



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Mahboob Ahmad - Additional Director/Head of Listed Companies Wing

In the Matter of

EXIDE Pakistan Limited

Number and Date of SCN: CSD/ARN/59/2024-411
dated August 09, 2024

Hearing Date: October 02, 2024

Present: Syed Aminuddin Fakir, Advocate-S.A. Fakir & Co.;
as the Authorized Representative

ORDER

Under Section 237 read with Section 479 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through Show Cause Notice CSD/ARN/59/2024-411 dated August 09, 2024 (the SCN) issued under section 237 of the Companies Act, 2017 (the Act) read with section 479 thereof and Circular No. 11 dated August 11, 2023 (Circular) against the Board of Directors and Chief Financial Officer (CFO), hereinafter collectively referred to as the Respondents, of EXIDE Pakistan Limited (the Company).

2. The brief facts of the case are that from the perusal of relevant record, it transpires that the Company has failed to timely file/transmit with the Registrar/Commission, its Quarterly Financial Statements (QFS) for the following period:

Period Ended	Due on	Date of Filing/Transmission of QFS with the Registrar/Commission
31-Dec-23	30-Jan-24	18-April-24 (delay of 78 days)

3. In view of the above, it transpired that the directors, Chief Executive Officer (CEO) and CFO of the Company had, *prima facie*, contravened the provisions of section 237 of the Act read with Circular by late filing/transmitting the above-mentioned QFS through eServices/eZfile with the Registrar/Commission.

4. Consequently, a SCN was issued to the Respondents to show cause in writing as to why penal action may not be taken against them for non-compliance with the requirements of section 237 of the Act read with Circular. In response, Syed Aminuddin Fakir, Advocate-



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S.A. Fakir & Co, the Authorized Representative of the Respondents (**the Representative**) vide letters dated August 22, 2024 and September 05, 2024 requested extensions to submit reply.

5. The Representative vide letter dated September 12, 2024 in response to the SCN, *inter alia*, stating the following:

- The QFS were prepared on January 29, 2024 as required under section 237 of the Act. The QFS was placed by the Company on its website and transmitted to the Pakistan Stock Exchange (PSX) on January 30, 2024.
- The QFS were also provided to Supervision and Enforcement Department and Commissioner (Enforcement) on 30 January 2024.
- The Company made attempts to file/transmit the QFS to the Commission electronically through eZfile, this could not be completed due to technical issues with the eZfile portal.
- The Respondents had instructed the relevant staff to continue follows up and file the QFS soon after resolution of eZfile technical issue. However, there was an unintentional oversight on the part of the office staff since the relevant official in charge had left the Company, and the electronic transmission of the QFS through the eZfile portal was further delayed.
- The Respondents took immediate remedial action and filed the QFS on April 18, 2024 through the eZfile portal. Since the QFS were being filed for the first time under the Circular, the Respondents took immediate steps to rectify the procedural deficiency and ensured compliance.
- The independent/non-executive directors would not be liable in the circumstances, since they have protection under section 181 of the Act.
- The Company has a distinguished compliance history, which is a testament to the Respondents' commitment in ensuring compliance with law and Commission's requirements. Therefore, a lenient view may be taken in the matter and the delay may be condoned without taking any punitive action.

6. In order to provide an opportunity for personal representation, hearing in the matter was fixed for October 02, 2024, where the Representative appeared and reiterated the written response submitted vide letter dated September 12, 2024 and made the following further submission:

- The QFS were submitted through Pakistan Unified Corporate Action Reporting System (PUCAR) platform of Pakistan Stock Exchange (PSX) on January 30, 2024; and



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- It was not a wilful default, as it occurred due to a technical issue in the eZfile system and oversight of the relevant staff of the Company; therefore, requested to take a lenient view.

7. Subsequent to the hearing, the Representative vide letter dated October 07, 2024 submitted the following:

- (i) The Company's SOP regarding the filing of QFS to avoid delay in filing the QFS in future; and
- (ii) Copies of case laws.

8. The relevant provisions of the Act stipulate as under:

"237. Quarterly financial statements of listed companies. – 1) Every listed company shall prepare quarterly financial statements within a period of: -

- a) thirty days from the close of first and third quarters of its year of accounts; and*
- b) sixty days from the close of its second quarter of its year of accounts.*

2) The quarterly financial statements shall be posted on the company's website for the information of its members and also be transmitted electronically to the Commission, securities exchange and with the registrar within the period specified under sub-section (1).

(4) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty of level 2 on the standard scale."

9. As regards the matter at hand, I have analyzed the facts of the case based on the relevant provisions of the Act, the available record, as well as the written and verbal submissions of the Representative. At this juncture, it is imperative to address the following:

(i) **Whether it is statutory obligation to timely file/transmit QFS?**

The provisions of section 237 of the Act are unambiguous and explicit. The timing of the QFS is essence and the disclosure requirements of QFS have been kept to a bare minimum. The timely preparation and filing/transmission of QFS with Registrar and the Commission provide to its users a reliable source of information regarding a Company's financial position and performance. In order to ensure compliance, the Respondents have fiduciary duty to ensure that the Company meticulously adheres to the law for preparation and filing/transmission of the QFS in a timely manner.

In the instant case, as per minutes of the Board of Directors (BoDs) meeting held on January 29, 2024, the QFS was approved by the board and transmitted through PUCAR platform of PSX on January 30, 2024. However, no evidence was provided by the Respondents to substantiate their claim that the delay in filing/transmission of QFS was due to technical issues in eZfile system.



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The Representative admitted that further delay occurred due to a lack of proper follow-up by the relevant office staff. This lack of timely follow-up indicates that the Respondent did not take adequate action to file/transmit the QFS, thereby contributing to the overall delay in submission.

The Representative's claim that QFS were filed for the first time under the Circular is not based on facts, as it is important to note that the requirement for electronic filing of QFS was further simplified through the issuance of the Circular.

(ii) Whether QFS is source of information for the stakeholders/members?

QFS are crucial source of information for stakeholders/members. It provides timely insights into a company's financial performance and position, enabling members to make informed decisions. Such information is essential for assessing the company's overall financial health on a regular basis, thereby ensuring transparency and accountability from the company's management.

In the instant case, the Company had transmitted the QFS through PUCAR platform of PSX and made it available on the Company's website in a timely manner i.e. January 30, 2024. However, failed to timely file/transmit the QFS with the Registrar/Commission.

(iii) Whether the assertion that independent/non-executive directors are entitled to protection under section 181 of the Act valid in this case?

Section 181 of the Act provides, "(a) an independent director; and (b) a non-executive director; shall be held liable, only in respect of such acts of omission or commission by a listed company or a public sector company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently."

Based on the above, independent and non-executive directors also bear the responsibility for ensuring compliance with the Act. They are required to exercise due diligence in adhering to legal requirements and there is no exemption provided in term of section 237(4) of the Act which, *inter alia*, provides that "every director, including chief executive and chief financial officer of the company who has by his act or omission been the cause of such default shall be liable to a penalty."

(iv) Whether the case laws referred by the Representative are relevant?

The Representative provided case laws i.e. "2022 CMR 1810, 2016 CLD 1283 and 1983 CLC 3200", which mainly relate to the matters of Arbitration under Arbitration Act, 1940; further issue of shares under the Companies Ordinance, 1984; and non-filing of accounts/annual report with the stock exchange under the Securities and Exchange Ordinance, 1969 and Rules made thereunder. However, the cited case laws— "2018 CLD 1031, 2010 CLD 34, and 2006 CLD 323"—pertain to matters involving the non-filing of accounts with the Commission. It has been noted that the Representative has referred case laws by providing copies without explaining/specifying any relevant arguments/citations that may be considered in its support.



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It is pertinent to mention that every case has its own peculiar facts and circumstances, therefore, decisions of past cases may not be applied to each case. In the instant matter, the Respondents have failed to submit evidence of the system facing technical issues or of lodging a complaint. This lack of evidence does not substantiate the delay in filing/transmitting the QFS with the Registrar/Commission, as required under section 237 of the Act read with Circular.

10. In view of the above, it is established that the Respondents have contravened section 237 of the Act read with Circular by filing/transmitting the QFS for the period ended December 31, 2023, with a delay of 78 days, and failed to substantiate through supporting documents that delay has occurred due to the system error. However, considering that the Company has compliance history, timely prepared and transmitted/placed the QFS on January 30, 2024 at PSX and Company's website. Therefore, given these circumstances, in exercise of the powers conferred under sub-section (4) of section 237 of the Act, I hereby Warn the Respondents by concluding the proceedings initiated through the SCN and also advise them to ensure meticulous compliance with the applicable legal and regulatory framework in future.

A handwritten signature in black ink, appearing to read 'Mahboob Ahmad', is written over a horizontal line.

Mahboob Ahmad
Additional Director/ Head of Wing
Listed Companies Wing,
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Announced:
November 11, 2024
Islamabad

