) of the Companies Act, 2017 (the Act) and section 512(2) thereof 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 notices of Annual General Meeting (AGM) of the Company for the years 2023 and 2024, it was transpired that the Company held the following three general meetings:
  - a) **AGM held on January 27, 2023:** In the notice of AGM, the Company gave option of video con facility to only those shareholders who were holding at least 10% shares at a geographical place, contrary to the requirements of the Circular;
  - b) **Extra-Ordinary General Meeting (EOGM) held on April 23, 2024:** In this meeting, election of directors was held. Video con facility was only provided to shareholders who were holding at least 10% shares at a geographical place, contrary to the requirements of the Circular. The right of e-voting and ballot



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paper was not provided in the EOGM notice contrary to the requirements the Regulations; and

- c) **AGM held on January 26, 2024:** In the notice of AGM, video con facility was only provided to those shareholders who are holding at least 10% shares of the Company at a geographical place, contrary to the requirements of the Circular.
- (ii) In view of the above, the Company, *prima facie*, contravened the requirements of the Circular as it has failed to provide the video con facility in the notices of three general meetings and the requirements of the regulations 3(b) and 4(1A) 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 Circular and the Regulations. In response to the SCN, Company Secretary vide letter dated May 29, 2024 made written submission on behalf of the Respondents, *inter alia*, as under:

**"AGM held on January 27, 2023:**

*We provided the video conference facility only to shareholders holding at least 10% shares in a geographical area. This decision was based on Section 24 of the Companies Act, 2017, which allows the company to consider the geographical dispersal of its members. We were not aware of the changes introduced by Circular No. 4 of 2021 at that time. We now acknowledge the updated requirement and will comply fully in the future.*

*Additionally, we did not receive any requests from shareholders for the provision of video link facilities. Had we received such requests; we would have certainly provided this service.*

**EOGM held on April 23, 2024:**

*The election of directors was held in compliance with Section 159(5) of the Companies Act, 2017. According to this section, if the number of candidates does not exceed the number of directors fixed under sub-section (1), there is no need for balloting. As we received only 7 applications for the 7 available seats, all candidates were elected unopposed, and there was no need for an election or balloting. However, we understand the necessity of providing e-voting and ballot papers as per the updated regulations and will ensure compliance in the future.*

**AGM held on January 26, 2024:**

*The video conference facility was again provided to shareholders holding at least 10% shares in a geographical area, as per our previous understanding of the law. We now recognize the necessity to provide this facility to all shareholders and will ensure compliance with Circular No. 4 of 2021 going forward.*

*Similar to the previous AGM, we did not receive any requests from shareholders for the provision of video link facilities. Had we received such requests; we would have certainly provided this service.*



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*We assure you that our company is committed to adhering to all regulations and circulars issued by SECP. Any unintentional oversights on our part will be rectified, and we will ensure full compliance in the future."*

4. 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.

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

*"It is pertinent to understand that Circular No. 4 of 2021 dated 15th February 2021 [the "Circular"] was introduced in the context of COVID-19. The Company acknowledges that the Circular was not followed, being a lapse on the part of its company secretary, however such a lapse was not willful and did not involve any element of mens rea. Your learned authority will appreciate that the Company was in full compliance with section 134(b) of the Companies Act 2017 [the "Act"] where it provided a video link facility to such members holding 10% of the total shareholding. This confirms that the Respondents are committed to comply with the applicable laws, regulations, and the circulars/notifications issued thereunder. Furthermore, in all general meetings not a single complaint from any shareholder was received by the Company nor any of the regulators with respect to the said issue.*

*The second issue in the SCN pertains to the right of e-voting and ballot paper under the requirements of the Companies (Postal Ballot) Regulations, 2018 [the "Regulations"] with respect to election of directors held in the EOGM dated 23rd April 2024. The relevant regulation is reproduced below:*

*"3. Applicability. The right of vote through postal ballot shall be provided to*

*(b) a listed company 4(for all businesses classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act]."*

**[Emphasis is ours]**

*Since the number of candidates did not exceed the number of directors fixed under section 159(1) of the Act, the aforementioned regulation is not applicable in the instant case and hence the same is liable to be vacated from the SCN."*

6. 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;



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- The requirement to provide video-con facility to all members as required under the Circular was missed unintentionally in AGMs and EOGM;
- Company secretary passed way which caused a gap in compliance with the requirements;
- The requirement to comply with the Regulations with respect to the election of directors held in the EOGM was not required as the candidates did not exceed the number of directors fixed;
- Engaged professionals to ensure compliance; and
- Requested to condone the non-compliance and assured to be compliant in future.

7. Relevant provisions of the Circular, Regulations and Act provide that:

### *"The Circular*

*Circular 4 of 2021. - (2) Now, keeping in view the fact that provision of facility for attending general meetings of listed companies virtually through video-link, webinar, or other electronic means helps maximization of members' participation in such meetings; SECP in continuation of its above mentioned Circulars hereby further directs that all listed companies to ensure participation of members in general meeting through electronic means as a regular feature from the date of this Circular till further orders. Furthermore, the Board shall ensure that facilities so provided are seamless and without any interruption.*

### *The Regulations*

**3. Applicability.** – *The right of vote through postal ballot shall be provided to members of- (b) a listed company for all businesses classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.*

### **4. Responsibility of company.** –

*(1A) The right to vote through electronic voting facility and voting by post shall be provided to members of every listed company for all businesses classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.*

**11B. Penalty for contravention of these regulations.** – *(1) Whoever fails or refuses to comply with, or contravenes any provision of these regulations, or authorizes or permits such failure, refusal or contravention shall be punishable with penalty as provided in sub-section (2) of section 512 of the Act.*

### *The Act*

**Section 510 of the Act.** – *Power to issue directives, circulars, guidelines. (2) Any person who obstructs or contravenes or does not comply with any directive, prudential requirements, codes, circulars, notifications, given under this section shall be liable to a penalty of level 3 on the standard scale.*



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**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."*

8. 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 provision of facility for attending general meetings through electronic means is required to be provided to the members?**

Yes, in accordance with the Circular, the provision of facility for attending general meetings of listed companies virtually through video-link, webinar, or other electronic means helps maximize members' participation in such meetings. Hence, it has been made obligatory for all listed companies to ensure the participation of members in general meetings through electronic means as a regular feature. The purpose of this requirement is to utilize technology to maximize attendance in general meetings.

The Respondents, however, through the notices of AGMs/EOGMs, failed to provide all of their members the facility for attending the said meetings through electronic means. The Representatives admitted the default, stating that it was not intentional and occurred due to the absence of the Company Secretary and also added that all other mandatory requirements were complied with in the AGMs/EOGM notices as envisaged in Section 134(b) of the Act.

In this regard, the Respondents could have effectively communicated the provision of this facility either as a note in the AGM/EOGM notices, on their website, or through any other means to ensure the participation of all their members in general meetings. Therefore, in view of the given requirement of the Circular, the default has been established, and the Respondents have admitted this default and assured that they will ensure compliance in the future.

**(ii) Whether any assurance for subsequent compliance or the absence of complaints from members absolves the Respondent from non-compliance with the Circular?**

No, the assurance given by the Respondent for subsequent compliance with the requirements of the Circular does not exonerate them from the above-stated non-compliance, even if the Company received no complaints from any of its members regarding the non-availability of the facility or if the non-compliance occurred unintentionally.



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(iii) **Whether provision of facility of electronic voting was required to be provided to the members of the Company in case of election of directors?**

Yes, in terms of regulations 3(b) and 4(1A) of the Regulations, the right to vote through postal ballot shall be provided to members of every listed company in case of election of directors if the number of persons who offer themselves to be elected is more than the number of directors fixed. Provision of the right to vote through postal ballot ensures participation of members.

However, the Representatives stated that there was no need for balloting as the Company received exactly seven applications for the seven available seats, resulting in all candidates being elected unopposed without the necessity for an election or balloting process. Therefore, in view of the given requirement of the Regulations, the Respondents are in compliant with the required provisions of the Regulations.

9. Keeping in view of the aforesaid, contravention with the requirement of the Circular at relevant point in time is established, for which the penal provision contained in section 512(2) is attracted. In exercise of the powers conferred upon me under the said, I hereby impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Company i.e. Khairpur Sugar Mills Limited and warn the remaining Respondents to be careful and to ensure compliance of applicable regulatory framework in true letter and spirit.

10. 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 Exchange and Commission of Pakistan within thirty (30) days of the date of this Order and furnish receipted bank challan, to the Commission. In case of failure to deposit the said penalty, the proceedings under section 485 of the Act will be initiated for recovery of the same as arrears of land revenue

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  
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**Announced:**

Dated: August 05, 2024

Islamabad