



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Say no to corruption

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

In the matter of

Metropolitan Steel Corporation Limited

Show Cause Notice No. & Date No.CSD/ARN/62/2015-763 dated January 27, 2023
Date of Hearing: February 27, 2023
Hearing attended by: Mr. Muhammad Umer Mehkari, Chief Executive

ORDER

Under Section 166 of the Companies Act, 2017 and Sections 169, 512(2), 479 thereof read with the Listed Companies (Code of Corporate Governance) Regulations, 2019

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. CSD/ARN/62/2015-763 dated January 27, 2023 (**the SCN**) issued under Section 166 of the Companies Act, 2017 (**the Act**) and Sections 169 and 512(2) thereof and regulations 6 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (**the Regulations**) and regulation 37 thereof against Metropolitan Steel Corporation Limited (**the Company**) its following directors hereinafter, collectively referred to as the **Respondents**:

- (i) Metropolitan Steel Corporation Limited through the Chief Executive
- (ii) Mr. Mehmood Ali Mehkri, Chairman
- (iii) Mr. Muhammad Umar Mehkari, Chief Executive
- (iv) Mr. Abdul Rafay, Director
- (v) Mr. Uzma Mehmood Ali Mehkri, Director
- (vi) Mr. Sofia Zakaria, Director
- (vii) Ms. Sara Mehmood Mehkri, Director
- (viii) Ms. Saba Mehkari Farooqui, Director

2. Brief facts of the case are that the review of Statement of compliance (SOC) with the Regulations as annexed to annual audited financial statements for the year ended June 30, 2022 (**the Accounts**) of the Company, *inter alia*, transpired that the Company, had no independent director on the board. In this regard, the auditors' review report on the SOC also, *inter alia*, stated that: "**Paragraph 2- There is no independent director on the Board.**"



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3. As per available information, election of directors of the Company was held on May 31, 2022 and seven directors were elected. The concerned department of the Securities and Exchange Commission of Pakistan (the Commission) through letter dated November 21, 2022 sought an explanation from the Company for not having at least two independent directors on its board as per the requirements of regulation 6 of the Regulations. In its reply, the Company through letter dated March 29, 2022, it was, *inter alia*, submitted that: "Mr. Asim Siddiqui was appointed as independent director but mistakenly not mentioned in the financials and they are in the process of appointing further independent directors."

4. The concerned department of the Commission again through letter dated December 26, 2022 sought an explanation from the Company as the name of Mr. Asim Siddiqui was not registered with the data bank of Pakistan Institute of Corporate Governance (PICG). The Company in this regard through reply dated January 5, 2023, *inter alia*, stated that:

- Mr. Asim Siddiqui appointed as independent director but not from the data bank maintained by the institute of corporate governance and evidence of his shareholding are attached to substantiate it.
- In the month of January 2023, the company has received consent by Mr. Irshad Ali Pitafi who has been selected from the PICG list and his consent is attached and we are in process of appointing him as independent director after all formalities.

5. The aforesaid transpired, *prima facie*, following contraventions with the requirements of:

- (i) by not having at least two independent directors, in its election of directors held on May 31, 2022, is contrary to the requirements of regulation 6(1) of the Regulations, for which penalty is provided in terms of regulation 37 of the Regulations read with Section 512(2) of the Act;
- (ii) the name of Mr. Asim Siddiqui, an independent director, was not registered with data bank of PICG, which is contrary to the requirements of Section 166(1) of the Act, for which penalty is provided in terms of Section 169 of the Act.

6. Hence, the proceedings were initiated through said SCN against the Respondents and they were called upon to show cause in writing within fourteen days as to why penalties may not be imposed for the cited violations of regulation 6(1) of the Regulations and Section 166(1) of the Act. In this regard, however, no reply was received within the given time.

7. In order to afford the Respondents an opportunity of representation, hearing in the matter was fixed for February 27, 2023, which was attended by Mr. Muhammad Umar Mehkari, Chief Executive. During the hearing, it was, *inter alia*, submitted that:

- (i) Mr. Irshad Ali Pitafi has been replaced as Independent Director with Mr. Asim Siddiqui. Mr. Pitafi is registered with the data bank of PICG. Mr. Pitafi has been appointed with effect from January 30, 2023;



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- (ii) Another Independent Director shall also be appointed soon. He requested to take lenient view.

8. Subsequent to the hearing, the Chief Executive was requested to furnish written reply in the matter of aforesaid proceedings. In this regard, however, no written reply was received. I am, therefore, constrained to conclude the proceeding based on the available record and submissions made during the hearing held on February 27, 2023.

9. Relevant legal provisions are reproduced as under:

Regulation 6:

(1) It is mandatory that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors.

Regulation 37:

“(37) Penalty. Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.”

Section 166(1) of the Act:

*(1) An independent director to be appointed under any law, rules, 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 independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:
Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment.*

Section 169 of the Act:

*(1) An independent director to be appointed under any law, rules, 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 independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:
Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment.*

Section 512(2) of the Act:

Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.



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10. I have gone through the facts of the case, the submissions made in writing before the concerned department of the Commission and during the hearing proceedings before me. In terms of regulation 6(1) of the Regulations and Section 166(1) of the Act, it is mandatory to have at least one third of the board members as independent directors, who are registered with the data bank maintained by an institute notified by the Commission i.e. PICG. Review of Accounts 2022 and relevant SOC transpired that the Company did not have at least two independent directors who were registered with the data bank of PICG. The Auditor of the Company in review report on the SOC also qualified the report by stating that no Independent Director was acting on the board of the Company. As per available information, Mr. Asim Siddiqui was elected in last election of directors, to act as Independent Director, however, he was not registered with the data bank of PICG, in contravention of Section 166(1) of the Act. During the course of hearings, it was informed that Mr. Irshad Ali Pitafi was replaced as Independent Director in place of Mr. Asim Siddiqui, with effect from January 30, 2023. In view of the given circumstances, the board of directors of the Company was not comprised of at least two Independent Directors, who were duly registered with the data bank of PICG and the default of regulation 6(1) of the Regulations persisted since election of directors till date of this order. The Chief Executive, however, assured that another Independent Director shall be appointed in near future.

11. I am, therefore, of the view that the defaults under Section 166(1) of the Act and regulation 6(1) of the Regulations are evident and persisted since election of directors held on May 31, 2022 till date. Keeping in view of the cited defaults, I, in terms of regulation 37 of the Regulations read with Sections 169 and 512 thereof, hereby, impose an aggregate penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on **Metropolitan Steel Corporation Limited** and warn other Respondents to be careful and to ensure compliance of the regulatory framework in true letter and spirit.

12. It is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days of the date of this Order and furnish receipted bank challan, evidencing payment of the same, to the Commission forthwith. In case of failure to deposit the penalties, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

13. Nothing in this Order may be deemed to prejudice the operation of any provision of the Regulations/ Act providing for imposition of penalties in respect of any default, omission, violation of the Regulations/ Act.

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced: March 21, 2023
Islamabad