



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Gulistan Textile Mills Limited

Show Cause Notice No. & Date CSD/ARN/196/2015-39 dated January 17, 2024

Date of Hearing: February 26, 2024

Present: Mr. Humza Khokar, Advocate and Mr. Muhammad Ijaz,
Company Secretary

ORDER

Under Section 166 of the Companies Act, 2017 read with Sections 169 and 479 thereof

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through Show Cause Notice dated January 17, 2024 (the SCN) issued, under Section 166 of the Companies Act, 2017 (the Act) read with Sections 169 and 479 thereof, to Gulistan Textile Mills Limited (the Company) and its Board of Directors hereinafter referred to as the Respondents.

2. Brief facts of the case are that:

- (i) The Company elected/ appointed following seven (7) directors on its board for a period of three years in extraordinary general meeting (EOGM) held on October 31, 2023:
 1. Mr. Mian Khalid Naseem;
 2. Mr. Naseer Ahmed;
 3. Mr. Waqar Ahmed;
 4. Mr. Muhammad Younus;
 5. Mr. Mian Basharat Mehmood Khalid;
 6. Ms. Nazia Waqar;
 7. Mr. Junaid Hussain Shah
- (ii) The Company reported that Ms. Nazia Waqar and Mr. Junaid Hussain Shah were elected as independent directors. It was however observed by the Commission that the aforesaid two independent directors were not selected from the databank maintained by Pakistan Institute of Corporate Governance (PICG) in contravention to the requirement, in terms of section 166(1) of the Act, that the independent director should be selected from the databank maintained by PICG.
- (iii) The Commission vide email dated December 26, 2023 sought clarification relating to the status of independent directors from the Company. The Company in its response dated January 03, 2024 confirmed that it has complied with all requirements of the Act. However it is noted that the reported independent



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directors are not appearing in the list of independent directors maintained by PICG, confirming that the independent directors were not selected from PICG databank.

- (iv) Regulation 4(7) of the Companies (Manner and Selection of Independent Directors) Regulations, 2018 states that "every company shall be responsible for exercising its own due diligence before selecting an individual from the databank for appointment as an independent director." It was, therefore, responsibility of the Company to choose independent directors from the databank maintained by the institute duly notified by the Commission.
- (v) The Company has also not annexed the statement of Material Facts along with the notice of AGM, contrary to the requirements of section 166(3) of the Act.
- (vi) It is evident from the aforesaid that the Company failed to select the independent director from the databank maintained by PICG and has also not annexed the Statement of Material Facts along with the notice of AGM, thus, *prima facie*, has contravened the provisions of section 166 of the Act. The said contraventions attract applicability of the penal provisions under section 169 of the Act.

3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondent seeking justification for appointing individuals as independent director whose names were not registered with the databank maintained by PICG. The Chief Executive Officer of the Company (CEO) vide letter dated January 26, 2024 submitted written response and relevant extract thereof is provided hereunder:

- Independent directors were appointed in accordance with the criteria for appointment of independent directors given under section 166 of the Act;
- Sole reason for not appointing independent directors from the databank of independent directors is that the elected independent directors refused to take salary from the Company due to adverse financial position;
- It is hoped that all matters with the financial institutions will be resolved and litigations with them will be withdrawn in terms of Scheme of Arrangement sanctioned vide order dated November 24, 2021; and
- In view of the above requirements of section 166(1) may be relaxed till settlement of issues in terms of Scheme of Arrangement.

4. In order to provide opportunity of personal representation, hearing was scheduled for February 26, 2024 wherein Mr. Muhammad Hamza Khokhar, Advocate and Mr. Muhammad Ijaz, Company Secretary appeared on behalf of the Respondents as their Authorized Representative (AR) stated that the elected independent directors offered not to take any remuneration, therefore, were appointed, after complying with the requirements of the Act, considering the adverse financial condition of the Company. Company is making efforts to get them registered in the databank of independent directors and requested lenient view.



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

“166. Manner of selection of independent directors and maintenance of databank of independent directors. - (1) An independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by an institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment.

(3) The independent director of a listed company shall be elected in the same manner as other directors are elected in terms of section 159 and the statement of material facts annexed to the notice of the general meeting called for the purpose shall indicate the justification for choosing the appointee for appointment as independent director.

169. Penalties. - Whoever contravenes or fails to comply with any of the provisions of sections 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years.”

6. I have gone through the facts of the case, considered both the written statement by the CEO, verbal submissions of the ARs and record available with the Commission. I have observed that Mr. Nazia Waqar and Mr. Junaid Hussain Shah were appointed as independent director, when their names were not registered in PICG databank of Independent Directors and the Respondents also failed to annex the Statement of Material Facts along with the notice of AGM. The aforesaid defaults have been admitted by the CEO in his written response dated January 26, 2024 and by the ARs during the hearing.

7. Section 166(1) of the Act requires the companies to select and appoint an independent director from the data bank maintained by the PICG once the company has exercised due diligence prior to selecting a person from the aforesaid data bank. In view of afore-referred provision, the Company is obligated to appoint independent directors selected from the databank of individuals maintained by the PICG. Registration in the databank of PICG is imperative in that it is duly authorized by the Commission and the due diligence of selection of independent directors from its databank synchronizes details of experienced directors as well as newly qualified candidates which reinforces the best governance practices in listed companies. It is an independent institution verifying the credentials of the individuals who qualify for exemption from the DTP as per criteria given in the Regulations.

8. In view of the aforesaid facts, it is evident that the Company has contravened the provisions of sub-section (1) and sub-section (3) of Section 166 of the Act by appointing the afore-referred independent directors not enrolled in the databank maintained by the PICG



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and by not annexing the Statement of Material Facts along with the notice of AGM, hence the non-compliance at relevant point in time is established and the same is also admitted by the Respondents and ARs. I, therefore, in exercise of the powers conferred under Section 169 of the Act, hereby impose a penalty of **Rupees fifty thousand (Rs. 50,000/-)** on the Company and Warn all the remaining Respondents and advise them to ensure meticulous compliance of the applicable legal and regulatory framework in future.

9. 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 and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

10. 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/ HOD
Adjudication Department-I

Announced:
Dated: March 04, 2024
Islamabad



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The Company announced the AGM on 7.10.2023 and posted the AGM notice on PUCAR as well as on the Company's website and circulated to all the members of the Company. We have complied with the requirements of Circular No. 11 by filling the annual audited accounts electronically."

- (iv) The Company in its comments on the matter stated that the notice of AGM was uploaded on PUCARS, Company's website and also sent to members, however, failed to furnish notice of AGM along with evidence of publishing in the newspaper with the Commission;
- (v) In view of the above, the Company has, *prima facie*, violated the requirements of Circular No. 4 and Circular No. 10 for not providing facility of AGM through video link, webinar, or other electronic means and for not submitting notice of AGM with the Commission,.

3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondent seeking justification for not complying with the requirements of Circular No. 4 and Circular No. 10. In response to the SCN, the Chief Executive Officer of the Company (CEO) vide letter dated January 17, 2024 made written submission, relevant extracts of which are, *inter-alia*, produced below:

- AGM was announced on October 07, 2023 notice of which was posted on PUCAR as well as on Company's website, published in two newspapers and circulated to all members, however the same was inadvertently missed to be sent to the Commission;
- Video link facility to the members to attend AGM was not provided due to wrong interpretation of Circulars by the Company, understanding that the provision of video link facility is optional and allowed during Covid-19 for facilitating listed companies facing difficulties in holding general meetings physically; and
- Non-compliance was neither deliberate nor intentional. Future compliance is assured and lenient view is requested.

4. In order to provide opportunity of personal representation, hearing was scheduled for February 26, 2024 wherein Mr. Muhammad Hamza Khokhar, Advocate and Mr. Muhammad Ijaz, Company Secretary appeared on behalf of the Respondents as their Authorized Representative (ARs) stated that ambiguity in understanding the requirement was created by Circular No. 6 however compliance by providing video link facility in future is assured and requested lenient view.

5. Relevant provision of the Circulars and Act provides that:

"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



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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.

***Circular 6 of 2021:** In continuation to this office Circular No. 4 dated February 15, 2021 and in light of the practical difficulties reported by the stakeholders, the Securities and Exchange Commission of Pakistan in exercise of powers conferred under section 510 of the Companies Act, 2017 (XIX of 2017) (the "Act"), hereby clarify that the listed companies which are facing practical difficulties in holding general meeting physically, may opt to hold such meeting through electronic mode; however, the company shall provide necessary reasoning in the notice of the general meeting issued under sub-section (3) of section 132 of the Act, for not holding general meeting physically.*

***Circular 10 of 2019.** – (ii) A copy of newspaper in each language, in which notice of general meeting was published, along with statement under section 134 of the Act, where applicable, shall be filed with the SECP within three days of publication.*

***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."*

6. I have gone through the facts of the case, considered the submissions made by the CEO in writing and the arguments submitted by ARs during the hearing and record available with the Commission. The requirements prescribed in terms of aforesaid Circulars are clear and explicit and require the Respondents to facilitate the members by providing video-link to attend the AGM enabling them to virtually participate in the AGM and to furnish the notice of AGM to the Commission. It is noted that the Circular No. 6, without making electronic holding of meeting optional for listed companies, further clarifies the requirement of holding meetings through electronic modes and clarifies that companies facing problems in holding meetings physically may opt to hold them through electronic modes by stating reasons thereof.

7. The responsibility to ensure compliance with the aforesaid legal and regulatory requirements rests with the Respondents and they cannot absolve themselves from the entrusted responsibility by misconstruing the requirements of the law. It is noted that the intent of the legislator behind the aforesaid requirement is to ensure accessibility and understanding of the businesses being discussed during AGM. Further it helps to promote transparency, inclusivity and assurance that the information reaches a broader audience. In view of the aforesaid facts.

8. In view of the aforesaid, it is evident that the Respondents have contravened the provisions of Circular No. 4, Circular No. 6 and Circular No. 10 by not providing video-link facility to the members for attending the AGM and not submitting the AGM notice to the Commission, therefore, I, in exercise of the powers conferred under Section 510 of the Act, hereby impose a penalty of **Rupees one hundred thousand (Rs. 100,000/-)** on the Company



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and Warn all the remaining Respondents and advise them to ensure meticulous compliance of the applicable legal and regulatory framework in future.

9. 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 and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

10. 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/ HOD
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Announced:
Dated: March 04, 2024
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