



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 39, 40 of 2016 and 78 of 2017

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

(All directors of Dewan Automotive Engineering Limited)

...Appellants

versus

Director, CSD, SECP

...Respondent

Date of hearing:

February 15, 2024

Present:

For the Appellants:

1. Syed Muhammad Abbas Hyder, Advocate High Court
2. Syed Muhammad Raza
3. Muhammad Hanif German

For the Respondent:

1. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
3. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This consolidated order shall dispose of Appeal Nos. 39 and 40 of 2016 and 78 of 2017 filed by the Directors of Dewan Automotive Engineering Limited (the Appellants) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against three separate Orders dated May

ML.



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5, 2016 and June 2, 2017 respectively (the Impugned Orders) passed by the Director, Adjudication-I SECP, (the Respondent) under Section 158 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).

2. The brief facts of the case are that the Appellants failed to convene the annual general meetings (AGMs) of Dewan Automotive Engineering Limited (the Company) for the years 2014, 2015 and 2016, within the stipulated time specified under Section 158 of the Ordinance. Relevant details are as under;

Appeal No. 39 of 2016		
S. No	Year Ended	due on
1	June 30, 2015	October 31, 2015
Appeal No. 40 of 2016		
S. No	Year Ended	due on
1	June 30, 2014	October 31, 2014
Appeal No. 78 of 2017		
S. No	Year Ended	due on
1	June 30, 2016	October 31, 2016

3. In view of the above violations, the Respondent issued three separate show-cause notices (the SCNs) to the Appellants, however, they failed to submit written replies to the SCNs. Thereafter, three separate hearings were held and accordingly three orders were passed whereby penalties were imposed on the Appellants. Relevant details of SCNs, replies, hearings and penalties are as under;

Appeal No. 39 of 2016				
SCN Date	SCN Reply Date	Hearing Date	Impugned Order Date	Penalty (Rs.)
January 06, 2015	No Reply	April 15, 2016	May 5, 2016	50,000/- on each Director (Aggregate Penalty 350,000)
Appeal No. 40 of 2016				



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SCN Date	SCN Reply Date	Hearing Date	Impugned Order Date	Penalty (Rs.)
SCN dated January 6, 2015 and addendum dated January 19, 2019	No Reply	April 15, 2016	May 5, 2016	50,000/- on each Director (Aggregate Penalty 350,000)
Appeal No. 78 of 2017				
SCN Date	SCN Reply Date	Hearing Date	Impugned Order Date	Penalty (Rs.)
January 13, 2017	No Reply	February 6, 2017, April 24, 2017 and May 03, 2017	June 02, 2017	50,000/- on each Director (Aggregate Penalty 350,000)

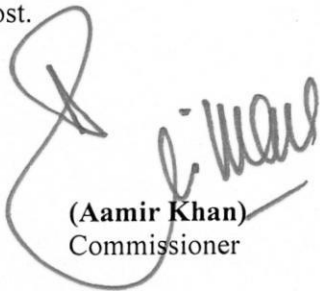
4. The Appellants have preferred these appeals *inter alia* on the grounds that the default was not deliberate, as the majority of the staff had left the company due to financial constraints. They further contended that the order in question was issued without proper jurisdiction or lawful authority and flagrantly disregarded principles of natural justice. The Appellants have also stated that this instance has taken place due to shortage of qualified staff as the company had undergone staff losses, hindering the preparation of accounts due to a lack of qualified staff. They also stated that over 80% of the company's shares were held by sponsors/directors. The Appellants further stated that they have requested the Respondent for extension of time to prepare the Accounts so that AGMs may be convened, however, it was not accepted. They further asserted that no complaint by any of the minor shareholders was received by the Securities and Exchange Commission of Pakistan (the 'Commission'). Therefore, by considering these circumstances a lenient view may be taken by waiving the penalty.
5. The Respondent rebutted the grounds of Appeals and put forth the arguments that the law clearly stipulates that a company must convene its AGMs within four months from the conclusion of its financial year. They further emphasized that conducting the AGMs is a crucial statutory obligation for safeguarding the interests of shareholders and offering significant opportunities, especially to minority shareholders. Additionally, they highlighted that directors of a listed company are required to be well-versed in the relevant legal provisions, with the Ordinance placing primary responsibility on them for



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organizing the AGMs. The Respondent further asserted that the Company has failed to hold its AGMs for the fiscal years ending on June 30, 2014, 2015 and 2016 and has neglected to prepare or submit audited financial statements since 2012 and there is a lack of authentic financial information concerning the company's status, attributable to the directors' failure to fulfill their legal duty regarding the AGMs.

6. The Appellate Bench (the 'Bench') has heard the parties and perused the record. The Bench is of the view that a listed company is under obligation *inter alia* to hold the AGMs as per the law within 120 days of the close of its financial year, however, the Appellants have failed to ensure compliance. The bench has pursued the record and submission made by the Appellants. The Bench is of the view that the non-holding of AGMs was caused due to factors beyond the control of the Company and the Appellants. The Bench noted that closure of machinery/plant since 2008 and political turbulence during 2023-14 due to which majority of the staff had left that resulted in statutory non-compliances. The Bench has observed that the company had no history of non-compliance before these years, and later on, all non-compliances were rectified in 2017-18. Therefore, we believe that the benefit of these mitigating circumstances should be given to the appellants. Therefore, considering the mitigating factors of the Appellant the Bench takes the lenient view.
7. In view of the above discussion, the Bench hereby converts the penalties imposed through the Impugned Orders into a warning. Accordingly, the above three appeals are disposed of, without any order as to cost.


(Aamir Khan)
Commissioner


(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: 19 AUG 2024