



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 49 of 2013

1. Mrs. Saira Hameed, Chairperson
2. Mr. Mian Asad Hameed, Chief Executive Officer
3. Mr. Saeed Iqbal Khan, Director
4. Mr. Mian Muhammad Ali Hameed, Director
5. Mr. Mian Zafar Hameed, Director
6. Mrs. Sana Suleyman, Director
7. Mrs. Amina Hamza Wazir, Director
(of Sazgar Engineering Works Limited) Appellants

Versus

Head of Department (Enforcement) Respondent

Date of Hearing 11/12/13

ORDER

Present:

For the Appellant:

Mr. Khawaja Asif Mahmood,
Advocate Supreme Court

For the Respondent: (through video conference)

Ms. Amina Aziz, Director (Enforcement)
Mr. Muhammad Anwar Hashmi, Deputy Director (Enforcement)



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- 1, This order is in appeal No. 49 of 2013 filed under section 33 of Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 27/06/13 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that the Board of Directors ("BoD") of Sazgar Engineering Works Limited (the "Company") in the meeting held on 28/03/11, chaired by Mrs. Saira Hameed, resolved to appoint Mr. Asad Hameed as CEO of the Company. Perusal of relevant records revealed that Ms. Saira Hameed is spouse of Mr. Asad Hameed and is an interested director. However, she did not disclose her interest nor set herself aside at the time of passing resolution to appoint her spouse as CEO of the Company and fixing of remuneration. In the same meeting, it was also resolved to appoint Mr. Saeed Iqbal Khan, Mrs. Saira Hameed and Mr. Muhammad Ali Hameed as working directors of the Company. However, during the proceedings, the three interested directors and chief executive's spouse being appointed as working directors, did not disclose their interest, nor set themselves aside while passing resolution for appointment and fixing remuneration. In view of the above, there were four interested directors who were conducting the proceedings of the BoD meeting, leaving the approval of the meeting as deficient. Based on these facts, the proceedings of the meeting were, prima facie, in contravention of section 214, 216 and 193 of the Companies Ordinance, 1984 (the "Ordinance").
3. Show Cause Notice dated 26/04/13 ("SCN") was issued to the Appellants under section 214, 216 and 193 read with section 476 of the Ordinance. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and taking a lenient view based on past track record of the Company, strictly warned the directors to be vigilant in the future.



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4. The Appellants have preferred the instant appeal against the Impugned Order.

The Appellants' counsel argued that:

- a) all the directors of the Company would not be in a position to hold the BoD meeting or make a decision pertaining to the Company as they are interested persons according to the interpretation of the Impugned Order. The BoD has become redundant and the Company is not able to perform its functions; and
- b) reliance is placed on *the Sindh High Court judgment of Nadir Akmal Khan Leghari and others versus Asim Arshad cited at 2012 CLD 1588*, wherein, it was held that section 214 of the Ordinance deals with the obligation of directors who have an interest in a *contract or arrangement* made by the company with a third person. There was no contract by the Appellants with any third person as evident from the minutes of board meeting of 28/03/11. The Respondent has misinterpreted the provision of the law and it is not justified, therefore, to hold the agenda of the BoD meeting as violative of section 214 and 216 of the Ordinance.

5. The department's representative argued that:

- a) the provisions of section 214 and 216 of the Ordinance cannot be disregarded. It has been held to be unsound company practice for a director to participate and vote on the proposal to appoint a near relative on the board of directors. The difficulties in getting the required quorum at board meetings where the directors are interested should be resolved by the company either by increasing the strength of the board of directors or co-opting new members, if so authorized by the articles. In case it is



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not found practicable to do so, the proposed contract should be placed before the general meeting for consent of the shareholders; and

- b) the Sindh High Court judgment of *Nadir Akmal Khan Leghari and others versus Asim Arshad cited at 2012 CLD 1588* relied on by the Appellants clearly define the application of the requirements of section 214 and 216 of the Ordinance. The Appellants have drawn a very limited view application of the requirements of section 214 and 216 of the Ordinance inferring that the said provisions are applicable only in case a company consequent to a contract or arrangement with another company, transfers some funds and directors have personal interest. In this regard, reference was drawn to section 218 of the Ordinance which interchangeably deals with appointment or contract of directors and spells out the criteria of disclosure of interest of directors; and

6. We have heard the parties. Section 214(1), 216(1) and 218(1)(a) are reproduced for ease of reference:

Section 214 of Companies Ordinance, 1984

214. Disclosure of interest by director. - (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors:

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.



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Section 216 of Companies Ordinance, 1984

216. Interested director not to participate or vote in proceedings of directors.- (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.

Section 218(1)(a) of Companies Ordinance, 1984

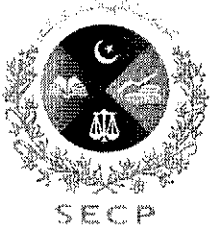
218. Disclosure to members of directors' interest in contract appointing chief executive, managing agent or secretary.-

1). "Where a Company;

a. appoints or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the Company, in which appointment or contract any director of the Company is in any way, whether directly or indirectly, concerned or interested;

Emphasis Added

a) in the instant case, Mrs. Saira Hameed being the spouse of Mr. Asad Hameed was an interested director in terms of section 214 of the Ordinance. The explanation to section 195(1) of the Ordinance provides that, the term 'relative' includes spouse and his minor children. Mrs. Saira Hameed, however, did not make the disclosure pursuant to section 214 of the Ordinance and also did not abstain from voting on appointing the Chief Executive Officer of the Company and fixing of his remuneration in violation of section 216 of the Ordinance. The meeting was conducted by four interested directors of the Company, wherein, it was further resolved to appoint Mr. Saeed Iqbal Khan, Mrs. Saira Hameed and Mr. Muhammad Ali Hameed as working directors of the Company and fix their remuneration in



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violation of section 214, 216 and 193 of the Ordinance. Moreover, the four interested directors of the Company neither disclosed their interest, nor refrained from voting while passing resolution for appointment of working directors and fixation of their remuneration. The argument by the Appellants that it would be impossible to operate the Company as the entire board consists of interested persons is not correct. The disclosure of interest of directors is required on a case to case basis. We, however, do not agree with the Respondent that matters such as appointment of Chief Executive and directors could be taken up at the general meeting. Matters such as appointment of directors and its Chief Executive Officer lie with the company board and not with the general body of shareholders. The Company must, therefore, comply with the requirements for listed companies in the Code of Corporate Governance 2012 (the "Code"). Reference is made to Chapter XI, paragraph 35 (i) of the Code, which provides that, "*The board of directors is encouraged to have a balance of executive and non-executive directors, including independent directors and those representing minority interests with the requisite skills, competence, knowledge and experience so that the board as a group includes core competencies and diversity, including gender, considered relevant in the context of the company's operations.*"; and

- b) on the issue of whether appointment of chief executive and fixing of remuneration is a contract or arrangement, the Appellants' counsel argued that appointment of working directors was not a contract or arrangement in terms of section 214 of the Ordinance. The Respondent had disagreed with the Appellants' assertion in the Impugned Order and reference was drawn to section 218 of the Ordinance stating that appointment of working directors is a contractual arrangement and not an administrative use of authority. From the bare reading of section 218(1)(a) of the Ordinance, it can be inferred that



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appointment of Chief Executive/directors and fixation of their remuneration is a contract and not a delegation of power to appoint them as directors.

In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to cost.

(Muhammad Asif Arif)
Commissioner (Insurance)

(Imtiaz Haider)
Commissioner (SCD)

Announced on: 30/1/14