



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department

Before

Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Gammon Pakistan Limited

Date of Hearing

June 14, 2022

Order-Redacted Version

Order dated June 27, 2022 was passed by Director/Head of Department (Adjudication-I) in the matter of Gammon Pakistan Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated April 29, 2022
2. Name of Company	Gammon Pakistan Limited
3. Name of Individual*	The proceedings were initiated against Board of Directors of Gammon Pakistan Limited.
4. Nature of Offence	Under Section 183 of the Companies Act, 2017 read with Sections 134 and 479 thereof.
5. Action Taken	<p>Key findings were reported in following manner:</p> <p>I have reviewed the facts of the case and considered the written submissions and the arguments put forth by the Authorized Representative in light of the afore-mentioned provisions of the Act and state that:</p> <p>(i) Section 183(3)(a) of the Act necessitates prior authorization of members as it provides that the board of a company shall not except with consent of the general meeting either specifically or by way of an authorization, sell, lease or otherwise dispose of the undertakings or sizable part thereof unless the main business of the company comprises of such selling or leasing. The word "shall" makes it necessary for the aforesaid disposal of sizeable part to seek prior consent or authorization of the members. In the instant case, the Company during the year 2021, disposed of its plant & machinery and motor vehicles, cycles & boats having carrying values of Rs. 4.026 million and Rs. 3.3 million respectively, which constitute the sizeable part in terms of explanation given to Section</p>



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

183(3)(a) of the Act. The Respondents, however, failed to seek authorization of members before disposal of the aforesaid assets. The Respondent submitted that the said disposal was approved by the members in the AGM held on October 28, 2021, and provided relevant minutes of the meeting which state that:

(a) Fixed Assets disposal.

The CFO after discussion on Projects also presented the list of Assets disposed off during the year and informed the shareholders about payment of old liabilities.

The shareholders after discussion unanimously approved the disposal of Assets as disclosed in note 6 of financial statements.

In this context, I am of the view that the Respondents did not seek members' approval prior for disposal of the aforesaid sizeable part rather sought post facto approval in the AGM held on October 2021. The Respondents also argued that lapse in the transaction has occurred due to ignorance and the prevailing wave of the COVID phase. In this regard, I am of the view that arguments put forth are not tenable, as it was mandatory for the Respondents to seek members approval before the said disposal. The Respondents, therefore, violated Section 183(3)(a) of the Act, which attracts applicability of sub-section (6) of Section 183 of the Act.

(ii) Statement of Material facts annexed to the Notice:

With regard to the statement of material facts in terms of Section 134 of the Act read with the SRO; it was observed that the said statement was deficient as relevant disclosures with regard to disposal of the said sizeable assets (plant & machinery and motor vehicles, cycles & boats) as special business and specified disclosures in the statement of material facts in terms of clause B(5)(I) of the SRO read with Section 134(3) of the Act, were not made in the notice of AGM of 2021. The Respondents have also admitted the default and evidence of compliance was not furnished.

Keeping in view the fact that the Respondents have disposed of sizeable part of the assets of the Company as mentioned in para 2 above; and the statement relating to disposal of the said assets, annexed to the Notice of AGM was deficient, which are non-



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

	<p>compliances of sub-section (3) of Section 183 and Section 134 of the Act; and clause B(5)(I) of the SRO. Further, the said non-compliances are established and conceded and attract applicability of the penal provisions contained in sub-section (6) of Section 183 of the Act. However, taking cognizance of the fact that aforesaid assets disposed of in 2021 were less than one percent of total assets and post facto approval of the members w.r.t disposal of sizeable part; obtained by the Respondents; I, therefore in exercise of the powers conferred under sub-section (6) of Section 183 of the Act, hereby conclude without imposing any monetary penalty. As regards to admitted default of non-disclosure of information in the statement of material facts annexed with Notice of AGM 2021, in terms of the SRO and Section 134 of the Act, I, hereby, impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on ***, and warn other Respondents to ensure compliance will all the applicable regulatory requirements.</p> <p>It is, hereby, directed to deposit the aforesaid amount of penalties 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. It may also be noted that the said penalty is imposed on the Respondents in a personal capacity; therefore, the Respondents are required to pay the said amount from personal resources.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for the imposition of penalties in respect of any default, omission, or violation of the Act.</p>
6. Penalty Imposed	The penalty of Rs. 50,000 (Fifty thousand Rupees only) imposed on ***.
7. Current Status of Order	No appeal has been filed by the respondents.