



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Adjudication Department –II
Lahore.

Through Courier

NO. ADJ-II/LHR/9844

March 19, 2024

The Chief Executive/Director,
M/S. CB Capital Limited,
182-CB House, New Garden Town,
LAHORE.

**SUBJECT: ORDER IN RESPECT OF SHOW CAUSE NOTICE SCN NO. /AO-LHR/1563
DATED FEBRUARY 20, 2024 IN THE MATTER OF M/S. CB CAPITAL
LIMITED**

Dear Sir/Madam,

Please find enclosed herewith copy of the final "Order", in the title matter for proceedings under section (s) 233 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 Corporate Registry Department, Lahore.



Securities and Exchange Commission of Pakistan
Adjudication Department –II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
ADJUDICATION DEPARTMENT -II
LAHORE

Through Courier

**BEFORE MOHSIN SYED, ADDITIONAL REGISTRAR /ADJUDICATION OFFICER,
ADJUDICATION DEPARTMENT -II, LAHORE.**

In the matter of
M/S. CB CAPITAL LIMITED

Number and date of SCN: SCN No. /AO-LHR/1563 dated February 20, 2024
Dates of Hearing: February 29, 2024;
Present: Mr. Hashim Tariq, authorized person representing all the respondent(s).

ORDER
UNDER SECTION 233 READ WITH SECTION 479
OF THE COMPANIES ACT, 2017


This Order shall dispose of the proceedings against M/S. CB Capital Limited (*"the company"*) and its directors including the chief executive (*"the Respondents"*), initiated through Show Cause notice (*"the SCN"*) dated February 20, 2024 issued under the provisions of Section 233 read with Section 479 of the Companies Act, 2017 (*"the Act"*).

BRIEF FACTS OF THE CASE

2. M/S. CB Capital Limited (*"the Company"*) is a public unlisted company registered under the repealed Companies Ordinance, 1984 (now the Companies Act, 2017) having an authorized capital of Rs. 500 million and a paid-up capital of Rs. 300 million.
3. Brief facts of the case are, that *"the company"* had failed to file its annual audited financial statement(s) for the year(s) 2023 with the Registrar, within the stipulated timeline, pursuant to Section(s) 233 of the Companies Act, 2017. The company had reported the holding of its annual general meeting on October 28, 2023 and without any prejudice, *"the company"* had contravened the aforesaid provisions of *"the Act"* and rendered the company liable to a penalty of level-1 on the standard scale, as provided under Section(s) 233 (4) read with Section 479 of *"the Act"* and
 - a) Consequently, the aforesaid SCN dated February 20, 2024 was issued to *"the respondent(s)"* to show cause in writing as to why penal action as enunciated under Section 233 (4) read with Section 479 may not be taken against *"the company"* for failing to conform to the provisions of Section 233 of *"the Act"*, *ibid*.
 - b) In the matter of aforesaid SCN, initial opportunity of hearing was provided to the company by fixing hearing on February 29, 2024 through serving the Show Cause notice served on February 20, 2024 at the registered office of the company, however, two different replies dated February 27, 2024 were filed by the chief executive of the company with the Commission, explaining the reasons for the said non-compliance and also stating appointment of



Securities and Exchange Commission of Pakistan
Adjudication Department -II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk


19/3/2024.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 1

Mr. Hashim Tariq in the other letter Ref# CB/CRO/SCN, as an authorized representative of the company in the subject case and that, duly considered and granted by the undersigned.

SYNOPSIS OF ARGUMENTS

4) On the aforesaid date of hearing, i-e February 29, 2024, Mr. Hashim Tariq, had appeared under authority and in person from company registration office, Lahore before the undersigned, on behalf of all the respondents as their authorized representative and argued the case:

a) Mr. Tariq, the learned authorized representative of the company started the argument and took the stance in the beginning that it's a law abiding company, but, since the proceedings are initiated against the political persons i-e Mr. Moonis Elahi and Chaudhry Pervez Elahi, having presence and major shareholding in the company, the company considers all such proceedings initiated by all the institutions, as unlawful and illegal, though he could not substantiate the non-filing in the instant case as the holding of the annual general meeting was notified to the "Registrar" on 28.10.2023, yet without any bias or prejudice; and further presence of Chaudhry Pervaiz Elahi could not be established even on the Board of Directors of the company;

b) Mr. Tariq, also contested the legal ground for issuance of the SCN by claiming the relief provided under Section 468 of the "Act" by calling the proceedings as "illegal and unlawful/Biased", and that objection was addressed by the undersigned that the said relief provided under Section 468, is applicable and available in case of "late filing" of returns /financial statements only and whereas "the company" has denied filing of financial statements for the year 2023 in the instant case and is without any prejudice, "not entitled" to any "relief", as claimed under Section 468 of the " Act" and the concluding text of the respondent/s is reproduced as under:

"that this office is well aware of the biased, one sided and frivolous proceedings against Mr. Moonis Elahi and Mr. Pervez Elahi. The management of the company strongly believes and is confident that the such proceedings shall stand rejected /closed with passage of time and all allegations levelled against Mr. Moonis Elahi and Mr. Pervez Elahi shall stand withdrawn. Pending the outcome of proceedings being conducted by the various regulatory authorities, the assertion of CB Capital Limited, is that there is no nil impact of aforesaid proceedings on the financial statements of CB Capital Limited and shall take time to be proven before auditors and third parties. Hence, filing of financial statements at this juncture, by CB Capital Limited shall be prejudicial to the interest of CB Capital Limited and its "shareholders", though it was not clarified, "what and how". In view of the aforesaid, we request this office to withdraw the SCN(s) under "reply".

c) The undersigned raised serious concerns over the response of the company whereby the financial information was suppressed from the creditors, financial institutions, FBR, other stakeholders in addition to the shareholders, by merely calling it "prejudicial to the interest of CB Capital Limited and its "shareholders"", on contrary to the spirit of the provisions of Section 233 and Section 468 of the "Act", *ibid*; and further, clarified the learned representative over the provisions of Section 233 (1), that clearly provides fifteen days to private companies, for filing of financial statement with the Registrar and therefore, the company has contravened the provisions of Section 233(1) of the "Act" that attracts the penal provisions of Section 233(4);



19/3/2024



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2

- d) Mr. Tariq, also referred the provisions of that Section 468 again, and contested that no proceedings shall be initiated against any company or any of its officers on account of filing of returns/documents after expiry of the prescribed period and provided relevant provisions of the law, that are stated below:

Section 468 provides that: "Acceptance of documents" presented after prescribed time. —(1) Notwithstanding anything contained in section 479, where any document required under this Act to be filed or registered with the registrar is presented after the expiry of the prescribed period, the registrar may accept the same, on payment of the fee as specified below....

- a. within ninety days, a fee equivalent to two times;*
- b. within one hundred and eighty days, a fee equivalent to three times;*
- c. within one year, a fee equivalent to four times;*
- d. within two years, a fee equivalent to five times; of the prescribed fee payable in respect thereof...and*

468 (3) The acceptance of the document by the registrar under sub-section (1) shall not absolve the defaulting company or other person concerned of any other liability arising from the default in complying with the requirements of this Act: emphasized that.....

"Provided that no proceeding shall be initiated against the company or any of its officers on account of delay in filing of any document required under this Act to be filed or registered with the registrar which is presented by the company or other person concerned on the payment of fee as specified under sub-section (1) and within the period as specified therein".

However, the undersigned had clarified again, that the said relief is available only in case of "delay in filing of any document to be registered with the registrar" which is presented by the company or other person concerned on *payment of fee as specified under sub-section (1) and within the period as specified therein.* Therefore, it is evident from the preceding excerpts of the law, that the subject case **does not qualify for the "relief", as provided in terms of section 468 of the "Act".**

Conclusion

5. Mr. Tariq, concluded the arguments with a note, that "the respondents", are not in violation of any provisions of the Companies Act, 2017 and therefore no penalty under the provisions of Section 233 of "the Act" be imposed upon the company or its director/chief executive and insisted on the same old stance by calling this proceeding, as unlawful /illegal "and certainly, that was not the fact as the default was established since the company had held AGM on 28.10.2023 and the same fact was notified to the "Registrar" and hence, the arguments of the learned representative were not cogent and eventually, disallowed".



Securities and Exchange Commission of Pakistan
Adjudication Department –II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk

6
19/13/2024



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 3

It is important to stat that all the arguments of the learned counsel /representative of "the company" have been heard, at length. At the very outset, it must be stated that authorized representative of the company, have neither described any cogent or persuasive reason(s) for the said prolonged default, wherein the company had failed to file financial statement(s) nor, any evidence in contention of filing was provided to the undersigned and mere the plea of the authorized representative for company's resolve for compliance or its "prejudicial to the interest of CB Capital and its "shareholders" , on contrary to the spirit of the provisions of Section 233 and Section 468 of the "Act"", can't be termed as persuasive and legal argument or defense , in the instant case.

6. Let us first have deliberation on the entreaty taken by the learned counsel regarding the interpretation of Section 233 of the Companies Act, 2017 and before proceeding any further, it is necessary to advert to the relevant provisions of the law and Section 233 of the Companies Act, 2017 which unambiguously stipulates that:

- a) *Sub-section (1) of Section 233 "Without prejudice to the provisions of sub-section (5) of section 223, after the audited financial statements have been laid before the company at the annual general meeting and duly adopted, a copy of such financial statements together with reports and documents required to be annexed to the same, duly signed in the manner provided by sections 226, 232 and 251, shall be filed by the company with the registrar within thirty days from the date of such meeting in case of a listed company and within fifteen days in case of any other company." and*

Sub-section (4) of Section 233 provides: that Any contravention or default in complying with requirements of this section shall be an offence liable—

- a) in case of a listed company, to a penalty of level 2 on the standard scale; and
b) in case of any other company, to a penalty of level 1 on the standard scale and*

And further, Section 468 (3) unambiguously provides that :

468- The acceptance documents presented after the prescribed time: by the registrar under sub-section (1) shall not absolve the defaulting company or other person concerned of any other liability arising from the default in complying with the requirements of this Act: emphasized that.....

"Provided that no proceeding shall be initiated against the company or any of its officers on account of delay in filing of any document required under this Act to be filed or registered with the registrar which is presented by the company or other person concerned on the payment of fee as specified under sub-section (1) and within the period as specified therein".

It is evident from the abovementioned scripts of the law that the company is in default of Section 233(1) of "the Act" as it has failed to file the financial statements within the stipulated timeline and further is liable to a penalty of level-1 on the standard scale, as provided in section 233 (4). The nature, seriousness and impact of the breach shows that the act of the company was deliberate and moreover the default/ duration and extent of the violation has raised serious concerns over the systemic weaknesses of the management systems and internal controls of the company.



19/3/2024



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4

7. Now as regards to the arguments by the learned authorized representative, he could not describe any persuasive reason(s) for the said default and only pleaded that the said returns can't be filed as "prejudicial to the interest of CB Capital Limited and its "shareholders", on contrary to the spirit of the provisions of Section 233 and Section 468 of the "Act", and certainly, it can't be termed as **persuasive and legal argument or defense, in the instant case**. The undersigned had further explained the respondent that director(s) /chief executive of the company are obligated to devise a system where all the reporting /filing requirements defined under "the Act", are timely met. Further to it, the undersigned provided him with hearing opportunity to explain any cogent reasons for the said default, however; he could not explain or describe any persuasive reasons for the said default and only reiterated that due to the aforesaid stated reason(s), the financial statements of "the Company" could not be filed with the Registrar, within the stipulated time and he further requested to consider the company's resolve for subsequent filing of returns, to decide the matter.
8. Now as regards to the arguments by the learned authorized representative over the relief provided under Section 468, the undersigned had clarified that the subject company is not entitled for any relief as provided under sub-section (3) of Section 468 and further the said relief is available for companies in case of delay filing of return(s) proceedings and for less than two years and the extract of the section is produced below for ready reference:

468 (3) The acceptance of the document by the registrar under sub-section (1) shall not absolve the defaulting company or other person concerned of any other liability arising from the default in complying with the requirements of this Act: emphasized that.....

"Provided that no proceeding shall be initiated against the company or any of its officers on account of delay in filing of any document required under this Act to be filed or registered with the registrar which is presented by the company or other person concerned on the payment of fee as specified under sub-section (1) and within the period as specified therein".

It is pertinent to mention here that no evidence to the filing effect of all the financial statement(s), was provided at the time or before the said hearings, despite requests of the undersigned. The conduct of the company was analyzed and it is evident that the company and its authorized representative has failed to substantiate the said default and further to share appropriate remedial steps taken by the company in respect of the violation or its likelihood of recurrence, necessitating the need for stern action, under the provisions of section(s) 233 of the "Act". Accordingly, in the case in hand, the default under Section-233 of "the Act" is **hereby "established"** and the company is liable to a penalty of level-1 on the standard scale, as provided under Section(s) 233 (4) read with Section 479 of "the Act".

9. In terms of the Commission's Notification S.R.O. 1546 (I)/2019 dated December 06, 2019, the powers to adjudicate cases under Section 233 of the Companies Act, 2017 have been delegated to the undersigned as Adjudication Officer, Adjudication Department-II, Lahore.
10. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Act, and the replies dated 27.02.2024 and arguments set-forth by the company's authorized representative over the course of hearing. The afore-mentioned provisions of the law are unambiguous and explicit and the fact that timing is essence of accounts and, the disclosure requirements of these accounts have been kept to a bare minimum. Financial statements and



Securities and Exchange Commission of Pakistan
Adjudication Department -II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk

19/3/2024




SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5

other returns prepared accurately and in a timely manner provide to its users a reliable source of information regarding a company's financial position and performance, besides illustrating the results of the management's stewardship of resources entrusted on to it. In order to ensure transparency, all companies must meticulously adhere to the law for preparation and circulation of financial statements. Directors are obligated to ensure that such mechanisms are in place, and appropriate actions be taken, whereby financial and operational reporting of the company is timely achieved, whilst ensuring due compliance of the law.

11. Considering the facts of the case, proceedings and other record presented before the undersigned, I am compelled to infer and decide that the case as "the company" has failed to comply with mandatory requirements of Section 233 of "the Act", by non-filing of the annual audited financial statements for the year ended 2023 and within the stipulated time frame as prescribed by the "Act". 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 failed to comply with the requirements of Section 233 of "the Act", therefore, I, while exercising the powers delegated vide S.R.O. 1546 (I) / 2019 dated December 06, 2019 under section 233 read with section 479 of the "Act", hereby impose a penalty of Rs. 15,000/- upon the company, to conclude ("the SCN") proceedings.

12. This order is being issued without prejudice to any other action, that the Commission may initiate against the company in accordance with law/s on matters subsequently, investigated or otherwise brought to the knowledge of the Commission. The chief executive of the Company is advised to deposit the aforementioned penalty in the designated bank account maintained with MCB Bank Limited or UBL Bank Limited in the name of the Securities and Exchange Commission of Pakistan, within thirty days from the receipt of this Order, and original receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fines, proceedings for recovery of the same shall be initiated against the company and the respondent(s) to this show cause notice.


19/3/2024.

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

Announced:
March 19, 2024,
Lahore.

The Chief Executive,
M/S. CB Capital Limited;
182-CB House;
New Garden Town;
LAHORE.



Securities and Exchange Commission of Pakistan
Adjudication Department -II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk