



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan – Director/Head of Department
Adjudication Department-I

In the matter of
Sitara Energy Limited

Show Cause Notice No. & Date No. CSD/ARN/585/2019-01; dated December 29, 2023

Dates of Hearings: February 1, 2024 & February 14, 2024

Hearing attended by: Mr. Rashid Sadiq & Mr. Azeem Rashid
(Authorized Representative)

ORDER

Under Section 510(2) and section 479 of the Companies Act, 2017 and Section 132 thereof read with the Circular No. 10 of 2019

This Order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/585/2019-01 dated December 29, 2023, under Section 510(2) of the Companies Act, 2017 (**the Act**) and Section 132 thereof read with the Circular No. 10 of 2019 dated July 3, 2019 (**the Circular**) against Sitara Energy Limited (**the Company**) through the Chief Executive and the Board of Directors of the Company.

2. Brief facts of the case are that on the review of the information of the Company available at website of Pakistan Stock Exchange (**PSX**), it was transpired that the Company disseminated to PSX on October 10, 2023 the notice of holding of its Annual General Meeting (**AGM**), which was scheduled to be held on October 28, 2023. During the review, it was observed that the Company published its notice of AGM in English (**Business Recorder**) and Urdu (**Daily Express**) language newspapers on October 7, 2023. However, it was noted that the notice published in Urdu newspaper was in English Language. The Securities and Exchange Commission of Pakistan (**the Commission**), through its email dated December 5, 2023, sought clarification from the Company for not publishing its notice of AGM in Urdu language. In this regard, the Company through its email dated December 5, 2023, *inter alia*, submitted that:

"We would like to inform you that our newspaper publishing agent took a lot of time to translate the Notice of AGM, however, eventually could not do so, hence, due to a shortage of time, we had no opinion left but to publish the same English matter in the Urdu newspaper as well."

3. In terms of sub-section (3) of Section 132 of the Act read with the Circular it was required to send notice of AGM to the members and to every person who is entitled to receive the notice of AGM at least twenty-one days before the date fixed for the meeting. In terms of the aforesaid, the notice of



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AGM shall be published in English and Urdu languages morning newspapers, having nationwide circulation, which are generally known and read, in English and Urdu languages respectively. The aforesaid, *prima facie*, were in contravention of the requirements given in the Circular read with Section 132 of the Act for which penalty was provided in terms of Section 510(2) of the Act and Section 132(5)(a) thereof. Hence, proceedings were initiated against the Respondents through the SCN and they were called upon to show cause in writing within fourteen days from the date of the SCN as to why penalties may not be imposed on them for the said contraventions.

4. In this regard, the Company Secretary through letter dated January 11, 2024 sought an extension of 15 days to submit a reply owing to the reason that Chief Financial Officer was not well. However, the reply was not furnished despite lapse of considerable time. Therefore, in order to provide the Respondents an opportunity of personal representation, the matter was fixed for hearing to be held on February 1, 2024. Mr. Rashid Sadiq, the Authorized Representative through email dated January 31, 2024 sought an adjournment of two weeks. Thereafter, the matter was fixed for hearing to be held on February 14, 2024. During the hearing, the Authorized Representative appeared and accepted the default. He, however, submitted that through the SCN two penal provisions i.e. Section 132(5)(a) of the Act and Section 510(2) of the Act have been referred for the same default, hence, fine in the matter cannot be imposed. He requested to take a lenient view as was taken in the precedent cases.

5. Subsequent to the hearing, the Authorized Representative submitted a reply to the SCN, in terms of which, it was, *inter alia*, stated that:

- The Company issued the notice of AGM of 2023 and the reasons of not publishing the notice in Urdu language were explained through email dated December 5, 2023. Due to shortage of time, the agent published the notice in English language instead of Urdu language in Urdu newspaper.
- The contravention is *prima facie*, of Section 132(3) of the Act read with the Circular. The submissions made are reiterated.
- The Commission in the past has condoned the defaults in similar facts and circumstances and no penalties were imposed. Reliance was placed on orders in the matter of Avenceon Limited (28.10.2016), Berger Paints Limited (10.3.2017), Chakwal Spinning Mills Limited (27.3.2017), Hala Enterprises Limited (9.6.2017) and Mehmood Textile Mills Limited (28.8.2017) where no fine was imposed.
- The Commission also condoned egregious violations of Bela Automotive limited and Crescent Star Insurance Limited and others. There should be consistency in lenient view to meet the requirements of the SECP Act, Constitution and binding precedents.
- The fine could only be imposed on substantial findings of guilt as was held by the Supreme Court in the case reported as 2011 PLD 778 in the matter of SECP vs First Capital Securities Corporation Limited. Reliance is placed on SECP's binding precedents in Appeal No. 40 of 2014 dated August 24, 2015 in the matter of Fauji Cement Company Limited and Next Capital Limited in Appeal No. 26 of 2015 dated July 24, 2015 for determination whether the default was committee knowingly and willfully.



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- In terms of Section 479(3) and (4) of the Act, the Commission is empowered to delegate powers only with respect to any case or class of cases by an order in writing. Accordingly, the delegation of powers under Section 479 of the Act cannot be achieved through a notification under Section 10 of the SECP Act, 1997 which is different in charter. Accordingly, the delegation under which SCN was issued to the Respondents is a deviation from the prescribed process as 'where procedure [has] been provided for doing a thing in a particular manner then same should be done in that manner alone and not in any other way or it should not be done at all; otherwise it would be considered non-compliance of the legislative intent and would be deemed illegal (emphasis provided) as amply recognized, acknowledged and upheld by the Pakistani Judiciary.
- The SCN has invoked both Section 132(5) as well as Section 510(2) of the Act for the same matter which is contrary to Article 13 of the Constitution of Pakistan. In light of the above, the SCN may be dropped without any further action.

6. The Respondents through the aforesaid correspondence has raised mainly the following issues:

- (i) Whether the notice of AGM was published in newspaper in Urdu language in compliance with the law?
- (ii) Whether the power delegated for issuance of SCN in the instant matter?
- (iii) The SCN invoked both Section 132(5) and Section 510(2) for the same matter whether it is contrary to article 13 of the Constitution of Pakistan?
- (iv) Whether the precedent cases are relevant and mandatorily applicable in the instant matter?

7. I have gone through the facts of the case, correspondence made, given requirements of the Act and the Circular, and submissions made by the Authorized Representative. In this regard, the matter is being summarized in the following manner:

- (i) **Whether the notice of AGM was published in newspaper in Urdu language in compliance with the law?**

No. The AGM notice was published in Urdu (Daily Express), language newspapers on October 7, 2023, however, it was published in English language contrary to the requirements of the Circular read with the proviso of Section 132(3) of the Act that the notice in Urdu Newspaper to be published in Urdu language. The default was admitted by the Company in written reply submitted dated December 5, 2023. The reason stated in this regard was shortage of time.

It is noted that the intent of the legal framework behind the aforesaid requirements is to ensure accessibility, understanding and communication of the information to the shareholders so that they can easily understand the contents of the notice. Further it is to promote transparency, inclusivity and assurance that the information reaches a broader audience in their national language.



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The responsibility to ensure compliance with the legal and regulatory requirements as regards to publication of notice of AGM rests with the Respondents and they cannot absolve from the entrusted responsibility stating that the violation was caused due to shortage of time.

(ii) **Whether the power delegated for issuance of SCN in the instant matter?**

The Respondent's assertion is that the delegation under which SCN was issued was in deviation from the prescribed procedure as in terms of Section 479(3) of the Act the Commission is empowered to delegate such powers by an order in writing.

In this regard, I am of the view that Section 479 of the Act has to be read in conjunction with Section 10 of the SECP Act, 1997 and in terms of Section 10 it does not require order in writing. Relevant Section 10(1) of the SECP Act, 1997 provides that:

"10. Delegation of the Commission's functions or powers.- (1) The Commission may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers under this Act or any administered legislation²² to one or more Commissioners or any officer of the Commission."

The powers to take cognizance of the violations of the requirements of Section 132(5)(a) of the Act and Section 510(2) thereof, in case of a listed company, has been duly delegated to the undersigned vide SRO No. 1545(I)/2019 dated December 6, 2019 (the SRO). The SRO also specifically authorized and empowered the undersigned to invoke the powers of Section 479 of the Act. The Commission has delegated its powers through the SRO and to bring such delegation into public domain and knowledge, as the said SRO is available on the website of the Commission. Therefore, the assertions of the Respondents are not cogent and the SCN was issued in terms of powers conferred under the SRO.

(iii) **Whether the SCN invoked both Section 132(5) and Section 510(2) for the same matter and it is contrary to article 13 of the Constitution of Pakistan?**

The Respondents are of the view that for same matter two legal provisions have been invoked. In this regard, it is relevant to state that in terms of Section 132(3) of the Act, the notice published in the Urdu language was required to be sent to the Commission. Relevant proviso to Section 132(3) provides that:

"provided that in case of a listed company, such notice shall be sent to the Commission, in addition to its being dispatched in the normal course to members and the notice shall also be published in English and Urdu languages at least in one issue each of a daily newspaper of respective language having nationwide circulation."

In terms of the Circular, however, additional requirements have been provided therein, which *inter alia*, include provision of filing, of newspaper to the Commission,



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transmission of notice through email address, filing of financial statements and repeal of circulars. The relevant requirements are as hereunder:

- (i) *All notices of general meetings shall be sent to the members and every person who is entitled to receive notice of general meetings at least twenty-one days before the date fixed for the meeting and shall be published in English and Urdu morning newspapers, having nationwide circulation, which are generally known and read, in English and Urdu languages respectively;*
- (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;*
- (iii) *Notice of general meeting, along with statement under section 134 of the Act, where applicable, shall also be transmitted to the SECP through fax or email at the email address general.meetings@secp.gov.pk ; and*
- (iv) *One of the copies of financial statements and reports attached therewith, filed with the SECP in pursuance of section 223(7) of the Act, shall be duly signed by the auditor, the Chief Executive, a director and the Chief Financial Officer as the case may be.*

Therefore, the requirements of the Section 132(3) and the Circular are not same in entirety. In absence of publication of notice of AGM in Urdu language, the Respondents failed to file a published copy of the newspaper having notice published in Urdu language was not forwarded to the Commission within three days of the publication. Moreover, the notice published in Urdu language was not forwarded at the given email address of the Commission. Hence, the violations of both of Section 132 and of the Circular are evident. I am, therefore, of the view that, as against the claim of the Respondents, there is no violation of article 13 of the Constitution of Pakistan.

(iv) Whether the precedent cases are relevant and mandatorily applicable in the instant matter?

The Respondent has placed reliance on precedent cases where no fine was imposed. In this regard, it is relevant 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. The case laws referred by the Respondents are neither mandatory nor binding on the undersigned. Moreover, following points are relevant:

- (a) Reliance in case of order dated October 28, 2016 (Avanceon Limited) is not relevant as the Respondent Avanceon Limited had published notice of AGM in Urdu language subsequently when highlighted by the Commission. Therefore, subsequent mitigation steps were taken in cited case as against the instant matter where no subsequent compliance was made by the Respondents.
- (b) Reliance in case of order dated March 10, 2017 (Berger Paints Pakistan Limited) is not relevant as the Respondent Berger Pakistan Limited provided a Urdu translated version of the notice of AGM to the Vendor for publication, however,



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- the Vendor did not publish the same. In case of the Company, a Urdu translated version of notice of AGM was not provided for publication, which shows complacency on part of the Company.
- (c) For the referred case laws of Bela Automotives Limited and Crescent Star Insurance Limited relevant particulars were not provided.
 - (d) The 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 referred case law and its facts are different from the case in hand. In the referred case law 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. Accordingly, facts of Next Capital Limited are also not relevant to this case, therefore, the same are not applicable.
 - (e) The Respondents have referred Appeal No. 40 of 2014 of Fauji Cement Company Limited, however, the reference is incorrect as the Appeal No. 40 of 2014 pertains to Pak Chromical Limited.

8. In view of the above, publishing of AGM notice in Urdu language and its dissemination within the given time is a requirement of the law but unfortunately, it has been noted that the Respondents have not observed the compulsory requirements of law. Therefore, in terms of the powers conferred under the provisions of Section 132 and 510(2) of the Act read with the Circular, I hereby impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only) on the Respondent Company i.e. Sitara Energy Limited** and warn the remaining Respondents to be careful and to ensure the compliance of applicable requirements in letter and spirit.

9. The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited/ UBL Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

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 or violation of the Act.

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced:

Dated: March 22, 2024