

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Suhail Jute Mills Limited

Dates of Hearing

May 20, 2019, October 5, 2020, October 13,
2020

Order-Redacted Version

Order dated October 20, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Suhail Jute Mills Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated April 26, 2019
2. Name of Company	Suhail Jute Mills Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. Suhail Jute Mills Limited
4. Nature of Offence	Violation of Listed Companies (Code of Corporate Governance) Regulations, 2017 read with section 512 of the Companies Act, 2017
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN and requirements of the Regulations and of the Act. At the outset, it is relevant to mention here that Auditors of the Company in their review report annexed with the Accounts, on the SOC with the Regulations, inter alia, highlighted instances of non-compliances of clause (1) of Regulation (6), Regulation (19), Regulation 29(1), Regulation (39), Regulation 10(2), Regulation 10(3)(ii), Regulation 10(3)(iii), Regulation 10(3)(iv), Regulation 10(3)(v) and Regulation 16 of the Regulations, which highlights an independent and external evaluation of compliance. However, based on the available record, I have analyzed the matter in the following manner:</p> <p>(i) In terms of clause (1) of Regulation (6) of the Regulations, the independent directors of each listed company shall not be less than two members or one third of the total members of the board, whichever is higher. The Company however at the time of review of SOC did not have any independent director. The Company in its representation has stated about application was made before the</p>

Commission seeking exemption of the given requirement, which was denied by the concerned department of the Commission. The Company also submitted that two independent directors were appointed on the board of the Company during the month of May 2019. Hence, at the time of review of SOC, total number of independent directors did not comply with Regulation 6(1) of the Regulations, evidencing that the Respondents have violated the requirements of Regulation 6(1) of the Regulations.

(ii) In terms of Regulation 19 of the Regulations, appropriate arrangements to carry our orientation courses for the directors to acquaint them with the Regulations and other applicable laws has been stipulated. The stance taken that the directors of the Company were well versed with the given requirements and the reason cited of default was scarcity of financial resources. The Authorized Representative also narrated that the aforesaid requirement was no longer mandatory requirement. In this context, I am of the view that during the relevant times, provision of these Regulations were mandatory to comply with. Moreover, it is worth to mention here that these orientation courses are helpful for the directors to get themselves aware of the continuous updated corporate and legal requirements. A company beside externally arranged orientation course, can also utilize its internal sources. The stance of the Company, hence, is not worthy to be considered, and violation in terms of Regulation 19 of the Regulations is established.

(iii) In terms of Regulation 29(1), for Human Resource and Remuneration (HR) Committee it has been stipulated that HR committee to be constituted comprising of three members having majority of non-executive directors of whom at least one member be an independent director. The Company in representation explained that during the period under review, there was no employee turnover or, hiring of human resources. I have also noticed that there was no independent director on the board of the Company at the relevant time of SOC. However, it is viewed that subsequent to appointment of two independent directors, the HR committee was required to be constituted. The Company, however, is showing leniency in ensuring compliance of Regulations.

(iv) In terms of Regulation 39; the Company is required to have a functional website. The Company in its representation has informed that website under the domain of www.sjmlimited.com had been developed and intimation about the same to Pakistan Stock Exchange and the Commission. However, evidence of posting key elements of policies on website was not discussed in the representation made by the Company. I am of the view that

subsequent compliance does not exonerate the Company from violation of Regulation (39) at the relevant time of SOC.

(v) In terms of Regulation 10(2), the board of directors is responsible for determining the company's level of risk and the board is required to undertake at least annually, an overall review of business risks. The Company in its representation has informed that the process of annual risk review was not formalized. The Company's stance does not however, is cogent as the Company's operations have significantly increased due to completion of merger process in the year 2017 and as informed the process of disposal of machinery of the Company was also in progress, so annual risk reviews are of significance to the Company and of its shareholders. The Company hence, at the relevant time of SOC, violated the requirements of Regulation 10(2) of the Regulations.

(vi) In terms of Regulation 10(3)(iii), adequate systems and controls for identification and redressal of grievances arising from unethical practices is required. The Company in its representation submitted that identification and redressal of grievances from unethical practices were handled in the normal course. In view of human resource strength, the matter of grievances of employees may be handled, but if the grievances are related to external stakeholders, appropriate mechanism is required to handle such grievances. The Company, however, did not assure to implement the required system. Hence, at the relevant time of SOC, the Respondents violated the requirements of Regulation 10(3)(iii) of the Regulations.

(vii) In terms of Regulation 10(3)(iv) of the Regulations, a system of sound internal control is required which needs to be effectively implemented and maintained at all levels within the Company. The Company in its representation submitted that the Company was in existence since 1981 and a system of internal control including internal audit existed. As stated, the internal controls are further augmented by the functioning of an Audit Committee. In this regard, I am of the view that in absence of independent directors, the Audit Committee constituted by the board was not in compliance of the given requirements of the Regulations. Hence, stance of the Company for the aforesaid non-compliance is not acceptable. The Company, therefore, at the time of SOC has violated the requirements of Regulation 10(3)(iv) of the Regulations.

(viii) In terms of Regulation (16), if any director has a conflict of interest then in case of board meeting, the quorum of the meeting

shall not be deemed present unless at least two independent directors are also present at such meeting in person or through video link. The Company's view is that non-compliance is owing to the reason that the Company did not have independent directors during the period under review. I am of the view that for the Company, having two independent directors, is primary requirement and implementation of the conflict of interest procedure is subject to the compliance of the aforesaid requirement. The Company, therefore, needs to implement conflict of interest procedures as per requirements of the Regulations as independent directors were appointed subsequent to the issue of Accounts 2018.

(ix) In terms of Regulation 10(3)(v), a formal and effective mechanism is required for annual evaluation of the board's own performance, members of board and of its committees. The Company in its representation admitted default of aforesaid requirement and assured to comply with the given requirement. In this context, I am of the view that effective evaluation mechanism of board's own performance is the first step to safeguard the interest of the shareholders and other stakeholders like financial institutions. Hence, in view of non-operational nature of the Company, a dysfunctional board, without any effective evaluation mechanism in place, would be of no value. The Company's admission of default proves that at the relevant time of SOC the requirement of the Regulation 10(3)(v) of the Regulations was violated.

(x) In terms of Regulation 10(3)(ii) a formal code of conduct is required and it has been enshrined that board shall take steps to disseminate code of conduct through the company along with supporting policies and procedures and these shall be put on the company's website. The Company's stance that due to limited management personnel with decision making authority there was less likelihood of unethical practices and unidentifiable conflicts of interest. The Authorized Representative has submitted that subsequent to the SOC code of conduct was implemented. However, I observe that at relevant time, Regulation 10(3)(ii) was not complied by the Company.

2. In view of the foregoing, it is concluded that the lapse was demonstrated by the Respondents with regard to compliance with the Regulations. Further, the Auditor of the Company reported such non-compliances in his review report on the SOC with the Regulations. The Respondents, therefore violated the aforesaid requirements of the Regulations for which justifiable grounds do

	<p>not exist and non-operational nature cannot be considered as cogent reason for non-compliance. The Authorized Representative ensured that despite non-operational nature of the Company, the compliance of the requirements of the Regulations be made in order to improve corporate governance of the listed Company.</p> <p>3. Keeping in view an aggregate penalty of Rs. 100,000/- (Rupees one hundred thousand) was imposed on the chief executive of the Company.</p> <p>Penalty order dated October 20, 2020 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs. 100,000/- (Rupees one hundred thousand) on the chief executive of the Company.
7. Current Status of Order	No Appeal has been filed by the respondents.