



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Say No to Corruption

Before

Shahzad Afzal Khan, Director/Head of Department

In the matter of

Ghani Global Glass Limited

Show Cause Notice No. & Date CSD/ARN/509/2017-913 dated March 06, 2023

Date of Hearing: May 31, 2023;

Hearing Attended By: Mr. Amir Zia; and
Mr. Inam ullah

ORDER

Under Sections 176 and 207 of the Companies Act, 2017 read with Section 479 thereof

This Order shall dispose of proceedings initiated through the Show Cause Notice dated March 06, 2023 (the SCN) issued under Sections 176 and 207 of the Companies Act, 2017 (the Act) read with Section 479 thereof to the following directors of Ghani Global Glass Limited (the Company), hereinafter collectively referred to as the Respondents, namely:

Sr. #	Name of Directors
1.	Mr. Atique Ahmad Khan, Chairman
2.	Mr. Yasir Ahmed Awan, Director
3.	Mr. Hafiz Farooq Ahmad, Director
4.	Mr. Muhammad Danish Siddique, Director
5.	Mr. Ubaid Waqar, Director
6.	Mr. Masroor Ahmad Khan, Chief Executive Officer

2. Facts of the case are that review of the financial statements of the Company for the year ended June 30, 2022 (Accounts 2022) transpires that the Company has carried out transactions with related parties including Ghani Chemical Industries Limited (Ghani Chemical), an associate company.

3. The Securities and Exchange Commission of Pakistan (the Commission) vide letter dated December 13, 2022 advised the Company to submit related minutes of the board meetings and attendance sheets approving the aforementioned related party transactions with Ghani Chemical.



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The Company vide its letters dated January 13, 2023 and February 11, 2023 submitted its replies along with extracts of minutes of board of directors' meetings revealing that Mr. Atique Ahmad Khan, Hafiz Farooq Ahmad and Mr. Masroor Ahmad Khan are on the board of the Company as well as on the board of Ghani Chemical; hence are interested due to their common directorship.

4. Record revealed that the aforementioned interested directors of the Company took part in the board meetings and voted for the approval of transactions with Ghani Chemical, details of which are as follows:

Sr. #	Board meeting date	Common / Interested Directors Present
1.	October 27, 2021	Atique Ahmad Khan and Hafiz Farooq Ahmad
2.	February 28, 2022	Atique Ahmad Khan and Masroor Ahmad Khan
3.	April 28, 2022	Atique Ahmad Khan, Hafiz Farooq Ahmad and Masroor Ahmad Khan
4.	October 3, 2022	Atique Ahmad Khan, Hafiz Farooq Ahmad and Masroor Ahmad Khan

5. The aforesaid directors, by not abstaining from the agenda item in question, despite being interested due to their common directorship in both the entities, the Respondents mentioned in Para 4 above, *prima facie*, have contravened the provisions of Section 207 of the Act.

6. Moreover, the record reveals that the quorum in the meeting held on October 27, 2021 was inquorate for approval of transactions with Ghani Chemical as only three out of five present directors were allowed to participate and vote as per Section 207 (1) of the Act and presence of remaining two interested directors did not count for the purpose of quorum as stated in section 176 of the Act hence their vote was also void.

7. In view of aforesaid, the interested directors of the Company, *prima facie*, have contravened the provisions of Subsection (1) of Section 207 of the Act as the interested directors have participated and voted to approve the transactions with the said associated company despite being interested due to their common directorship. Furthermore, the respondent directors of the Company attended meeting held on October 27, 2021, *prima facie*, have contravened the provisions of subsection (1) of section 176 of the Act by approving transaction with Ghani Chemical in a meeting in absence of quorum.

8. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents for the aforesaid contraventions of Sections 176 and 207 of the Act, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions.



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9. In reply to the SCN dated March 06, 2023 the Company vide letter dated March 21, 2023 stated that (extracts):

1. Please note that the Ghani Chemical Industries Limited (GCIL) and Ghani Global Glass Limited (GGGL) are the subsidiary Companies of Ghani Global Holdings Limited (GGL). The Board of Directors is appointed by the GGL and the interested Directors (to whom the Show Cause Notice has been served) have nominal shareholding (0.164%) in the GGGL. They do not have any interest (for Profit) in the subsidiary Companies.
2. For purchase For purchase of Oxygen & Nitrogen gases by the GGGL from GCIL (appearing as 'Purchases' in Quarterly and Annual Accounts of GGGL for the year ended June 20 2022), the shareholders of GGGL in their annual general meeting held on October 28, 2020 had already passed a special resolution, granting approval under section 208 of the Companies Act, 2017, for entering into an agreement with GCIL for these purchases for a period of 15 years (long-term agreement), in accordance with commercial terms already in practice in the market.

Accordingly, the Purchase transactions (Oxygen & Nitrogen gases) have been executed by GGGL in compliance with the provisions of the Companies Act, 2017 and Companies (Code of Corporate Governance) Regulations, 2019, and have been placed before the Audit Committee and the Board meetings for approval as normal course of business.

3. In compliance with the requirements of section 199 of the Companies Act, 2017, the Company had already obtained approval from shareholders of GGGL, in their annual general meeting held on October 28, 2019, for Rs.300 million, in shape of loans and advances, in GCIL through special resolution. The said special resolution is valid for a period of three (3) years (i.e. upto October 28, 2022).

Further loan and advances (amounting to Rs.300 million) by GGGL in GCIL is subject to markup "i.e., 3 months KIBOR + 150 bps" and other terms as approved by the shareholders of the Company (GGGL).

Accordingly, the Loan/advances transactions have been executed by GGGL in compliance with the provisions of the Companies Act, 2017 and Listed Companies (Code of Corporate Governance) Regulations, 2019, and have been placed before the Audit Committee and the Board meetings for approval as normal course of business.

4. GGGL have carried out other related party transactions ("transactions") with GCIL, during period from July 1, 2021 to June 30, 2022, and all these transactions were made in ordinary course of business on "Arm's Length Basis". Thus, provisions of section 208 of the Companies Act, 2017 (for placement of related party transactions before the general meeting for the approval from the shareholders as special resolution) does not apply to any transactions entered into by the company in its ordinary course of business on an arm's



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length basis and accordingly section 176 and section 207 of the Companies Act, 2017 do not apply.

Kindly note that the Board of Directors approved the related party transactions which were either 'pre-approved' by the shareholders of the Company or were 'in ordinary course of business on "Arm's Length Basis". Accordingly, the Directors (to whom Show Cause Notice is served), participated in Board meetings and approved the above mentioned transactions as an ordinary course of business, for which shareholders of the Company have already granted approval under section 199 and section 208 of the Companies Act, 2017.

In view of the above explanations, submissions and clarifications, the Show Cause Notice issued to the Company may kindly be withdrawn/ disposed of."

10. In order to provide opportunity of personal representation, hearing in the matter was fixed for May 31, 2023, wherein Mr. Amir Zia and Mr. Inam ullah appeared as representatives (the Representatives) on behalf of the Respondents before the undersigned and submitted that:

- Ghani Global Glass Limited purchases liquid gas from Ghani Chemical Industries Limited;
- The related party transactions were carried out on arm's length basis therefore the provisions of 208 of the Companies Act, 2017 does not apply;
- Common interest of the Directors wasn't there so the quorum was complete;
- However, the company will welcome directions from the regulator and assures to comply; and
- Requested to take lenient view and condone the contravention.

11. Relevant legal provisions are reproduced as under:

207. Interested director not to participate or vote in proceedings of board. – (1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void:

Provided that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered.



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(2) If majority of the directors are interested in, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, the matter shall be laid before the general meeting for approval.

(3)...

(4) Any contravention or default in complying with requirements under this section shall be an offence liable to a penalty of level 1 on the standard scale.

176. Proceedings of the board. — (1) The quorum for a meeting of board of a listed company shall not be less than one-third of number of directors or four, whichever is greater and the participation of the directors by video conferencing or by other audio visual means shall be counted for the purposes of quorum under this sub-section:

Provided that if at any time, there are not enough to form a quorum to fill a casual vacancy, all the remaining directors shall be deemed to constitute a quorum for this limited purpose.

(4) If a meeting of the board is conducted in the absence of a quorum or a meeting of board is not held as required by sub-section (3), the chairman of the directors and the directors shall be liable-

- (a) if the default relates to a listed company, to a penalty of level 2 on the standard scale; and
- (b)"

12. I have gone through the facts of the case, and considered the written submissions made by the Company through its letter by the Respondents, their Representatives and the arguments made during the hearing, in light of the aforesaid legal provisions and the record placed before me and state as under:

(i) Interested director not to participate or vote in terms of Section 207 of the Act:

By not abstaining from the agenda item in question despite being interested due to their common directorship in both the entities, the Respondents in Para 4 above have contravened the provisions of Section 207 (1) of the Act. With regard to the provision of sub-section (1) of Section 207 of the Act, presence of director, being interested due to their common directorship, cannot be counted for the purpose of forming the quorum.

(ii) Insufficient Quorum terms of Section 176 of the Act:

The record reveals that the quorum in the meeting held on October 27, 2021 was inquorate for approval of transactions with Ghani Chemical as only three out of five present directors were allowed to participate and vote as per Section 207 (1) of the Act and remaining two present directors did not count for the purpose of quorum. Therefore the directors of the company (mentioned at S No. 1 to 5 in Para 1 above) present in the meeting conducted the aforementioned meeting without quorum, in contravention with the provisions of Section 176 of the Act.



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13. In view of the foregoing, I hereby conclude that with respect to the transaction executed by the Company with Ghani Chemical, an associate company/ related party, by;

- a. not abstaining from participating in the proceedings of the Board meeting relating to the approval of the transaction by the Company with Ghani Chemical; the three (3) directors of the Company namely; (i) Mr. Atique Ahmad Khan, (ii) Mr. Hafiz Farooq Ahmad and (iii) Mr. Masroor Ahmad Khan had contravened the provisions of Section 207 of the Act and, therefore, are liable to be penalized; and
- b. conducting the proceedings of the board meeting, in the absence of quorum for the Board Meeting, dated October 27, 2021, for related party transaction with Ghani Chemical, the Respondents (mentioned in S. No 1 to 5), being directors of the Company, had contravened the provisions of Sections 176 of the Act and are liable to be penalized.

14. Taking cognizance of the aforesaid contraventions/ non-compliances, I, in exercise of the powers conferred under Section 176 and 207 of the Act, hereby impose aggregate penalty of **Rs. 75,000/- (Rupees seventy five thousand only)** on the Respondents in the following manner:

Sr. #	Name of the Respondents	Penalty (Rs.) for violation of Sections	
		176	207
1.	Mr. Atique Ahmad Khan	5,000	20,000
2.	Mr. Yasir Ahmed Awan	5,000	-
3	Mr. Hafiz Farooq Ahmad	5,000	15,000
4.	Mr. Muhammad Danish Siddique	5,000	-
5.	Mr. Ubaid Waqar	5,000	-
6.	Mr. Masroor Ahmad Khan	-	15,000
	Total:	25,000	50,000

15. The Respondents are hereby, directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the penalty.



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

A handwritten signature in blue ink, appearing to read 'Shahzad Afzal Khan', is written over a horizontal line.

(Shahzad Afzal Khan)
Director/ HOD
Adjudication Department-I

Announced:

Dated: June 06, 2023

Islamabad