



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
ADJUDICATION DIVISION
ADJUDICATION DEPARTMENT-II
LAHORE

Through Courier

NO. ADJ-II/AO-LHR/ 1887

February 22, 2024

✓ M/S. Gugera Hydro Power Company (Private) Limited
64-Ahmed Block, New Garden Town,
Lahore.

**SUBJECT: ORDER IN RESPECT OF SHOW CAUSE NOTICE SCN NO./AO-LHR/675
DATED JANUARY 15, 2024 IN THE MATTER OF M/S. GUGERA HYDRO
POWER COMPANY (PRIVATE) LIMITED**

Dear Sir/Madam,

Please find enclosed herewith copy of the final "Order", in the title matter for proceedings under section 123-A read with section 479 of the Companies Act, 2017, for your record. and necessary action.

Mohsin Syed
Additional Registrar/Adjudication Officer,
Adjudication Department-II, Lahore.

Cc: Incharge Company Registration Office, Lahore,
3rd Floor, Associated House, 7-Egerton Road,
Lahore.



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ADJUDICATION DEPARTMENT –II
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BEFORE THE ADDITIONAL REGISTRAR /ADJUDICATION OFFICER,
ADJUDICATION DEPARTMENT –II, LAHORE.

In the Matter of

M/S. GUGERA HYDRO POWER COMPANY (PRIVATE) LIMITED

Number and date of SCN: SCN No./ AO-LHR/SCN/675 dated January 15, 2024
Dates of Hearing/s: January 23, 2024, January 29, 2024, and February 06, 2024
Present: Mr. Muhammad Aslam, Director of the company
representing all the respondent(s).

ORDER

**UNDER SECTION 123-A READ WITH SECTION 479 OF
THE COMPANIES ACT, 2017**

This Order shall dispose of the proceedings against M/S. Gugera Hydro Power Company (Private) Limited (*"the Company"*) and its directors including the chief executive (*"the Respondents"*), initiated through Show Cause Notice (*"the SCN"*) dated January 15, 2024 issued under the provisions of Section 123-A read with Section 479 of the Companies Act, 2017 (*"the Act"*).

2. Brief facts of the case that led to this show cause notice, are that the company had failed to conform to the provisions of Section 123-A (Act No. XXVII of 2020 in Act XIX of 2017 amendment made through Companies Amendment Act, 2020) of the Companies Act, 2017, by not filing the declaration of compliance as per Form 45, with the Registrar, pursuant to sub-section (2) of Section 123-A of the Companies Act, 2017 (*"the Act"*) read with Regulation 19A (5) of the Companies (General Provisions and Forms) Regulations, 2018 (the *"Regulations"*) and rendered the company liable to a penalty, as contained in sub-section 3 of section 123-A read with section 479 of *"the Act"*.

3. Consequently, the aforesaid SCN dated January 15, 2024, was issued to *"the Respondents"* to show cause in writing as to why penal action as contained in sub-section 3 of section 123-A read with section 479 of *"the Act"* may not be taken against *"the company"* for failing to conform to the provisions of section 123-A of *"the Act"*, *ibid*.

4. In the matter of aforesaid SCN, initial opportunity of hearing was provided to the company by fixing hearing on January 23, 2024, by serving the Show Cause notice on January 15, 2024, at the registered office of the company. However, both the company and



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its chief executive / director(s) had failed to appear personally or through an authorized representative on the scheduled date and time of the said hearing. Thereafter, another opportunity of hearing was provided to the company, through its chief executive/director(s) by fixing the hearing for January 29, 2024, vide hearing notice # AO-LHR/680 sent at the registered office of the company, however, both the company and its chief executive/director(s) had again failed to appear personally or through an authorized representative on the scheduled date and time. Considering the persistent non-appearance, a final opportunity of hearing was provided to the company through its chief executive and director(s) by fixing hearing for February 09, 2024 by serving the notice, however, in response of the above said notice(s), Mr. Muhammad Aslam, the director of the company had appeared in person on February 06, 2024 instead, and argued the case. Mr. Aslam initiated the case with a stance that it's a law-abiding company that gives due care to compliance of every prevailing law(s), however, due to resignation of relevant staff, the company failed to file the declaration of compliance as per Form 45 for the period(s) 2021 and 2022, with the "Registrar", within the stipulated timeline and further requested and committed to file the overdue returns within 5 days' time, if allowed. The arguments of the learned director were heard and considered, and further he was also allowed to comply with the provisions of section 123-A of the "Act" during the adjudication proceedings, and to which the company complied and the same fact was verified by the Registrar, CCD, Lahore.

5. Before proceeding further, it is necessary to advert to the relevant provisions of the law and Section 123-A of the Companies Act, 2017 which unambiguously stipulates that:

And Whereas, Sub-section(s) 1 and 2 of Section 123-A (Act No. XXVII of 2020 in Act XIX of 2017 amendment made through Companies Amendment Act, 2020) of the Companies Act, 2017 unambiguously stipulate/s that:

Section 123- A (1): Record of Ultimate Beneficial Owner: A company shall maintain information of its ultimate beneficial owners in such form and manner, within such period, and obtain such declaration from its members as may be specified.

(2) Every company shall, in such form and manner as may be specified, maintain a register of its ultimate beneficial owners and shall timely record their accurate and updated particulars, including any change therein, and provide a declaration to this effect to the registrar and where any government is a member of a company such particulars of the relevant government shall be entered in the register of ultimate beneficial owners in the specified manner and

WHEREAS, Regulation 19A (5) of the "Regulations" provides that, "Every company required to maintain a register of ultimate beneficial owners shall, within fifteen days from the receipt of declaration received under sub-regulation (2) or (3), and thereafter along with its annual return, submit to the registrar concerned a declaration of compliance in pursuance of sub-section (2) of section 123A of the Act, as per Form 45".



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6. Without any prejudice, the company/and its director(s)/officer(s) has contravened the aforesaid provisions of Section 123-A of the Companies Act, 2017 (Act No. XXVII of 2020 in Act XIX of 2017 amendment made through Companies Amendment Act, 2020) and rendered the company liable to a penalty, as contained in sub-section 3 of Section 123-A of "the Act", which entails as under:

123-A :

(3) Any contravention or default in complying with requirement of this section shall be liable in case of:

- (a) a director or officer of the company or any other person, to a penalty of which may extend to one million rupees; and
- (b) the company, to a penalty which may extend to ten million rupees;

7. It is evident from the abovementioned scripts of the law that the company was in default of Section 123-A of "the Act" as it has failed to file the aforesaid declaration of compliance /return(s), within the stipulated time *i-e* within fifteen days from the receipt of declaration received under sub-regulations (2) or (3) and thereafter along with its annual return, as the case may be and rendered the company liable to a penalty as contained in sub-section 3 of Section 123-A of "the Act". The nature, seriousness, and impact of the breach show that the act of the company was deliberate and the default, duration, and extent of the violation have raised serious concerns over the systemic weaknesses of the management systems and internal controls of the company. However, considering the aforesaid facts of the case, relevant provisions of "the Act", and the arguments set forth by the company's director over the course of the hearing, it is pertinent to state the fact that the afore-mentioned provisions of the law are unambiguous and explicit and the fact that timing is the essence of these returns and the disclosure requirements of these have been kept to a bare minimum. Declaration of compliance as per Form-45 and returns prepared with financial statements together accurately and promptly provide to its users a reliable source of information regarding a company's position and performance, besides illustrating the results of the management's stewardship of resources entrusted to it. In order to ensure transparency, all companies must meticulously adhere to the law for the preparation and filing of these returns under various provisions of "the Act". The Chief Executive, directors, and officer(s) of the company are obligated to ensure that such mechanisms are in place, and appropriate actions are taken, whereby financial and operational reporting of the company is timely achieved, whilst ensuring due compliance with the law.

8. In terms of the Commission's Notification S.R.O. 1356 (I)/ 2020 dated December 16, 2020, the powers to adjudicate cases under Section 123-A of "the Act" have been delegated to the undersigned as Adjudication Officer, Adjudication Department- II, Lahore.



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9. Considering the facts of the case, and other record presented before the undersigned, I am compelled to infer and decide that the case as the company has complied with the mandatory requirements of Section 123-A of "the Act", during the pendency of the ongoing adjudication and the same fact has also been verified by the "Registrar". Before proceeding with the decision, I would also like to highlight that directors of the company are required to exercise the utmost care in making business decisions in order to fulfill their fiduciary duties. Duty of care requires directors to make business decision after considering all available information, requirements of laws/regulations with regard to operations of the company and then act in a judicious manner while promoting the company's best interest. However, I have gone through the facts of the case as the company has complied with the requirements of Section 123-A of "the Act" during the adjudication proceedings, therefore, I, while exercising the powers delegated vide S.R.O. 1356 (I)/ 2020 dated December 16, 2020 under section 123-A read with section 479 of the "Act", hereby condone penalty, with a "**warning**" to the company for future adherence to the law, in letter and spirit, to conclude "the SCN" proceedings.

Mohsin Syed
- 22/2/2024

Mohsin Syed
Additional Registrar/Adjudication Officer,
Adjudication Department-II, Lahore.

Announced:
February 22, 2024,
Lahore.

The Chief Executive,
M/S. Gugera Hydro Power Company (Private) Limited,
64-Ahmed Block,
New Garden Town,
LAHORE.



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