



Corporate Supervision Department
Company Law Division

Before Amina Aziz –Director (CSD)

In the matter of

Dewan Automotive Engineering Limited

Number and date of SCN: EMD/233/435/02-987, dated January 6, 2015 read with addendum
CSD/ARN/95/2015-2662-68 dated January 19, 2016
Hearing held on: April 15, 2016
Present: Mr. Haroon Iqbal and Mr. M. Hanif German, representatives

ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors of Dewan Automotive Engineering Limited (the "Company") and its following directors including chief executive (together referred to as "respondents"):

- | | | | |
|---|-------------------|---|----------------------------|
| 1 | Mr. Aziz Ul Haque | 5 | Mr. M. Naeemuddin Malik |
| 2 | Mr. Haroon Iqbal | 6 | Mr. Syed Maqbool Ali |
| 3 | Mr. Ishtiaq Ahmed | 7 | Mr. Waseem Ul Haque Ansari |
| 4 | Mr. Manzoor Ahmed | | |

These proceedings against the respondents were initiated through show cause notice (the "SCN") dated January 6, 2015 and subsequent addendum to the SCN dated January 19, 2016 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the Company was required to hold its annual general meeting ("AGM") for the year ended June 30, 2014 on or before October 31, 2014, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the Company failed to convene its AGM as per requirements of the law. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time.

3. The respondents failed to submit any response to the SCN. The case was fixed for hearing on April 28, 2015 and October 2, 2015 by serving the hearing notices at the registered address of

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
NIC Building, 63 Jinnah Avenue,
Islamabad, Pakistan



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the Company. However, later it transpired that the directors of the Company had changed in the year 2014; therefore, through addendum dated January 19, 2016 to SCN, the names of the respondents were included in the subject proceedings. The respondents were given fourteen days' time to submit reply to the SCN. Since, no response to the SCN was received, a hearing the matter was fixed on April 6, 2016, which upon the respondents request was rescheduled for April 25, 2016. However, Mr. Haroon Iqbal, the chief executive and Mr. M. Hanif German, appeared before the undersigned on April 15, 2016 as authorized representatives of the respondents and requested to hold the hearing. Their request was acceded to and hearing was held. The representatives stated that the Company had laid off its staff and it was not possible to prepare accounts due to shortage of qualified staff. They further stated that more than 80% of the Company's shareholding vests with the sponsors / directors. However, no definite timeline was given by them for preparation of accounts and holding of the AGM of the Company.

4. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance:

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

"Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days."

Sub-section (4) of section 158, inter alia, provides as under:

"If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--



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(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;"

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four months from the close of its financial year. Holding of the AGM is a very important statutory event and provides an opportunity to the shareholders including those in minority, to participate in discussion and voting on agenda items of the AGM that include consideration and approval of a company's financial statements. The financial statements not only show the financial position and performance of a company but also show the results of management's stewardship of resources entrusted to it. In order to ensure minority participation and transparency, all the companies must meticulously follow the procedure prescribed by the Ordinance for holding an AGM. In addition to their responsibility of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. Directors of a listed company while filing their consents to act as directors, inter alia, give an undertaking that they are aware of their duties under the Ordinance and that they have read the relevant provisions contained therein. It is mandatory for the directors of a listed company to have knowledge of provisions of the applicable laws and in terms of the Ordinance the directors are primarily responsible for holding the AGM. In this context the respondents' cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts.

6. The Company has not held its AGMs for the years ended June 30, 2013, 2014 and 2015 and has neither prepared nor filed its audited financial statements after the year 2012. Moreover, the



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auditor of the Company in his report on latest available financial statements of the Company for the year ended June 30, 2012 has given an adverse opinion. Therefore, there is no credibility of the reported figures of the year 2012. No authentic financial information on state of affairs of the Company is available as directors of the Company have failed to discharge their legal obligation regarding holding of the AGMs and preparing and filing of annual and interim accounts. It is the directors' responsibility to understand and discharge their statutory obligations in this regard. Therefore, respondents' attempt to justify their inability to hold the AGMs and file the respective accounts by stating shortage of staff as the reason is not tenable. It is also pertinent to mention that in respect of the Company' failure to hold its previous AGM for the year ended June 30, 2013 the Commission has concluded the proceedings previously by imposing a penalty of Rs100,000 on the chief executive and chairman of the Company through order dated July 14, 2014. This reflects unsatisfactory track record of the Company regarding holding of its AGMs.

7. In view of the foregoing, I have concluded that the provisions of the law have been violated as the respondents have failed to hold the AGM of the Company for the year ended June 30, 2014, as per requirements of the law. Hence, they are liable to fine in terms of section 158 of the Ordinance. Therefore, in exercise of the powers conferred by sub-section (4) of section 158 of the Ordinance, I hereby impose an aggregate fine of Rs350,000/- (Rupees three hundred fifty thousand only) on the respondents, as per following details:

Name of Respondents	Amount in Rs.
1. Mr. Aziz Ul Haque	50,000
2. Mr. Haroon Iqbal	50,000
3. Mr. Ishtiaq Ahmed	50,000
4. Mr. Manzoor Ahmed	50,000
5. Mr. M. Naeemuddin Malik	50,000
6. Mr. Syed Maqbool Ali	50,000
7. Mr. Waseem Ul Haque Ansari	50,000
TOTAL	350,000

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 from the receipt of this order and receipted bank vouchers must be furnished to the Commission.

In case of failure of the respondents to deposit of the fines, proceedings for recovery of the fines as



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arrears of land revenue will be initiated. It may also be noted that the aforesaid fines are imposed on the respondents in their personal capacities; therefore, they are required to pay the said amounts from personal resources.

Amina Aziz
Director (CSD)

Announced:
May 5, 2016
Islamabad