



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 show cause notice: No. CSD/ARN/284/2016 - 301 dated May 17, 2024

Date of hearing: June 24, 2024; and July 09, 2024

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

ORDER

Under Sections 176, 205 and 207 of the Companies Act, 2017 read with Section 479 thereof

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through Show Cause Notice No. No. CSD/ARN/284/2016 - 301 dated May 17, 2024 ("SCN") issued under sections 176, 205 and 207 of the Companies Act, 2017 (the "Act") read with section 479 thereof against Khairpur Sugar Mills Limited (the "Company") and its Board of Directors, herein collectively referred to as **Respondents**.

2. Brief facts of the case are that:

- i. Examination of the accounts of the Company for the year ended September 30, 2022 ("Accounts") revealed that there has been huge increase in remuneration of the Chief Executive Officer (CEO).
- ii. The Commission vide letter dated May 31, 2023 sought explanation from the Company about huge increase in remuneration of the CEO as per the Accounts. The Company vide letter dated June 20, 2023 provided the extract of the specific agenda relating to increase in remuneration of CEO in its board meeting held on December 27, 2021 and claimed to have complied with the requirements.
- iii. On analysis of the minute, it was observed that it was attended and signed by five (05) directors. Particulars of the five directors w.r.t relationship with CEO are as follows:

S.No.	Name	Father/ Husband Name	Directorship	Relationship with CEO
1	Muhammad Mubeen Jumani	Allah Warayo Jumani	Director	Father
2	Faraz Mubeen Jumani	Muhammad Mubeen Jumani	CEO	Self



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3	Fahad Mubeen Jumani	Muhammad Mubeen Jumani	Director	Brother
4	Arisha Mubeen Jumani	Muhammad Mubeen Jumani	Director	Sister
5	Qamar Mubeen Jumani	Muhammad Mubeen Jumani (Husband)	Chairperson	Mother

- iv. In view of the above, it was revealed that Mr. Faraz Mubeen Jumani, the CEO of the Company also participated in the said meeting and approved the agenda of increase of his remuneration. No disclosure of interest was given in the Board of Directors (BODs) meeting as per the extracts.
- v. Moreover, section 205 of the Act used the term "director's relatives" which includes the director's parents (as given in the above table) and no evidence is provided that they have disclosed their interest and participated in the board meeting and approved the agenda.
- vi. In addition to above, the CEO and two other directors (parents) are also excluded from said board meeting which resultantly broke the quorum of the Board meeting as required under section 176(1) of the Act.
- vii. Furthermore, the analysis of the above given board meeting and its attendance also revealed that three (3) interested directors participated in the said board meeting, failed to disclose their interest and approved the CEO remuneration increase agenda, which results in non-fulfilment of quorum as required by the Act. Therefore, the Company/Board was required to get approval of the shareholders in the general meeting.
- viii. In view of the above, *prima facie*, there have been contraventions with the requirements of the section 176(1), 205(1) and 207(1), which attract the penal provisions contained in section 176(4)(a), 205(6) and 207(4) of the Act.
3. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents for the aforesaid contraventions of sections 176, 205 and 207 of the Act, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions.
4. In response to the SCN, the Company Secretary of the Company on behalf of the Respondents vide letter dated May 29, 2024 requested an extension to furnish response.
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:



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"1. At the outset it is informed that if one analyzes the Companies Act 2017 [the "Act"] with respect to the powers of appointment of CEO or terms and conditions of such appointment, the intent of the legislature is that such power has been given to the Board. Reference is made sections 187 and 188 of the Act. The relevant extracts are produced below:

187. Appointment of subsequent chief executive. -(1) Within fourteen days from the date of election of directors under section 159 or the office of the chief executive falling vacant, as the case may be, the board shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment:

188. Terms of appointment of chief executive. (1) Save as provided in sub-section (2), the terms and conditions of appointment of a chief executive shall be determined by the board or the company in general meeting in accordance with the provisions in the company's articles."
[Emphasis is ours]

Therefore, it is crystal clear from the above that powers with respect to appointment of CEO along with terms and conditions of his/her appointment [which includes remuneration] lie with the Board.

2. Your learned authority has mentioned in the SCN that the quorum of the Board meeting, held on 27th December 2021, as provided under section 176(1) of the Act for the Board meeting was not complete since 03 directors in the said Board meeting were interested directors by virtue of the parent/son relationship which leaves 02 directors which is less than the minimum requirement of 04 as provided under section 176(1) of the Act. While this fact cannot be disputed, it is informed to your learned authority that while adjudicating upon the said matter, to please consider the fact that approximately 81% shareholding in the Company lies with the family and as such the outcome with respect to increase in remuneration of the CEO will be the same as approved in the said Board meeting even if the said matter would have been laid before a general meeting. Furthermore, not a single complaint from any shareholder was received by the Company nor any of the regulators with respect to the said issue.

3. Even otherwise, the non-compliance was not willful and did not involve any element of mens rea.

4. Furthermore, our clients undertake and commit to ensure strict compliance going forward."

7. Another hearing in the matter was fixed for July 09, 2024, wherein the Representatives appeared and reiterated the written arguments submitted earlier in response to the SCN, and also stated that the Company is owned by a single family holding 81% of the shareholding. Moreover, the Representatives admitted the default and assured compliance in the future.

8. Relevant provisions of the Act are reproduced as under:

"176. Proceedings of the board. — (1) The quorum for a meeting of board of a listed company shall not be less than one-third of number of directors or four, whichever is greater and the participation of the directors by video conferencing or by other audio visual means shall be counted for the purposes of quorum under this sub-section:



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Provided that if at any time, there are not enough directors to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.

(4) If a meeting of the board is conducted in the absence of a quorum or a meeting of board is not held as required by sub-section (3), the chairman of the directors and the directors shall be liable-

(a) if the default relates to a listed company, to a penalty of level 2 on the standard scale."

"205. Disclosure of interest by director. – (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board:

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, is so interested or concerned.

(6) Any contravention or default in complying with requirements of sub-sections (1) or (2), shall be an offence liable to a penalty of level 1 on the standard scale.

"207. Interested director not to participate or vote in proceedings of board. – (1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void:

Provided that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered.

(2) If majority of the directors are interested in, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, the matter shall be laid before the general meeting for approval.

(4) Any contravention or default in complying with requirements under this section shall be an offence liable to a penalty of level 1 on the standard scale."

9. I have gone through the facts of the case and considered the written submissions, as well as the arguments made during the hearings by the Representative, in light of the aforesaid legal provisions and the record placed before me, and state as under:

(i) Disclosure of interest of directors under Section 205 of the Act:

The Board of Director of the Company in its meeting held on December 27, 2021 approved the agenda of increasing the remuneration of CEO. It is hereby pointed out that section 205 of the Act provides for disclosure of nature of direct as well as indirect interest in any contract or arrangement entered or to be entered at the meeting of the board. Therefore, in context of the Company, the Respondent namely; Mr. Faraz



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Mubeen Jumani, the CEO of the Company, was required to disclose his interest in the meeting of the board of directors held on December 27, 2024 w.r.t. increase of his remuneration, in terms of the requirements of section 205 of the Act. However, copy of the minutes of the Board meetings provided by the Company did not state any such disclosure by him.

Moreover, section 205 of the Act uses the term "director's relatives," "director's relatives", which includes – (a) the director's spouse; (b) the director's children, including the step children; (c) the director's parents. Therefore, it is noted that Mr. Faraz Mubeen Jumani is the son of Mr. Muhammad Mubeen Jumani and Mrs. Qamar Mubeen Jumani, making them all interested directors. Due to their familial relationship, they had a vested interest in the proposed increase in remuneration.

By not disclosing their interest during the board meeting held on December 27, 2021, where the agenda to increase the CEO's remuneration was approved, they failed to comply with the provisions of Section 205 of the Act. This section mandates that any interest a director or their relatives may have in matters being discussed must be disclosed to ensure transparency and avoid conflicts of interest. The failure to disclose this information during the meeting constitutes a contravention of section 205 of the Act, which has also been admitted by the Representatives.

(ii) Interested director not to participate or vote in terms of Section 207 of the Act:

With regard to the provision of section 207 of the Act, it is an established fact that three interested directors were present in the meeting held on December 27, 2021. The minutes of the Board's stated meeting, however did not disclose that the interested directors recused from discussion and voting, when the matter of increasing the remuneration was being considered and approved. It may be noted that in view of requirements of sub-section (1) of section 207 of the Act, interested directors of a company are prohibited to participate in discussion and vote on any contract/ arrangement entered or to be entered where such director is directly or indirectly concerned. For listed companies, the requirements are further stringent as to the presence of a director having material personal interest is prohibited to be present in such meeting of the board while considering the said matter.

Hence, it is noted that the Respondents namely; (i) Mr. Faraz Mubeen Jumani, (ii) Mr. Muhammad Mubeen Jumani and (iii) Mrs. Qamar Mubeen Jumani, had interest in agenda of increasing remuneration due to their relationship with each other, and by participating in the consideration and approval of the aforementioned agenda; these three Respondents, being directors of the Company contravened the provisions of section 207 of the Act and the same has been admitted by the Representatives.

(iii) Insufficient Quorum and matter to be placed before general meeting:

The minutes of meeting of the Board held on December 27, 2021 discloses that matter of increasing the remuneration of CEO was placed before the Respondents for consideration and approval. Considering the fact that out of five directors attended the meeting held on December 21, 2021, the CEO and two other directors (parents) are excluded from said board meeting.



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Accordingly, the interested directors in respective companies were required to refrain from participation and voting in the meeting of the Board and their presence could not be counted for the purpose of forming the quorum while considering the agenda of increasing the remuneration. Therefore, the quorum of meeting dated December 21, 2021 in terms of section 176 of the Act was not formed. However, the Representatives committed to ensure strict compliance going forward.

(iv) Assertion regarding the powers of the Board in appointing the CEO and setting terms under the Act:

The Representatives' assertion regarding the authority of the Board under sections 187 and 188 of the Act to appoint a CEO and determine his terms of appointment, including remuneration, is acknowledged. However, it is crucial to note that while the Board holds these powers, they must be exercised in accordance with the provisions of the Act, including the requirement for interested directors to refrain from participating in discussions and voting on matters where they have a personal interest.

Therefore, while the Board possesses the authority to appoint the CEO and set his terms, including remuneration, this authority is contingent upon strict adherence to other provisions of the Act, particularly concerning the conduct of meetings and the participation of interested directors. Upholding these standards is essential to maintain the integrity and legality of corporate decisions, ensuring they reflect the best interests of the Company and its shareholders.

(v) Assertion that the outcome of the decision would have been the same in a general meeting due to majority shareholding:

The Representatives' assertion that the outcome of a decision would have been same in a general meeting due to majority shareholding does not negate the Board's obligation to adhere to statutory requirements, notably the maintenance of a quorum as prescribed under section 176 of the Act. Quorum ensures that decisions taken by the Board are not only representative of the collective judgment of its directors but also legally binding and enforceable. It acts as a critical safeguard against decisions being made by an insufficient number of directors who may not fully represent the diverse interests and perspectives within the company.

Upholding quorum in board meetings is therefore paramount to uphold the integrity, validity, and legitimacy of decisions made, safeguarding adherence to robust corporate governance principles mandated by the law and ensuring transparency and accountability in corporate decision-making processes

10. In view of the foregoing, I hereby conclude that with respect to the specific agenda relating to increase in remuneration of CEO by the Company:

- a) By not disclosing their interest relating to increase in remuneration, the Respondents namely; (i) Mr. Faraz Mubeen Jumani, (ii) Mr. Muhammad Mubeen Jumani and (iii) Mrs. Qamar Mubeen Jumani have contravened the provisions of section 205 of the Act, hence are liable to be penalized;



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b) By not abstaining from participating in the proceedings of the Board meeting relating to the approval and increase in the remuneration of the CEO, the three directors of the Company, namely; (i) Mr. Faraz Mubeen Jumani, (ii) Mr. Muhammad Mubeen Jumani, and (iii) Mrs. Qamar Mubeen Jumani, contravened the provisions of Section 207 of the Act and are therefore liable to be penalized.

c) Obtaining approval in the Board meeting, in the absence of quorum for the Board meeting dated December 27, 2021 for the aforesaid agenda, all the Respondents, being directors of the Company, had contravened the provisions of section 176 of the Act and are liable to be penalized.

11. Taking cognizance of the aforesaid established contraventions/ non-compliances, I in exercise of the powers conferred under sections 205 and 207 of the Act, hereby impose aggregate penalty of **Rupees Thirty Thousand (Rs. 30,000/-)** on the Interested directors in the following manner and warn all the Respondents on violation of section 176 of the Act with advice to be careful and ensure compliance to the applicable regulatory framework in future in letter and spirit:

Sr. #	Name of the Respondents	Penalty (Rs.) for violation of Section 205 and 207
1.	Mr. Faraz Mubeen Jumani	10,000
2.	Mr. Muhammad Mubeen Jumani	10,000
3.	Mrs. Qamar Mubeen Jumani	10,000
	Total:	30,000

12. The Respondents are hereby, directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the penalty.

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

(Shahzad Afzal Khan)
Director/ HOD
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Announced:

Dated: August 05, 2024
Islamabad