



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

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

In the matter of

Show Cause Notice issued

under Section 166(1) and 166(3) read with Section 169 and Section 512(2) of the Companies Act, 2017 and Regulation 4(7) of the Companies (Manner and Selection of Independent Directors) Regulations, 2018

Number and date of Show Cause Notice	CSD/ARN/258/2016-347 dated May 29, 2024
Date(s) of Hearing:	July 08, 2024
Hearing(s) attended by:	Mr. Amir Khan Afridi, Director Corporate Affairs, M/s MJ Panni & Associates (Authorized Representative)

ORDER

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. CSD/ARN/258/2016-347 dated May 29, 2024 (the "SCN") against M/s SG Allied Business Limited through its Chief Executive Officer (the "Company" or the "Respondent No. 1"), Mr. Sohail Ahmed, Chief Executive Officer (the "Respondent No. 2"), Mr. Mansoor Mubeen, Independent Director ("Respondent No. 3"), Mr. Asim Ahmed, Executive Director (the "Respondent No. 4"), Mr. Salim Razak Tabani, Independent Director (the "Respondent No. 5"), Mr. Farhan Sohail, Executive Director (the "Respondent No. 6"), Ms. Saba Sohail, Non-Executive Director (the "Respondent No. 7"), and Ms. Sana Sohail, Non-Executive Director (the "Respondent No. 8") for their alleged failure to comply with the requirements of Section 166(1) and 166(3) of the Companies Act, 2017 (the "Act") and Regulation 4(7) of the Companies (Manner and Selection of Independent Directors) Regulations, 2018 (the "Regulations") read with Section 169 and 512(2) of the Act.

2. Brief facts of the case are summarized as below:

- (i) The Securities and Exchange Commission of Pakistan (the "Commission") carried out a review of the annual audited financial statements of the Company for the year ended June 30, 2023 (the "Accounts").
- (ii) During the aforesaid review, it was noted that the election of directors of the Company was held in its Annual General Meeting on October 27, 2023, and amongst others, Mr. Salim Razak Tabani was elected as an independent director of the Company.
- (iii) Section 166(1) of the Act read with Regulation 4(7) of the Regulations *inter alia* require appointment and selection of an incumbent independent director from a databank, and stipulate that every company shall exercise its own due diligence before making such selection. Section 166(3) of the Act *inter alia* stipulates that the statement of material facts annexed to the notice of the general meeting shall indicate the justification for choosing a person as an independent director.



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- (iv) The relevant department of the Commission vide its letter dated March 13, 2024 requested the Company to clarify with respect to compliance with the requirement of Section 166(3) of the Act regarding disclosure in the statement of material facts and non-inclusion of the name of Mr. Salim Razak Tabani in the database of independent directors maintained by M/s Pakistan Institute of Corporate Governance (PICG). The Company responded vide its letter dated April 02, 2024, *inter alia* stating that:

“Mr. Salim was already an independent director [who] had offered himself for re-election, which were held on 27-10-2023. Since all the retiring directors had offered themselves for re-election, it was not felt necessary to issue Statement of Material Facts. As regards evidence regarding Mr. Salim Razak Tabani name appearance in the PICG database of independent directors, we are pleased to attach the same as Annexure-B. Since Mr. Tabani was already on the Board as independent director and had met the prescribed qualification and experience, no due diligence was felt necessary.”

- (v) It was observed that the afore-referred Annexure-B (to the Company’s response letter dated April 02, 2024) contained a screenshot of an email dated March 20, 2024 received by the Company from PICG regarding “Director Activation” including the director’s username and password. Further, it was noted that the starting date of experience of Mr. Salim disclosed in the PICG database was w.e.f. March 19, 2024, *prima facie* depicting that the name of Mr. Salim was inducted in the PICG database effective from the said date while his login credentials were emailed to him on March 20, 2024.
- (vi) The relevant department of the Commission subsequently reached out to PICG to comment on the timing of generation of its confirmation email. In response, PICG vide its email dated April 15, 2024 informed that *the confirmation email along with respective login credentials was sent to the director’s registered email address on March 20, 2024...confirmation email is sent once the request gets approved.*
- (vii) It was apparent that the name of Mr. Salim Razak Tabani was not included in the PICG database of independent directors as at the date of election of directors of the Company i.e. October 27, 2023; however, the Company was obligated under Section 166(1) of the Act read with Regulation 4(7) of the Regulations to exercise its due diligence for selection of the independent director from the PICG databank. Further, the afore-referred response of the Company depicted that neither any statement of material facts as required under Section 166(3) was given nor any justification for selection of Mr. Salim as an independent director was furnished. Thus, the Company *prima facie* failed to ensure compliance with the requirements of Section 166(1) of the Act read with Regulation 4(7) of the Regulations and Section 166(3) of the Act.



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3. Considering the above, a Show Cause Notice dated May 29, 2024 was served upon the Respondents for the alleged contravention of Section 166(1) and 166(3) of the Act and Regulation 4(7) of the Regulations read with the penal provisions of Section 169 and 512(2) of the Act.

4. The Respondents submitted their response to the SCN vide letter dated July 08, 2024, the relevant extracts of which are reproduced below:

"...Mr. Salim Razak Tabani was already an independent director on the previous Board and had offered himself for re-election which was held on October 27, 2023. Since all the retiring directors had offered themselves for re-election, it was not felt necessary to issue Statement of Material Facts.

As regards evidence of appearance of Mr. Salim Razak Tabani's name in the PICG databank of independent directors, it is stated that his name has now been included in PICG's databank: PICG confirmation dated March 20, 2024 is attached..."

5. In order to meet the ends of justice and provide an opportunity of being heard to the Respondents, a hearing was scheduled vide hearing notice dated July 02, 2024 for July 08, 2024, which was attended by Mr. Amir Khan Afridi, Director Corporate Affairs, M/s MJ Panni & Associates being the Authorized Representative of the Respondents. During the course of hearing, the Representative was inquired regarding the contraventions of the law as alleged in the SCN. The Representative admitted that the Company was non-compliant with the questioned requirements of law at the time of election of directors on October 27, 2023; however, considering the mandatory requirements of law, the Company reached out to Mr. Salim for inclusion of his name in PICG database. The Representative requested for a lenient view considering the subsequent compliance and rectification of default and given the sheer commitment of the Respondents to ensure meticulous compliance of the applicable laws in the future.

6. I have gone through the relevant provisions of Section 166(1) and 166(3) of the Act and Regulation 4(7) of the Regulations and submissions made by the Respondents in the written response as well as during the course of hearing through their Authorized Representative. I have also perused Section 169 and 512(2) of the Act, which stipulate penal provisions for contravention of the afore-referred provisions of law. I have noted the following pertinent aspects vis-à-vis the submissions made by the Respondents:

- a. The provisions of Section 166(1) of the Act read with Regulation 4(7) of the Regulations mandatorily required the Company to exercise its due diligence and select an independent director from the databank maintained by PICG. Similarly, Section 166(3) of the Act obligated the Company to furnish in the statement of material facts annexed to the notice of general meeting the justification for choosing an independent director. However, it is clearly evident from the PICG database that the name of Mr. Salim was inducted in the said database only with effect from March 19, 2024 while his login credentials were emailed to him on March 20, 2024. The PICG also confirmed vide its email dated April 15, 2024 that the confirmation email/login credentials are sent only when the request (for induction in the databank) gets



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approved. Moreover, the written submissions made by the Respondents themselves evidently establish that neither any statement of material facts as required under Section 166(3) of the Act was given nor any justification for selection of Mr. Salim as an independent director was furnished.

- b. Be that as it may, the Respondents through their Authorized Representative during the course of hearing held on July 08, 2024 have demonstrated active efforts and commitment to comply with the above-referred requirements of the law, particularly by subsequently getting the name of Mr. Salim inducted in the databank maintained by PICG in order to ensure compliance with the requirements of Section 166 of the Act. Further, the Respondents have requested for condonation of the regulatory lapses and have shown their commitment to ensure due compliance of all applicable laws in the future.

7. In view of the above-stated facts, circumstances and submissions made by the Respondents, particularly the efforts undertaken for rectification of the regulatory lapse as well as commitment for future compliance on part of the Respondents, I, in exercise of the powers conferred upon me under Section 169 of the Act read with Section 512(2) of the Act, am inclined to conclude the instant proceedings with a **warning** to the Respondents to ensure meticulous & timely compliance with all applicable laws including the Regulations & the Act in true letter and spirit in the future.

8. This Order is being issued without prejudice to any other action that the Commission may initiate against the Respondents and / or management including CEO of the Respondent No. 1 in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

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

Announced:

August 5, 2024
Islamabad