

*Before*

**Amir M. Khan Afridi, Director/Head of Department**

*In the matter of*

**Pakistan Engineering Company Limited**

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Dates of Hearing

July 27, 2021; August 5, 2021 and August 17, 2021

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**Order-Redacted Version**

Order dated December 10, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Pakistan Engineering Company Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show Cause Notice dated March 17, 2021
2. Name of Company	Pakistan Engineering Company Limited
3. Name of Individual*	The proceedings were initiated against the directors of Pakistan Engineering Company Limited.
4. Nature of Offence	Section 176 of the Companies Act, 2017 read with Section 479 thereof for non-holding of board meetings once in each quarter
5. Action Taken	<p>Key findings are given as hereunder:</p> <p>I have gone through the facts of the case, relevant legal provisions, written submissions made and arguments placed before me during the hearing proceedings and state that:</p> <p>a. In terms of Section 176 of the Act, it is mandatory for the Board of a public limited company to meet at least once in each quarter of a year and any contravention in this regard attracts applicability of Section 176(4) of the Act. In the instant matter, it was mandatory for the Board to hold at least one meeting in each quarter ended March 31, 2020 and June 30, 2020; in compliance with the requirements of Section 176 of the Act. However, the Board failed to hold its meetings for the said two quarters. Hence, non-compliance in the said matter is established, which attracts applicability of the penal provisions i.e. Section 176 of the Act read with Section 479 thereof.</p>

b. During the hearing held on July 27, 2021, one of the Respondents argued that NAB had imposed restriction on holding the Board's meetings. In this regard, it is stated that I have reviewed the NAB's letter dated December 27, 2019, which explicitly allows to convene the Board's meetings. Relevant text of the NAB's said letter is reproduced as under:

*“The undersigned has been directed to convey that PECO may convene Board Meetings to meet its statutory requirements as provided in the Companies Act, 2017”.*

From the above, it transpired that NAB had not imposed any restriction on convening the Board's meeting for the quarters ended March 2020 and June 2020. Hence, the Respondents' stance in this regard is not tenable.

c. I have duly considered the arguments placed before me by \*\*\*\*\* and others on behalf of \*\*\* of the Company, conferring that in terms of Article 79 of Memorandum of Association of the Company read with ERO 1972; the provisions of the Act are not applicable as for as holding of Company's Board meetings are concerned and MD appointed by the Federal Government is the sole authority to run affairs of the Company.

In this regard, I would like to draw attention of the Respondents to Section 4 of the Act, which has overriding effect and the Respondents were required to comply with the aforesaid provisions of the Act, in letter and spirit. The said fact was also clarified by the \*\*\*\* vide letter dated December 31, 2018 to the relevant \*\*\*\*. The said Section 4 of the Act is reproduced as under:

*“Save as otherwise expressly provided herein (a) the provisions of this Act shall have effect notwithstanding anything contained in any other law or the memorandum or articles of a company or in any contract or agreement executed by it or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, executed or passed, as the case may be, before or after the coming into force of the said provisions; and (b) any provision contained in the memorandum, articles, contract, agreement, arrangement or resolution aforesaid shall, to the extent to which it is repugnant to the aforesaid provisions of this Act become, or be, void, as the case may be”.*

d. During the hearing proceedings, authorized representative of the board specifically highlighted their inability to access the Company's premises inclusive of related record of the Company and their inability to attend/ convene the Board's meetings, owing to the fact that all the matter including financial as well as corporate are being controlled and managed by \*\*\*\*\* being \*\*\*\* of the Company. This fact has not been negated by \*\*\*\*\* \*\*\*\*\* on behalf of \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* categorically stated that powers of the Board are vested with \*\*\* and \*\*\* has taken powers of all the affairs of the Company since October 24, 2018.

This stance of \*\*\*\*\* \*\*\*\*\* is although not correct owing to the reason mentioned above in Para 13(c) above; however, this transpires that \*\*\*\*\* \*\*\*\*\* is controlling the affairs of the Company as well as the relevant record. It can also be evidenced from the fact that the Company has prepared annual accounts for the year ended June 30, 2019 and submitted the same to the Commission. Therefore, it is construed that \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* being \*\*\* of the Company; was responsible to convene the Board meetings during the said two quarters.

e. On the matter of non-compliance by not holding the said quarterly Board meetings; \*\*\*\*\* \*\*\*\*\* \*\*\*\*\*., neither justified the non-compliance and nor put forth any argument or evidence, in terms of which he could substantiate that he had taken steps to avoid contravention/ default of sub-section (3) of Section 176 of the Act. He rather presented those arguments which do not relate or pertain to the instant proceedings. Therefore, arguments of \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* are not tenable as provisions of Section 176 of the Act are mandatory and require the Board, being the board of a public limited company, to meet at least once in each quarter of a year.

f. With regard to \*\*\*\* \*\*\*\*\* \*\*\*\*\*; the record available with the Commission transpires that \*\*\* vide letter dated March 4, 2021 has stated that:

*“Notwithstanding the above, \*\*\*\*\* \*\*\*\*\* \*\*\*\*\*; has been indicated as the member of the BoD of PECO. This is allegedly based on false facts. \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* \*\*\*\*\*; was member of BoD of PECO in his capacity as \*\*\*\*\*. The position has been vacant since his departure from \*\*\* on 7<sup>th</sup> July, 2019.”*

	<p>From the above, it appears that **** ***** *****; has not acted as chairman/director of the Company after 7<sup>th</sup> July, 2019, therefore, no action against him is warranted with regard to the cited defaults.</p> <p>g. At this juncture, I would like to mention here that **** ***** who appeared as Authorized Representatives on behalf on **** ***** ***** has neither furnished attendance sheet and nor power of attorneys despite repeated reminders. However, stance submitted by **** ***** and **** ***** on behalf of **** ***** ***** has been admitted for the instant proceedings.</p> <p>In view of the aforementioned fact, I am of the considered view that **** ***** ***** ***** of the Company, was responsible for holding meetings of the Board for the quarters ended March 31, 2020 and June 30, 2020; however, by not holding the aforesaid meetings he has contravened the provisions of sub-section (3) of Section 176 of the Act. I, therefore, in exercise of powers conferred under sub-section (4) of Section 176 of the Act, <b>hereby, impose an aggregate penalty of Rs.400,000/- (Rupees Four hundred thousand only) (Rs.200,000/- for each default) on **** ***** ***** of the Company.</b> I hereby warn the rest of the Respondents to ensure discharging of their statutory responsibilities as members of the Board of the Company in letter and spirit, in future.</p> <p>The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and to furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue. It may also be noted that the said fines are imposed on the Respondent in his personal capacity, therefore, he is required to pay the said amount from his resources.</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 or violation of the Act.</p>
6. Penalty Imposed	A Penalty of aggregating Rs. 400,000/- was imposed.
7. Current Status of Order	No Appeal has been filed by the Company.