



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

Before  
Mahboob Ahmad – Additional Director/Head of Wing

*In the Matter of*  
Pakistan Engineering Company Limited

Number and Date of SCN: No. CSD/ARN/188/2015-183 dated June 26, 2023

Hearing Dates: August 16, 2023, August 29, 2023, September 20, 2023 and October 11, 2023

Present: On August 16, 2023, Mr. Manzoor Raza on behalf of Mr. Muhammad Arif Habib; Mian Anwar Aziz appeared on behalf of Mirza Mahmood Ahmad, Mr. Rashid Ali Khan, and Mr. Muhammad Iqbal.

On August 29, 2023, Mr. Mohammad Hassan Iqbal, Chief Executive/MD, Mr. Iftikhar Hussain, and Ansar Javed

On September 20, 2023. Mian Anwar Aziz, Chief Financial Officer

October 11, 2023, Syed Kaukab Mohyuddin

Mr. Nadeem Ahasan, ex-officio director made representation through letter dated October 13, 2023

### 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. CSD/ARN/188/2015-183 dated June 26, 2023 (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 Pakistan Engineering Company Limited (the Company).

2. Brief facts of the case are that the Company failed to electronically transmit its quarterly financial statements (QFS) for the following period with the Securities and Exchange Commission of Pakistan (the Commission) within the stipulated time pursuant to Section 237 of the Act read with Circular No. 24 of 2017 (the "Circular"):

Sr. #	Period ended	Transmission due on
1	September 30, 2022	October 30, 2022

3. The Respondents, *prima facie*, contravened the provisions of Section 237 of the Act read with the Circular by failing to electronically transmit the aforementioned QFS with the Commission within



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the stipulated time. 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.

4. In this regard, Mian Anwar Aziz, Chief Financial Officer (CFO), through letter dated July 11, 2023, *inter alia*, submitted as follows:

- (i) We were unable to comply due to very hostile attitude of ex-MD Mr. Mairaj Anees Ariff (**Mr. Mairaj**) whereby the Company officers as well as Board of Directors (**BOD**) were not allowed to enter into Head Office due to unlawful and baseless allegations.
- (ii) The professional team of Company had no access to the Company's record for the period from October 2018 to May 2023.
- (iii) As per the Commission's Investigation Report dated 5<sup>th</sup> November 2021 (the Investigation Report) on affairs of the Company under Section 257 of the Act, which enlisted a long list of statutory non-compliances by ex-MD, Mr. Mairaj. In investigation report's page no. 48 at Sr. no. 15.1 (ii) it is mentioned that Mr. Mairaj (MD) being at the helm of affairs of the Company and by his act failed to maintain books of accounts and other relevant books and papers as provided in Section 220 of the Act. Further, on same page of the Investigation Report at Sr. no. 15.1(iii) it is stated that the Company failed to transmit QFS after September 30, 2018, attracting the provisions of Section 237 of the Act. The MD being at the helm of the affairs did not file the relevant accounts.
- (iv) Consequent upon the transfer of Mr. Mairaj on September 16, 2022, the Board and the incoming Managing Director of the Company Mr. Hassan Iqbal (now resigned), resolved to fulfill the requirements of prevalent and applicable laws and clearing the backlog with hard work and utmost efforts. The management has succeeded to locate about 80% of relevant record.
- (v) Furthermore, since it is quite voluminous and challenging task which needs deployment of staff to accomplish the targets, therefore, it is humbly requested to allow us six months' time to clear all back log. Considering our practical inability despite our best efforts, the penal action may please be condoned.

5. In order to afford the Respondents, an opportunity of personal representation, a hearing in the matter was fixed for August 16, 2023. On the date of hearing, following appeared:

- (i) Mr. Manzoor Raza on behalf of Mr. Muhammad Arif Habib, director;
- (ii) Mian Anwar Aziz appeared on behalf of Mirza Mahmood Ahmad director, Mr. Rashid Ali Khan, director, and Mr. Muhammad Iqbal, director.

They reiterated stance as was given in writing through letter dated July 11, 2023, wherein, it was, *inter alia*, submitted that the Company's AGMs for the previous years are overdue, hence, QFS for the period ended September 30, 2022 could not be prepared and transmitted. It was also requested that six months' time be allowed to ensure the compliance.



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6. A hearing in the matter was re-fixed for August 29, 2023 to provide another opportunity to the rest of the Respondents. On the date of hearing, Mr. Mohammad Hassan Iqbal, Chief Executive, Mr. Iftikhar Hussain, director and Mr. Ansar Javed, director appeared before me. During the hearing they, *inter alia*, submitted that:

- (i) We do not have access to the relevant record so QFS could not be prepared.
- (ii) Mr. Mohammad Hassan Iqbal informed that he joined on September 17, 2022 and no record was available at that time.
- (iii) Mr. Ansar Javed informed that there was no personal interest and no mala fide involved for the alleged delays.

7. Mr. Mohammad Hassan Iqbal through letter dated August 28, 2023, also stated that he assumed the charge of Managing Director of the Company on September 17, 2022 and remained posted till January 27, 2023. The Company was dysfunctional and most of the staff was removed and there was no company secretary for two months during his tenure. Due to absence of staff and non-availability of the record, compliance of the given provision of Section 237 of the Act was not made.

8. Subsequent to the hearing held on August 29, 2023, the CFO through another reply dated August 29, 2023, *inter alia*, submitted that:

- (i) We are working hard to clear the back log as under:
  - (a) Preparation of QFS for the current and previous periods;
  - (b) Preparation of Annual Accounts for the current and previous years;
  - (c) Holding of Annual General Meetings for the current and previous years and appointment of auditors;
- (ii) In order to complete the above said voluminous work, we require at least six months.

9. A hearing in the matter was re-fixed for September 20, 2023 to provide another opportunity to the remaining Respondents. On the date of hearing, Mian Anwar Aziz, CFO appeared and submitted that he had written to BOD and to the Commission as the Ex MD Mr. Mairaj did not allow him to access the records and no entry was allowed to office premises.

10. In this regard, Mian Anwar Aziz, CFO through following correspondences, *inter alia*, submitted as follows:

Letter dated August 21, 2023:

- The Company is a public listed company. Its' BOD is constituted by nine directors of which, six are private directors and three are nominated by the Government. In terms of Articles of Association of the Company, the chairman and chief executive are nominated by Government.
- The affairs of the Company were running smoothly up till the appointment of Mr. Mairaj as its Managing Director in 2016 by the Government. Immediately after his appointment, Mr. Mairaj started running the affairs of the Company as per his whims and wishes, On October 29, 2018, a Board meeting was scheduled to be held at the Company's Kot Lakhat Pat factory,



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Lahore, wherein the entry of Board members including the chairman and the management was denied by ex-MD, Mr. Mairaj, consequently, the subject meeting could not be held and was adjourned.

- The denial of entry of BOD by Mr. Mairaj into the premises of the Company was duly informed to the Commission on October 30, 2018 by the BOD of the Company and the Company Secretary. Later, due to mismanagement of Mr. Mairaj, the BOD unanimously removed him with immediate effect from his position as Managing Director in its 199<sup>th</sup> meeting held on 14<sup>th</sup> December 2018, in terms of the provisions of section 190(1) of the Act. In addition to attendance of said meeting by all members of the BOD including the Government nominated Chairman, the said meeting was also attended by the Minister of Industries and Production (MOIP).
- Mr. Mairaj, ex-MD adopted the view that under Economic Reforms Order 1972, he is empowered to exercise all the functions/powers of the Board. The matter was referred to the Commission and through its letter dated December 4, 2018 the Commission informed that affairs of the Company would be governed under the Act and advised to ensure the compliance with provisions of the Act. Furthermore, Ministry of Law through letter dated December 31, 2018 informed that the Company would be governed under the provisions of the Act.
- Despite his removal as MD of the Company by the Board, Mr. Mairaj refused to vacate the office and continued running the affairs of the Company by illegally taking over the Company. Upto four years since October 2018, Mr. Mairaj had not let the BOD appointed employees of the Company to even enter the premises of the Company. The Board's appointed CFO, Company Secretary and Internal Auditor were prevented from performing their duties. Consequently, for the last four years, no accounts of the company have been prepared and audited; no AGM of shareholders had been called.
- The circumstances were beyond the control of lawfully elected BOD, who were already deprived of their right of consideration of accounts and attending the board and general meetings. During all this period, the BOD and management remained continuously engaged with relevant authorities including the Commission, Pakistan Stock Exchange, MOIP and office of the Prime Minister to update them about the situation and get the matter resolved.
- A comprehensive representation to the Commission was made through letter dated July 20, 2020 wherein affairs of the Company were discussed and remedial measures on the part of the Commission was requested to be taken.
- With regard to non-compliance with Section 237 of the Act; the Respondents were unable to have access of record and ERM systems and the same was communicated to the Commission.
- On the request of Board member(s), an investigation was conducted by the Commission under Section 257 of the Act, and the investigation report dated November 5, 2021, inter alia, states that: *"In the light of the above referred opinions of Ministry of Law & Justice and PLAD, SECP, it is evident that the Company is to be governed under the provisions of the Act rather than ERO 1972, therefore, all the actions taken by MD under the ERO, 1972 by not complying with the mandatory provision of the Act have no legal force. Similarly, restricting the Board of the Company to perform their*



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*functions and terminating key officers of the Company without approval of the Board under the grab of ERO 1972 is considered as void ab initio and having no legal effect whatsoever... The Company failed to transmit quarterly financial statements after March 31, 2018 attracting the provisions of Section 237 as stated therein. The MD being at the helm of the affairs did not file the relevant accounts."*

- After transfer of Mr. Mairaj, ex MD, vide notification dated September 13, 2022, the management was able to have access to the factory and their respective work premises. On the advice of the BOD, the management of the Company is working to gather financial records of previous four years and entering data in to ERM system so that financial statements could be prepared. It is pertinent to mention here that not a single financial transaction has been recorded since October 2018 due to inefficiency of Mr. Mairaj, ex MD. It is expected that the financial statements would be prepared in next six months. It is requested that no penal action be taken against the Respondents.

## Letter dated September 20, 2023:

- Since October 2018, all issues prevailing in the Company were communicated from time to time to all relevant forums in Pakistan i.e. the Commission, MOIP, Prime Minister's Office, Pakistan Stock Exchange and the Board of the Company.
- Despite our best efforts, we were not allowed to perform our statutory duties and meet with deadlines for preparation of accounts, holding of AGMs etc. Prior to October 2018, Company was compliant and everything was in line.
- After transfer of Mr. Mairaj, ex-MD of the Company on September 13, 2022, the entry of key personnel of the Company were allowed and presently we are busy in preparation of accounts in order to comply with the statutory obligations.

11. In order to afford another opportunity of hearing to the remaining Respondents, the matter was fixed for October 11, 2023. On the date of hearing, Syed Kaukab Mohyuddin appeared and informed he ceased on July 7, 2019 as Chairman of the BOD of the Company. In this regard, the Company through letter dated October 10, 2023 also informed the same facts to the Commission.

12. Subsequently, through letter dated November 27, 2023, the CFO, *inter alia*, enumerated the steps taken to rectify the default under Section 237 of the Act:

- During last five years, the relevant facts were appropriately and timely intimated to all relevant forums.
- Reiterated stance as was given through letter dated September 20, 2023 and through his previous correspondence in this regard.
- The management of the Company is working to gather financial records of previous years and entering data in ERM system so that financial statements could be prepared. The Company is facing difficulty as record of previous financial transactions is not available.



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- The stance given through letter dated August 21, 2023 was reiterated.

13. In the matter of aforesaid proceedings, Mr. Nadeem Ahsan, through reply dated October 13, 2023, *inter alia*, stated that:

- He was appointed as director on the Company's board by MOIP on September 16, 2022 as an ex-officio director.
- The commercial operations and financial position of the Company began to deteriorate due to the conflict between the erstwhile MD and the BOD of the Company. It is important to again place on record, which is a matter of fact that the confrontation between the erstwhile MD and the BOD started in 2018. It is also a matter of fact that the impasse led to protracted litigation. The position has been documented by the Commission being the regulator in its Investigation Report.
- He played an important role and has taken the following steps:
  - (i) The dysfunctional BOD was revived to manage the important policy affairs of the Company.
  - (ii) Regular meeting of BOD have been held since my nomination on the BOD as ex-officio member.
  - (iii) Appointment of new MD was ratified by the BOD.
  - (iv) Banks maintaining the accounts of the dysfunctional Company was activated.
  - (v) Pakistan Stock Exchange was approached for the revival of the Company.
  - (vi) Creditors who have filed legal cases against the Company were reached out for settlement of the dispute and reviving the Company as an ongoing corporate body.
  - (vii) Policy is being devised for completion of financial audits keeping in view the poor liquidity position of the Company.
- Considering the above and the Commission's own Investigation Report, he is justified to state that responsibility cannot be placed on the ex-officio director who as a member of the Board has done his best to break the deadlock between ex-MD and the BOD. Hence, the withdrawal of the SCN is prayed.

14. Further in respect of submissions made following have been observed:

- The Company through its letter dated November 28, 2022, addressed to the Pakistan Stock Exchange (PSX) stated that the appointment of Mr. Mohammad Hassan Iqbal, MD, was ratified by the BOD in its meeting held on October 14, 2022. Relevant extract of the disclosure, made to the PSX, is given hereunder:

*We wish to inform you that Mr. Mohammad Hassan Iqbal is posted/appointed as Managing Director of Pakistan Engineering Company Ltd. (PECO) through Establishment Division letter No. PF(777)/E-S(PAS) dated 13.09.2022. The Board of Directors of Pakistan Engineering Company Ltd. (PECO) in its meeting held on 14.10.2022 ratified the aforementioned appointment in accordance with section 187 of Act; read with Listed Companies (Code of Corporate Governance) Regulations, 2019 and clause 79 of the Articles of Association of PECO.*





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- The Respondent namely Syed Kaukab Mohyuddin informed that his term of directorship on the board of the Company had expired in 2019 being an ex-officio director. The Respondent in this regard has also furnished letters dated July 8, 2019 and July 19, 2019 of State Engineering Corporation, in terms of which, it was, *inter alia*, stated that: *"In pursuance of MoI&P letter F.No.1(3)/2015-SEC (Led-III) dated 19<sup>th</sup> July, 2019 it is notified that the tenure of Syed Kaukab Mohyuddin as Chief Executive Officer (CEO), State Engineering Corporation has been expired on 7<sup>th</sup> July, 2019 after completing second term. SEC has already issued an Office Order No.P-01(080715) dated 8<sup>th</sup> July, 2019, in this regard, which was distributed to all the concerned."*

Moreover, the Company Secretary through letter dated October 10, 2023, *inter alia*, stated that: *"We reiterate that terms of employment of Syed Kaukab Mohyuddin expired on 7<sup>th</sup> July, 2019 and he is seized to be Chairman of PECO effective that day."*

In view of the available information, as regard to the Respondent i.e. Syed Kaukab Mohyuddin the instant proceedings are closed.

15. The relevant provisions of the Act stipulate as under:

Sub-section (1) of Section 237 of the Act read with the Commission's Circular No. 24 dated October 19, 2017 entails:

- 1) Every listed company shall prepare quarterly financial statements within a period of :-
  - a) thirty days from the close of first and third quarters of its year of accounts; and
  - b) sixty days from the close of its second quarter of its year of accounts.
- 2) The quarterly financial statements shall be posted on the company's website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1).

Sub-section (4) of Section 237 read with Section 479 of the Act stipulates that:

*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.*

16. As regards the matter at hand, I have analyzed the documents presented, matter related to the case, relevant provisions of the Act, and the arguments put forth during the course of the hearings as well as the written correspondence made. In this regard, it is observed that:

- **Whether it is statutory obligation to transmit quarterly financial statements:**

The provisions of Section 237 are unambiguous and explicit. The timing of the QFS is of essence and the disclosure requirements of these QFS have been kept to a bare minimum. QFS prepared accurately and in a timely manner not only provide to its users a reliable source of information regarding a 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



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meticulously adheres to the law for preparation and transmission of the QFS. Moreover, the Respondents in addition to their responsibilities of overseeing and managing the affairs of the Company, also have fiduciary duties towards the Company and its shareholders. It is the responsibility of the Respondents to oversee the functioning of the Company, to keep it appropriately organized to ensure due compliance of the law. In this context, Respondents cannot absolve themselves from their statutory duties pertaining to preparation and transmission of the QFS in a timely manner as stipulated under the Act.

- **Whether QFS is a key source of information for the shareholders:**

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 electronically transmit the Company's QFS for the period ended September 30, 2022 pursuant to Section 237 of the Act read with the Circular. It is also highlighted that the Company has poor compliance history with regard to transmission of QFS. The Respondents have submitted that the Company was dysfunctional, no record was available to the management, and overdue AGMs mainly caused delay in the preparation and transmission of the QFS. It was also sought that six months' time be given to ensure compliance. 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. Moreover, the aforesaid QFS for the period ended September 30, 2022 has not been transmitted to the Commission till date.

With respect six months time sought by the Respondent CFO in order to prepare QFS under Section 237 of the Act, it is clarified that such relaxation does not fall under the purview of the instant proceedings, therefore, he may proceed in accordance with the Act.

- **Whether the resignation of ex-MD was prior to the default committed:**

The Respondents also placed reliance on the Investigation Report dated November 5, 2021 on affairs of the Company under Section 257 of the Act, in terms of which ex-MD, Mr. Mairaj was at the helm of the affairs which caused delay in preparation and transmission of the QFS for the period ended September 30, 2022. In this connection, the aforesaid argument, as well as the Respondents' stance that they had no access of the Company's record till May 2023, is contradictory to the statements made by the CFO through response dated July 11, 2023 and reproduced as hereunder:

*"Consequent upon the transfer of Mr. Mairaj Anees Ariff on September 16, 2022, the Board and the incoming Managing Director PECO (Mr. Hassan Iqbal, now resigned as well) resolved to fulfill the requirements of prevalent and applicable laws and clear the backlog with hard work and utmost effort."*

- **Whether CFO approached the BOD for access of the financial record:**

The CFO highlighted that identification and collection of relevant record for the purpose of preparation of overdue financial statements was in progress. However, he did not substantiate his stance with any supporting documents. Moreover, CFO did not provide any correspondence exchanged with the BOD in terms of which it was informed to the BOD that due to non-availability of the record, which resulted delay in preparation and transmission





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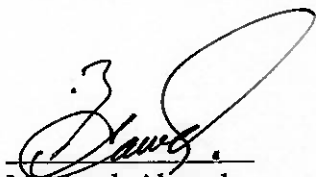
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of the QFS of the Company for the period ended September 30, 2022. The CFO has furnished copies of correspondences made with PSX, MOIP and the Commission with regard to affairs of the Company, however, he did not submit any correspondence pursuant to which he could substantiate that efforts were made to prepare and transmit QFS, duly approved by the BOD, for the period ended September 30, 2022. I am, therefore, of the considered view that the CFO owes statutory responsibility to comply with the provisions of section 237 of the Act, however, he failed to act to comply with the given provisions of Section 237 of the Act.

17. In view of the preceding facts, since the QFS for the period ended September 30, 2022 was not transmitted to the Commission within the stipulated time, hence, default under Section 237(2) of the Act is attracted. In view of the above, I, in exercise of powers conferred under sub-section (4) of Section 237 of the Act, impose an aggregate penalty of **Rs. 100,000 (Rupees One Hundred Thousand only)** on the Respondent CFO i.e. **Mian Anwar Aziz**. I also warn the remaining Respondents with the advice to be careful in discharging their statutory duties to comply with the provisions of the Act.

18. The aforementioned penalty 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.

19. 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.

  
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**Mahboob Ahmad**  
Additional Director/  
Head of Listed Companies Wing

**Announced:**  
December 21, 2023  
Islamabad

