



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan - Director/ Head of Department

In the Matter of

Diamond Industries Limited

Number and Date of SCN: CSD/ARN/562/2018-31 dated January 15, 2024

Dates of Hearing: February 22, 2024; March 11, 2024 & March 19, 2024

Present: Mr. Munawar Chief Financial Officer; Mr. Zahoor Ahmed
Company Secretary

ORDER

UNDER REGULATION 32 AND 36 OF THE LISTED COMPANIES (CODE OF CORPORATE GOVERNANCE) REGULATION, 2019 READ WITH REGULATION 37 THEREOF

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the **Commission**) against Diamond Industries Limited (the **Company**) and its Board of Directors (collectively referred to as the **Respondents**) through Show Cause Notice CSD/ARN/562/2018-31 dated January 15, 2024 (the **SCN**) issued under regulations 32 and 36 of the Listed Companies (Code of Corporate Governance) Regulation 2019 (the **Regulations**) read with Regulation 37 thereof.

2. Brief facts of the case are that:

- (i) the Audit Oversight Board (the **AOB**) informed that the Company, a public interest company (**PIC**), during the year ended June 30, 2022 appointed M/s Sarwars Chartered Accountants (the **Audit Firm**) as their external auditors which is not registered with the AOB and Mr. Rashid Sarwar (the **Auditor**) being the engagement partner performed the audit of the Company. The AOB also informed that the Audit Firm was not qualified to be an auditor of a PIC under Section 36W of Securities and Exchange Commission of Pakistan Act, 1997 (the **SECP Act**) read with Regulation 4 of AOB (Operations) Regulations, 2018 and other applicable legal requirements for appointment of auditors.
- (ii) It is mandatory that the company shall appoint a firm of auditors, as external auditor, which has been given satisfactory rating under Quality Control Review Program (QCR) of the Institute of Chartered Accountants of Pakistan (ICAP) and is registered with AOB. It is noted that the Audit Firm is neither registered with AOB nor on the list of QCR-rated firms of ICAP.
- (iii) On perusal of record, it has been noted that the Audit Firm:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 1 -

- had issued auditors' report for the year ended June 30, 2022 as well as the review report on the Statement of Compliance contained in the Regulations for the year ended June 30, 2022 (**the SOC**);
 - was also appointed as the external auditors for the year ended June 30, 2023 and had issued a review report on the half yearly accounts of the Company for the period ended December 31, 2022.
- (iv) The Commission vide letter dated September 22, 2023 raised the matter with the Company. The Company vide letter dated October 13, 2023 responded that as per Audit Firm it is allowed to continue working as QCR rated firm in accordance with the order of the Honorable Court of Civil Judge, Lahore, in the matter of Civil Suit No. 4025/2021. The Company also informed that M/s A.K. Minhas Law Associates, legal advisor of the Company, were also of the opinion that the Audit Firm is still a QCR rated Firm and can continue to conduct audit of the Company.
- (v) The AOB vide email dated November 28, 2023 informed that the name of Audit Firm was initially removed from QCR list of ICAP on December 31, 2021 and was subsequently restored therein on the basis of afore-said court order dated January 31, 2022, however was finally removed from the QCR list w.e.f. March 11, 2022 by ICAP's Quality Assurance Board (**QAB**).
- (vi) Comments regarding compliance with regulations 32(1), 32(2) and 36(1) of the Regulations were sought from the Company vide letter dated November 03, 2023. The Company has not responded the same despite reminder dated November 23, 2023.
- (vii) The Company was required to appoint an external auditor who fulfilled three conditions i.e. (i) satisfactory QCR rating, (ii) registration with AOB and (iii) compliant with the International Federation of Accountants (the IFAC) Guidelines on Code of Ethics (**the Code of Ethics**). The Code of Ethics as adopted by ICAP defines the term Engagement Partner as under:
- "The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body."*
- (vii) The Company, in paragraph 16 of the SOC disclosed that the statutory auditor of the Company is registered with AOB, having satisfactory rating under QCR of ICAP and compliant with the Code of Ethics as adopted by ICAP. However the said disclosure was contrary to the position due to the reasons that (i) the name of the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 2 -

Audit Firm was not registered with AOB, therefore, the engagement partner of the audit firm was not compliant with the Code of Ethics; (ii) the Audit Firm has not been given satisfactory QCR rating by ICAP. Moreover, the company has not explained aforesaid non-compliances in paragraph 18 of the SOC.

(viii) The company appointed the Audit Firm as external auditor for FY 2023, *prima facie*, knowing the fact that the Audit Firm was neither given satisfactory rating by QCR of ICAP nor was registered with AOB and was not even compliant with the Code of Ethics.

(ix) It appears from the aforesaid that the Company has, *prima facie*, contravened the following provisions of the Regulations:

- Regulation 32(1) by appointing an audit firm that is not registered with AOB as its external auditor for the year ended June 30, 2023.
- Regulation 32(2) by appointing an audit firm as external auditors, which is non-compliant with the IFAC's Guidelines on Code of Ethics, as adopted by the ICAP.
- Regulation 36(1) by not explaining, in para 18 of SOC, the non-compliance observed in para 16 of SOC of FY 2022 with respect to the auditor not being registered with AOB.

3. In order to take cognizance of the aforesaid contraventions, SCN was issued to the Respondents requiring to show cause as to why penalty may not be imposed on them for the aforesaid non-compliances. However the Respondents failed to submit their written response within the specified time, therefore, in order to provide opportunity of personal representation, hearings in the matter were fixed for February 22, 2024 and March 11, 2024 that were adjourned on request of the Respondents. Another opportunity was provided by fixing hearing on March 19, 2024, wherein Mr. Munawar, Chief Financial Officer and Mr. Zahoor Ahmad, Company Secretary, appeared on behalf of the Respondents as their Authorized Representatives (the **Representatives**) and submitted that:

- The name of the Audit Firm was appearing in the list of ICAP QCR rated firms dated February 10, 2022;
- Audit Firm was appointed after placing reliance on its representation that the stay order by the Court is still intact and its stance as regards to registration with AOB; and
- Observing that the name of Audit Firm is still not appearing in the register of firms maintained by AOB, the Audit Firm was not considered while appointing the auditor for the year ending June 30, 2024z.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 3 -

4. Relevant provisions of the Regulations are reproduced hereinunder:

“32. Terms of appointment of external auditor.- (1) It is mandatory that no company shall appoint an external auditors, a firm of auditors, which has not been given a satisfactory rating under the Quality Control Review program of the Institute of Chartered Accountants of Pakistan and registered with Audit Oversight Board of Pakistan under section 36I of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).

(2) It is mandatory that no company shall appoint as external auditors, a firm of auditors which or a partner of which is non-compliant with the International Federation of Accountants' Guidelines on Code of Ethics, as adopted by the Institute of Chartered Accountants of Pakistan.”

36. Compliance Statement and Auditor Review.- (1) It is mandatory that the company shall publish and circulate a statement, as given under Annexure A to these Regulations, along with their annual reports to set out the status of their compliance with the requirements of these Regulations and the said statement shall be specific and supported by necessary explanations.

37. Penalty.- Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.”

5. I have considered the facts of the case in light of the relevant provisions of applicable legal framework, and the information available on record and state that, companies are required to comply with regulatory requirements, and one such requirement is appointing auditors who are registered with the AOB. The AOB registration typically involves meeting certain standards related to audit quality, independence, and professional competence. Engaging a registered audit firm provides assurance that the audit process will be conducted according to established standards, enhancing the reliability and credibility of the financial statements.

Overall, adhering to the appointment of an audit firm having satisfactory QCR rating and registration from AOB is essential for ensuring regulatory compliance, maintaining audit quality, enhancing stakeholder confidence and upholding the essence of best practices.

In addition to the above and considering the contents of SCN and reply by the Respondent, following issues were framed before me which are addressed below in light of the applicable provisions of law to conclude the proceedings on hand:

a. **Whether the Audit Firm was registered with AOB:**

No, the name of the Audit Firm was not registered with AOB at the time of its appointment as external auditor of the Company for the year ended June 30, 2022 and June 30, 2023.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 4 -

- b. **Whether the name of Audit Firm included in the register of Audit Firms maintained by AOB:**

No, the name Audit Firm is not included in the register of Audit Firms maintained by AOB as the same was removed therefrom vide Circular No. 01 of 2022 dated January 19, 2022.

- c. **Whether the Audit Firm eligible to perform audit of PIC:**

No, the Audit Firm was not registered with AOB thus was also not eligible to conduct audit of PIC in terms of section 36W of the SECP Act.

- d. **Whether the Auditor compliant with code of Ethics of ICAP:**

No, the Audit Firm was not registered with AOB, which means that the Auditor did not have the proper authority to conduct the audit of a PIC, in terms of Code of Ethics of ICAP. Accordingly, the Auditor was not qualified to perform as the engagement partner for the audit of the Company and performing the audit of a PIC as an ineligible engagement partner leads to breach of the Code of Ethics of ICAP.

- e. **Whether the AOB a defendant in the Civil Suit filed by the Auditor and Whether any order issued to AOB by the Court:**

No, the said suit is against the QAB and QAD of ICAP. AOB is neither a defendant in the referred Civil Suit nor was issued any order by the Court. Further the name of the Audit Firm is still neither registered with AOB nor its name is appearing in the satisfactory QCR firms list by ICAP. Moreover the Civil Court in its order dated January 31, 2022 has specifically stated that this order shall not affect any legal/judicial proceedings before any forum of competent jurisdiction.

- f. **Effects of the Order of the Civil Court Lahore on compliance with applicable legal and regulatory framework by the Respondent:**

No, the Order of the Civil Court Lahore has no effect on the Respondents and they were required to appoint as external auditor, a firm of auditors who: (i) has satisfactory QCR of ICAP; (ii) is registered with AOB and (iii) compliant with the Code of Ethics of IFAC as adopted by ICAP and to state reasons for any non-compliance with the Regulations in the SOC.

- g. **Whether the legal and regulatory framework provide any exception for compliance by the Respondent:**

No, the provisions of regulation 32 and 36 of the Regulations are explicit and requires the Respondent to appoint as external auditor, a firm of auditors who: (i) has satisfactory QCR of ICAP; (ii) is registered with AOB and (iii) compliant with the Code of Ethics of IFAC as adopted by ICAP and to state reasons for any non-compliance with the Regulations in the SOC.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 5 -

6. In view of the preceding facts, I am of the considered view that by failing to appoint the external auditors who does not fulfil the above-stated eligibility criteria and not by disclosing the said non-compliance in the SOC, the Respondents have contravened the regulations 32 & 36 of the Regulations, punishable under regulation 37 thereof, read with Section 512 (2) of the Act. I, therefore, in exercise of the powers conferred under sub-section (2) of Section 512 of the Act, hereby impose a penalty of **Rs. 250,000 (Rupees Two Hundred and Fifty Thousand Only)** on the Company, and **Warn** the remaining Respondents to be careful in future and ensure meticulous compliance of applicable legal provision.

7. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

8. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondent in respect of any default, omission or violation thereof.

Shahzad Afzal Khan
Director/ HOD
Adjudication Department-I

Announced:
May 14, 2024
Islamabad.