



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

Before  
**Mahboob Ahmad**  
Additional Director/  
Head of Wing

*In the Matter of*

**Sitara Peroxide Limited**

Number and Date of SCN: No. CSD/ARN/543/2018-183 dated March 28, 2024

Hearing Dates: May 3, 2024 and June 10, 2024

Present: Mr. Rashid Sadiq as Authorized Representative on behalf of the Respondents other than Mr. Junaid Makda, Mr. Saqib Anjum and Mr. Yasir Ahmed Awan

### ORDER

#### Under Section 237 of the Companies Act, 2017 and Section 479 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice No. No.CSD/ARN/543/2018-183 dated March 28, 2024 (**the SCN**) issued under Section 237 of the Companies Act, 2017 (**the Act**) read with Section 479 thereof against the board of directors and Chief Financial Officer, hereinafter collectively referred to as **the Respondents**, of Sitara Peroxide Limited (**the Company**).

2. Brief facts of the case are that the Company failed to prepare and file/transmit through e-Services with the Registrar/Securities and Exchange of Pakistan (**the Commission**) its quarterly financial statements (**QFS**) for the following period within the stipulated time pursuant to Section 237 of the Act read with Circular No. 11 of 2023 (**the Circular**):

Sr. #	Period ended	Transmission due on
1	September 30, 2023	November 29, 2023 (extended time)

3. The QFS for the said period were also not posted on the website of the Company. As per available record, the Company through its application dated October 5, 2023 sought extension of 30 days for submission of the QFS for the period ended September 30, 2023, which the Commission acceded to through its letter dated October 17, 2023 advising the Company to file/transmit QFS with the Registrar/Commission on or before November 29, 2023. The QFS for the aforesaid period were, however, not filed/ transmitted through e-Services with the Registrar/Commission within the extended time.



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4. The Respondents, *prima facie*, contravened the provisions of Section 237 of the Act read with the Circular by failing to prepare and file/transmit the QFS with the Registrar/ Commission. Consequently, the SCN was issued to the Respondents to show cause in writing as to why penal action may not be taken against them for non-compliance of Section 237 of the Act.

5. In this regard, Mr. Junaid Makda, one of the Respondent through email dated April 15, 2024, *inter alia*, submitted that:

- Through communication dated April 4, 2024, the challenges encountered were stated. The reluctance of the Company's management to engage constructively is one of the challenge. Relevant text is reproduced as below:  
*"Regarding your show cause notice received on 6.2.2024, I would like to bring to your attention the challenges faced by me in obtaining timely information from SPL. Despite diligent efforts to engage with SPL management and its recurring executives over the past year, we find ourselves at an impasse. Regrettably, it appears that the old management of SPL lacks the necessary proactive approach and seriousness required for the company's operations."*
- Through communications with Commission dated April 4, 2023, April 26, 2023, April 27, 2023, April 30, 2023, August 6, 2023, October 10, 2023 and February 6, 2024 in terms whereof he communicated the concerns on various issues including accounts, non-compliances, queries and dissents on QFS for the period ended September 30, 2023, non-provisions of accounts for the year 2023 and replies to SCN issued by the Commission for non-holding of the AGM.
- I remain helpless as the management's apathy towards adopting a proactive and serious demeanor necessary for steering the company forward had been disheartening.
- The management did not implement my suggestions and solutions.

6. In order to afford the Respondents, an opportunity of personal representation, the hearing in the matter was fixed for May 3, 2024. Owing to adjournment request received from Mr. Rashid Sadiq, the Authorized Representative of the Respondents namely Mr. Saim Bin Saeed, Mr. Haroon Ahmed Zuberi, Mr. Imran Ghafoor, Mrs. Sharmeen Imran and Mr. Shahid Irshad CFO (herein after referred to as the **Respondents**), the matter was re-fixed for June 10, 2024. On the date of hearing:

- (i) Mr. Junaid Makda, Mr. Saqib Anjum and Mr. Yasir Ahmed Awan (herein after referred to as the **Other Respondents**) appeared. The Respondents were of the view that the default of Section 237 of the Act for failure to transmit QFS of the period ended September 30, 2023 were not in their control. They corresponded with the management to ensure compliance, however, reluctance of the management caused delay in preparation and transmission of the QFS.



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- (ii) Mr. Rashid Sadiq appeared as Authorized Representative on behalf of the Respondents appeared in hearing held on June 10, 2024. He highlighted the underlying reasons of the default and submitted that a written reply to the SCN shall be furnished.

7. Subsequent to the hearing, the Authorized Representative of the Respondents, through reply dated July 9, 2024, *inter alia*, submitted that:

- An application was made to the Commission for extension in holding of the Annual General Meeting (AGM) for the year 2023 which was allowed by the Commission for 30 days i.e. to hold AGM on or before November 29, 2023.
- The BoD of the Company announced financial results for the year ended June 30, 2023 on November 6, 2023 on the basis of draft audited accounts as received from the auditors. The AGM was also announced to be held on November 27, 2023 i.e. within time period allowed by the Commission.
- Subsequently, the signed audited accounts were not issued from the auditors as they required further information before issuing audit report.
- In view of the development, the Company postponed the AGM which was scheduled for November 27, 2023 through its notification dated November 24, 2023 to the Pakistan Stock Exchange (PSX).
- The Company is trying to get audited accounts from the auditors as soon as possible and on receipt of the same, the Company will immediately hold its AGM for the year 2023.
- Interim financial statements cannot be prepared unless annual financial statements are prepared as has been held in the recent judgment of the Commission in the matter of Worldcall Telecom Limited dated March 11, 2022.
- The Company is a listed company, it is paramount that the results released on the PSX for the benefit of the public shareholders reflect an accurate picture of the financial health of the Company. Rule 5.6.7(b) of the PSX Rulebook, *inter alia*, requires accurate financial results to be transmitted.
- The QFS for the quarter ended September 30, 2023 are connected with the preceding annual audited accounts i.e. accounts for the year ended on June 30, 2023. Before issuance of the auditors report several possible contingencies, provisioning, changes and amendments may be made to the accounts as a result of which closing balances are created which in turn form the basis for the opening balances of the next year. Therefore, it is not possible for a listed company to release its first QFS without first finalizing the preceding fiscal year's audited annual accounts. This position is recognized by the Commission itself in Appeal No. 79 of 2019



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in the matter of Agritech Limited vs. SECP through Order dated December 30, 2020 whereby the Appellate Bench of the Commission held that:

*"The Bench is of the view that the Annual Accounts were approved on May 31, 2019, therefore, preparation and filing of quarterly accounts on or before April 31, 2018 was not possible. The Bench is of the view that delay in approval of the Annual Accounts in the AGM has inevitably caused delay in filing of the Quarterly Accounts."*

- The law is silent where the delay in annual financial statements is more than thirty days and there is no law for such a situation where interim financial statements could not be filed with the Commission. However, guidance is available in the precedents of the Commission.
- Reliance is placed on the principle enshrined in Article 25 of the Constitution as well as Section 20(6)(c) of the SECP Act that provides for the requirement of uniformity and consistency in performance of the Commission's functions and the exercise of its powers. The superior judiciary of the Pakistan has highlighted the importance of the equality principle in several cases. A few cases are cited: PLD 2012 Supreme Court 421, 2001 SCMR 1320, PLD 2009 Lahore 362, Appeal No. 1 of 2015 (Nishat Mills Limited).
- The Appellate Bench of the SECP itself has acknowledged the importance of the equality principle in the cases cited as 2017 CLD 686 it was held in Paragraph 15 thereof that, *"The bench has also observed that the Respondents have taken different actions for the same default in the past. This act tantamounts to discrimination. Law requires equal and fair treatment. Further section 24A of the General Clauses Act requires that fair trial be provided. The Commission should have a uniform approach in exercising powers and functions."* In the said matter, the SECP Appellate Bench proceeded to setting aside the penalty imposed. In Appeal No. 29 of 2016, it was held in para 10 thereof that, *"In the above circumstances it is mandatory for the Bench to follow Principle of consistency in order to maintain balance and the doctrine of equality before law as enshrined in Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, we hereby allow this appeal and set aside the Impugned Order to the extent of the appellant."*
- There are a number of cases, presented as follows, in which SECP condoned the delay in filing of quarterly accounts under Section 237 of the Act. The reasons provided for the delay in some of these cases appear to be much less strenuous than the circumstances faced by the Company:
  - (a) In order dated 11<sup>th</sup> March 2022 in the case of WorldCall Telecom Limited the delay for filing of half yearly accounts under Section 237 of the Act, the non-compliance was attributable to the backlog of financial statements as a result of delay in convening of the Company's AGM and it was held that:

*"9. In view of the preceding facts, I have concluded that the pertinent provisions of the statute have been violated, and the Respondents are liable to penal action in terms of Section 237 of the Act as a*



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*result of failing to electronically transmit the Company's interim financial statements for the period ended June 30, 2021 with the Commission within the statutory timeframes.*

*However, the non-compliance is attributable to the backlog of financial statements as a result of delay in convening of the Company's AGM for the year ended December 31, 2020 which was held on July 30, 2021 were subject to limited scope review by the statutory auditors, hence not concluded within the statutory timeframe. Therefore, I hereby conclude the proceedings with a cautionary advice to the Respondents to ensure meticulous compliance of the law in the future."*

- (b) In SECP Orders all dated 21<sup>st</sup> April 2022 for delay in filing of various quarterly and half yearly accounts by K-Electric Limited under Section 237 of the Act, no penalty was imposed as a result of subsequent compliance of the filing by K-Electric Limited.
- (c) In SECP Order dated 12<sup>th</sup> November 2020 no penalty was imposed on Pakistan Engineering Company Limited for the delay in filing quarterly accounts under Section 237 of the Act. The said Order stated that, "..., however, given correspondence of NAB as well as the Ministry, the matter was beyond the control of the Respondents to convene its board meeting and thereby approve the requisite quarterly financial statements..."
- (d) In SECP's Order dated 7<sup>th</sup> July 2022 no penalty was imposed on Citi Pharma Limited for the delay in filing of quarterly statements under Section 237 of the Act due to subsequent compliance of the filing of QFS by Citi Pharma Limited.
- (e) In SECP Order dated 5<sup>th</sup> July 2022 no penalty was imposed on Burshane LPG (Pakistan) Limited for the delay in filing of quarterly statements under Section 237 of the Act due to subsequent compliance of the filing of QFS by Burshane LPG (Pakistan).
- (f) In SECP Order dated 10<sup>th</sup> June 2022 no penalty was imposed on AGP Limited for the delay in filing of quarterly statements under Section 237 of the Act due to subsequent compliance of the filing of QFS by AGP Limited.
- (g) In SECP Order dated 22<sup>nd</sup> February 2018 a lenient view was taken and no penalty was imposed on Azmat Textile Mills Limited for the failure to timely file quarterly statements under Section 245 of the now repealed Companies Ordinance, 1984 (para materia provision to Section 237 of the Act) considering the peculiar circumstances of the company. The peculiar circumstances were that the said company was dormant since the year 1993, was on the PSX defaulter counter and the business activities of the company were halted.
- (h) In SECP Order dated 3<sup>rd</sup> May 2018 no penalty was imposed on Mandviwalla Mauser Plastic Industries Limited for the failure to timely file quarterly statements under Section 245 of the now repealed Companies Ordinance, 1984 as the company had made corrective measure and submitted the quarterly accounts as well as made a firm commitment to timely comply with the mandatory statutory requirements in future.



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(i) In SECP Order dated 23<sup>rd</sup> August, 2017 no penalty was imposed on Husein Industries Limited for the failure to timely file quarterly statements under Section 245 of the now repealed Companies Ordinance, 1984 as the company had subsequently submitted the quarterly accounts as well as made a firm commitment to timely comply with the mandatory statutory requirements in future.

- That there must be a substantial finding of guilt before application of stringent penal provisions, has been categorically instructed by the Supreme Court of Pakistan in its judgment in the matter of Securities and Exchange Commission of Pakistan vs. First Capital Securities Corporation Limited (2011 CLD 907, PLD 2011 SC 778) in the following terms:

*"20. It should also be clarified that since the penal provision is stringent in nature it should be applied in an appropriate manner. In applying such a provision SECP should always bear in mind the importance of determining not merely a technical contravention but a substantial finding of guilt in relation to the person on whom the fine or penalty is being levied. It is not sufficient either in the case of this law, or any other law, merely on the basis of a technical contravention to arbitrarily impose a fine of either the full amount or 50% or 75% or any other arbitrarily chosen figure, a condign punishment is the requirement of law and equity."*

- No director by his act or omission has been the cause of the delay alleged in the SCN. With regards to the requirement for establishing willful non-compliance, the Appellate Bench of the SECP has ruled in Appeal No. 44 of 2014 in the matter of re:Fauji Cement Company Limited vs. Director (MSRD) dated August 24, 2015 that: *"Moreover, penalty can only be imposed under Section 224(4) of the Ordinance if the failure to comply was willful which has not been established on the facts of the instance case."*
- In light of the above submissions, the SCN issued to the Respondents may please be dropped without any further action.

8. The following questions are relevant to be addressed in the instant matter:

- (i) Whether it is statutory obligation to timely file/transmit quarterly financial statements.
- (ii) Whether QFS is a key source of information for the stakeholders.
- (iii) Whether the requirements stipulated in the rule 5.6.7(b) of PSX Rulebook are relevant in the instant matter?
- (iv) Whether reliance on cited precedent cases is relevant.
- (v) Whether the Respondents have been treated justly during the instant proceedings?



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9. I have analyzed the facts of the case, relevant legal provisions, and the arguments put forth during the course of the hearing as well as the written correspondence made. In this regard, it is observed that:

(i) **Whether it is statutory obligation to timely file/transmit quarterly financial statements?**

The provisions of Section 237 are unambiguous and explicit. The timing of transmission of the QFS is of essence and the disclosure requirements of QFS have been kept to a bare minimum. The QFS prepared in a timely manner not only provide to its users a reliable source of information regarding the Company's financial position and performance but also shows the results of the management's stewardship of resources entrusted on to it. In order to ensure compliance, the Respondents have fiduciary duty to ensure that the Company meticulously adheres to the law for preparation and filing/transmission of the QFS in a timely manner. Moreover, the Respondents are required to upload the QFS on the website of the Company. In this context, the Respondents cannot absolve themselves from their statutory duties pertaining to preparation and filing/transmission of the QFS in a timely manner as stipulated under the Act read with the Circular.

I have observed that till date the QFS for the period ended September 30, 2023 are overdue. The Respondents are of the view that the QFS for the first quarter are connected with the preceding annual audited accounts for the year ended June 30, 2023. The Authorized Representative further submitted that before issue of auditors report several possible contingencies, provisioning, changes and amendments are made to the annual accounts as a result of which closing balances are created, therefore, it was not possible to release the QFS. As per the letter dated October 5, 2023 of the Company, the application for extension in holding of the AGM for the year 2023 was, *inter alia*, based on the grounds due to non-finalization of the annual financial statements for the year ended June 30, 2023 and that the audit was under process, the Company sought extension in holding of the AGM.

In this regard, it is relevant to highlight that:

- (a) the Company through its notice dated July 22, 2024 has informed the Pakistan Stock Exchange (PSX) about holding of the emergent board meeting wherein the agenda items, *inter alia*, include: "1. To discuss and reconsider pending approval of audited financial statements along with subsequent developments and way-forward."

The aforesaid transpires that the annual financial statements for the year ended June 30, 2023 are audited, however, require approval of the board of the directors.

- (b) As per the letter dated November 6, 2023, it was informed that the AGM of the Company would be held on November 27, 2023. Later on, through the letter dated November 24, 2023, the Company announced postponement of the AGM.



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- (c) The Company has released its financial results for the year ended June 30, 2023 through the PSX.

In view of the above, the notice dated July 22, 2024 addressed to the Pakistan Stock Exchange (PSX) disclosed the agenda item of the board meeting to reconsider pending approval of audited financial statements along with subsequent developments and way-forward. The record, however, transpires that the annual audited financial statements have not been finalized after a lapse of over one year since close of the financial year ended on June 30, 2023. In view thereof, the stance of the Respondents does not hold ground and is not cogent. Further, it is relevant to highlight that the instant proceedings are in terms of the provisions of the Section 237 of the Act, with respect to the QFS for the period ended September 30, 2023.

I am of the view that in terms of the provisions of Section 237 of the Act read with the Circular a listed company is required to transmit/file its QFS for its first quarter within the stipulated time which was extended to November 29, 2023 in the instant matter. In case of the Company, a considerable delay has already been noticed in transmission/filing of the QFS for the period ended September 30, 2023 and the Respondents are still uncertain with respect to date of transmission/filing of the aforesaid QFS.

**(ii) Whether QFS is a key source of information for the stakeholders:**

The preparation and transmission of QFS within the stipulated timeframe rests with the Respondents. In this context, perusal of Company's records transpires that they failed to prepare and file/transmit the Company's QFS for the period ended on September 30, 2023. In this regard, I am of the view that the Respondents have deprived the shareholders of their statutory right to receive QFS of the Company within the stipulated time which was extended till November 29, 2023.

**(iii) Whether the requirements stipulated in the rule 5.6.7(b) of PSX Rulebook are relevant in the instant matter:**

It has been argued by the Authorized Representative that in terms of the rule 5.6.7(b) of the PSX Rulebook an accurate picture of the financial health of the Company needs to be disseminated for the benefit of the shareholders. In this regard, I am of the view that the instant proceedings are under Section 237 of the Act, which, *inter alia*, requires that the QFS are transmitted with the Commission/Registrar in a timely manner as stipulated therein. It is, therefore, statutory obligation of the Respondents to ensure compliance of the applicable provisions of the Act read with the Circular.





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**(iv) Whether reliance on cited precedent cases is relevant:**

The Authorized Representative's reliance on cited precedent cases is neither applicable nor relevant to the facts of this case. In this regard it is important to understand that every case has its own peculiar facts and circumstances, therefore, decisions of past cases may not be mechanically applied to this case. In instant matter, the Respondents have failed to submit evidence of compliance with the requirements of Section 237 of the Act, whereas, in cited case law of Nishat Mills Limited, 2017 CLD 686, Appeal No. 29 of 2016, Worldcall Telecom Limited, K-Electric Limited, Citi Pharma Limited, Burshane LPG (Pakistan) Limited, AGP Limited, Mandviwalla Mauser Plastic Industries Limited, Husein Industries Limited the facts of cases were different as in the instant matter the Company has not made compliance till date. In view thereof, *ratio decidendi* of the cases relied upon by the Respondents has no bearing on the merits and facts of this case. Accordingly, the Respondents are mainly liable to penalty as provided under section 237 of the Act.

Mr. Junaid Makda through the correspondence dated April 4, 2024 and April 15, 2024 highlighted that he was a non-executive director and he highlighted his concerns for the non-compliances. He highlighted that he gave dissent notes in board meetings in the year 2023, along with other directors namely Mr. Yasir Ahmed Awan and Mr. Saqib Anjum with various matters including the non-approval of quarterly accounts and non-holding of the AGM. I am of the view that as per the corporate information available with the QFS for the period ended March 31, 2023, the mentioned directors are non-executive directors (**Other Respondents**), and also have shown their dissents on matters pertaining to the Company. However, specifically their dissent with regard to QFS for the period ended September 30, 2023 is not on record.

The Authorized Representative has referred case laws cited as 2011 PLD 778 to build an argument that before proceeding in the instant matter, the Commission was required to establish substantial findings of guilt against the Respondents. However, the mentioned case law and its facts differ from the case at hand. In the stated case laws there was the requirement to establish a willful default under Section 22, 223 and 224 of the Companies Ordinance, 1984, however, no such requirement is applicable in this case as relevant provision of Section 237(4) of the Act is reproduced as below:

*(4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale.*

The failure to prepare and transmit the QFS for the period ended September 30, 2023 is evident as the provisions of the Section 237 of the Act have not been complied till date of the order.



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Moreover, facts of Next Capital Limited are also not pertinent to this case, therefore, the same are not applicable. The Respondents have referred Appeal No. 40 of 2014 of Fuji Cement Company Limited, however, the reference is incorrect as the Appeal No. 40 of 2014 pertains to Pak Chromical Limited.

(v) **Whether the Respondents have been treated justly during the instant proceedings?**

During the SCN proceedings, due process has been followed. The Respondents made written submissions, sought adjournment in conduct of hearing which was duly allowed, appeared in the hearing through the Authorized Representatives. The Respondents were, therefore, provided adequate and ample hearing opportunities coupled with the right to legal representation and have been treated in a fair, just and transparent manner pertinent to the applicable laws. Hence, no violation of Article 4, 10A and 25 of the Constitution of Pakistan and Section 20(6)(c) of the SECP Act, 1997 may be attributed in the instant matter.

10. In view of the above, I have come to the conclusion that the afore-said provisions of the Act have been violated and it renders the Respondents liable to penal action in terms of Section 237 of the Act as a result of failing to prepare and file/ transmit for the Company's QFS for the period ended September 30, 2023 within the stipulated time and by not posting the same on the Company's website. Therefore, in exercise of powers conferred under sub-section (4) of Section 237 of the Act, I hereby impose an aggregate penalty of **Rs. 200,000/- (Rupees Two Hundred Thousand only)** on **Mr. Imran Ghafoor, the Chief Executive**, for the said default. The remaining Respondents are warned and are advised to be careful in ensuring compliance of the provisions of the Act. Moreover, the Other Respondents are also advised to be more cautious in future.

11. The aforementioned penalties 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 (30) days from the receipt of this Order, and duly deposited bank challan shall be furnished to the Commission. In case of non-deposit of the penalties, proceedings for recovery under Section 485 of the Act as arrears of land revenue will be initiated. It may also be noted that the penalty has been imposed on the Respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

12. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on Respondents in respect of any default, omission or violation thereof.

  
Mahboob Ahmad

Additional Director/ Head of Wing  
Listed Companies Wing,  
**Announced:** August 9, 2024,  
Islamabad