



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

Before

Amir M. Khan Afridi - Director/Head of Department

In the matter of Show Cause Notice issued to Image Pakistan Limited
(formerly Tri-Star Polyester Limited)

Dates of Hearings

February 15, 2022

Order-Redacted Version

Order dated June 28, 2022 was passed by Head of Department (Adjudication-I) in the matter of Image Pakistan Limited (formerly Tri-Star Polyester Limited). Relevant details are given as hereunder:

| Nature | Details |
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| 1. Date of Action | Show cause notice dated December 28, 2021 |
| 2. Name of Company | Image Pakistan Limited (formerly Tri-Star Polyester Limited) |
| 3. Name of Individual* | The proceedings were initiated against the Company and its directors. |
| 4. Nature of Offence | <p>Proceedings were initiated in terms of the Section 166 of the Companies Act, 2017 (the Act) read with Sections 169, 512, 479 thereof and the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations)</p> <p>Brief facts of the case are that upon review of the annual audited financial statements of the Company for the financial year ended June 30, 2020 (FY2020) and the auditors' review report on the Statement of Compliance (SOC) of the Regulations 2019, following non-compliances were observed:</p> <p><i>"a. The composition of board includes one independent directors *** Further Code requires independent directors shall not be less than two or one third of total number of the board, whichever is higher, whereas board include one independent director.</i></p> |



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| | <p><i>b. The chairman of Audit Committee shall be an independent director, whereas in our view *** does not meet the criteria of independence due to reason reflected in para (a) above."</i></p> <p>Moreover, the information available with the Commission transpires that *** was holding two positions as Chairman of the Board, and Chairman of the Board Audit Committee (BAC), and the name of *** was not found in the database maintained by the Pakistan Institute of Corporate Governance (PICG) for the purpose of appointing independent directors by the companies. The Company, by not appointing: (i) at least two independent directors; (ii) independent directors from the database maintained by PICG; and (iii) Chairman of BAC out of the independent directors has violated, the following provisions:</p> <ul style="list-style-type: none">(i) Section 166(1) of the Act read with SRO 73(I)/2018 dated January 25, 2018, for not having the name of *** registered in the data bank of PICG;(ii) regulation 6(1) of the CCG Regulations 2019 (corresponding 2017 Regulations) as the Board was not comprised of at least two independent directors; and(iii) regulation 27(1)(ii) of the CCG Regulations 2019 (corresponding 2017 Regulations) as chairman of BAC i.e. ***, was not an independent director. <p>Keeping in view the non-compliances as mentioned above, the SCN was served upon the Respondents requiring to show cause in writing within fourteen (14) days of the date of the SCN as to why action should not be initiated against them for the said non-compliances/violations/ contraventions.</p> |
| 5. Action Taken | <p>Key findings were reported in the following manner:</p> <p>I have gone through the facts of the case, submissions made by the Respondent through its Representative, and the aforesaid relevant provisions of the Act, the CCG Regulations 2019, and the CCG Regulations 2017 and state that:</p> <ul style="list-style-type: none">(i) in terms of Section 166(1) of the Act, an independent director to be appointed under any law, rules, |



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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 an independent director, maintained by any institute, body or association, as may be notified by the Commission. In this regard, it is stated that the Commission through SRO 73(I)/2018 dated January 25, 2018 (**the SRO**) has notified PICG for maintaining the data bank of the individuals who can be elected as independent directors on the board of directors of the companies. As per the available information, the Company in its election of directors held on December 21, 2018, appointed only one independent director namely ***; who was not registered/ enrolled in the data bank of PICG. In response to the SCN, the Company vide letter dated January 25, 2022, submitted that *** was no more acting as an Independent Director. Rather, the Company has appointed *** as an Independent Director in his place on 10.6.2021 i.e. much before the due date for the compliance of regulation 6 of the CCG Regulations 2019.

In this regard, it is stated that although the Company has subsequently appointed *** as an independent director in place of *** but at the time of his election as an independent director on December 21, 2018, *** was not registered/ enrolled in the data bank of PICG. The Respondents, therefore, were not compliant with the requirements of Section 166(1) of the Act read with regulation 6(1) of the CCG Regulations 2017. Hence, the Respondents have contravened Section 166(1) of the Act. The said contravention attracts applicability of the penal provision contained in Section 169 of the Act.

- (ii) The Respondents are of the view that requirements of regulation 6(1) of the CCG Regulations 2019 were not applicable at the time of the election of directors held on December 21, 2018. In this regard, it is stated that although at the time of the election of directors i.e. December 21, 2018; the CCG Regulation 2019 were not promulgated; however, the repealed CCG Regulations



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2017 were in force and mandated similar requirement i.e. to have at least two or one third, whichever is higher, independent directors on the Board of the Respondent Company.

In this regard, regulation 39 of the CCG Regulations, 2019 provides repeal and saving clause and, *inter alia*, states that:

39. Repeal and Savings.- (1) The Listed Companies (Code of Corporate Governance) Regulations, 2017, hereinafter called as repealed regulations, shall stand repealed: Provided that repeal of the repealed regulations shall not- (a) revive anything not in force at the time at which the repeal take effect; or (b) affect the previous operation of the repealed regulations or anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the said repealed regulations; or (d) affect any penalty imposed, forfeiture made or punishment incurred in respect of any offence committed against or in violation of the repealed regulations; or (e) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if these Regulations has not been notified.

2) Save as otherwise specifically provided, nothing in these Regulations shall affect or deemed to effect any action taken, orders issued, application received, relaxation granted unless withdrawn, fee paid or accrued, resolution passed, direction given under the repealed regulations shall, if in force at the effective date of these Regulations and not inconsistent with provision of these Regulations, shall continue to be in force and have effect as if it were respectively taken, made, directed, received, passed, given, executed or issued under these Regulations.

I am, therefore, of the view that the corresponding requirements of the CCG Regulations 2017 were applicable to the Company, and the Company was required to appoint two or one third of board members



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| | <p>as independent directors, whichever was higher, on its Board at the time of the election of directors held on December 21, 2018. Moreover, in terms of regulation 27(1)(ii) of the CCG Regulations 2019 (corresponding CCG Regulations 2017) as chairman of BAC was required to be an independent director. Keeping in view that the Respondent Company proceeded to comply with the given requirements of regulation 27(1)(ii) of the CCG Regulations 2019 (corresponding CCG Regulations 2017), I hereby, impose no monetary penalty for the said default.</p> <p>(iii) The stance of the Respondents that operational para did not contain the applicable penal provisions of Section 166 of the Act is not correct. In this regard, it is stated that para 8 of the SCN, clearly highlights violations and relevant penal provisions, <i>inter alia</i>, contained in Section 169 of the Act.</p> <p>Keeping in view the above-mentioned facts, I am of the view that the Respondents have contravened/ violated Section 166(1) of the Act, therefore, I, in exercise of the powers conferred under Section 169 of the Act, hereby, impose penalty of Rs.50,000/- (Rupees Fifty Thousand only) on the Respondent Company and warn other Respondents to be careful in future.</p> <p>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.</p> |
| 6. Penalty Imposed | Rs.50,000/- (Rupees Fifty Thousand only) |
| 7. Current Status of Order | No Appeal was filed. |