



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before
**Shahzad Afzal Khan - Director/
Head of Department**

In the Matter of

Hascol Petroleum Limited

Number and Date of SCN: CSD/ARN/554/2015-188 dated August 29, 2023
Dates of Hearing: October 2, 2023
Present: Mr. Farhan Ahmad, Company Secretary and
Mr. Amad Uddin, CFO

ORDER

Under Section 132 of the Companies Act, 2017 and Section 479 thereof

This Order shall dispose of the proceedings initiated against Hascol Petroleum Limited (the Company or the Respondent) through Show Cause Notice dated August 29, 2023 (the SCN) issued under Section 132 of the Companies Act, 2017 (the Act) read with Section 479 thereof.

2. Brief facts of the case are that in terms of sub-section (1) of Section 132 of the Act, the Company was required to hold its Annual General Meeting (AGM) for its Financial Year (FY) ended on December 31, 2019 within stipulated time i.e. latest by May 29, 2020 in terms of circular number 6/2020.. The Company through its letter dated April 28, 2020 applied to the Securities and Exchange Commission of Pakistan (the Commission) for seeking directions under Section 147 of the Act. In this regard, the Commission through letter dated May 4, 2020 allowed to hold aforesaid AGM latest by June 30, 2020. Moreover, the Commission through email dated June 17, 2020 declined request of the Company for another direction to hold aforesaid AGM. As per available information the AGM of the Company for the FY 2019 was held on August 11, 2020 i.e. with a delay of 41 days from extended date allowed for holding the said AGM.

3. In view of the above, the Company has failed to hold its AGM for the FY ended on December 31, 2019 within the extended time i.e. latest by June 30, 2020, *prima facie*, contrary to the requirements of Section 132(1) of the Act. Therefore, taking cognizance of the alleged non-compliance proceedings were initiated through serving the SCN requiring to show cause in writing within ten (10) days, as to why penalty, as provided, should not be imposed on the Respondent.

4. In this regard, Company vide letter dated September 7, 2023, *inter alia*, submitted that:

- Pakistan stock Exchange (PSX) vide its letter dated 28 October 2020 has already imposed a penalty of PKR 250,0000 on the Company for its inability to hold the AGM on 11 August 2020 for the year ended 31 December 2019. The penalty amount was duly paid by the Company vide Cheque no.00010699 dated 06.10.2020 in favor of PSX. In this regard, the Company's letter dated November 2, 2020, *inter alia*, stated, that the annual audit for the year ended 31 December 2019 could not be completed due to then



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 1 -

prevailing COVID-19 pandemic and certain unavoidable circumstances which did not allow the audit process to be completed including the lock-down and illness of our key staff members.

- This is a past and closed matter from a regulatory compliance standpoint. The Notice under reference pertains to a cause of action for which the Company has already been penalized. As such, the Notice which in essence reopens a matter after a lapse of a three years is unjustified. Therefore, humbly request to re-consider this matter without taking any punitive action.
- As a matter of fact, and record, the Commission vide its order dated 19 September 2022 had also condoned the delay in holding AGM for the period ending on 31 December 2021 under section 132 and did not take punitive action.

5. In order to provide opportunity of personal representation, a hearing in the matter was fixed for October 2, 2023. On the date of hearing, Mr. Farhan Ahmad, Company Secretary and Mr. Amad Uddin, CFO appeared as authorized representatives. During the hearing, it was, *inter alia*, submitted that:

- (i) For the said default, we have already paid penalty to PSX;
- (ii) One regulator has already penalized on the same default.
- (iii) Considering prior order of default of 2021, lenient view is requested.

6. Relevant provisions of the law are reproduced hereinunder:

Sub-section (1) of Section 132 of the Act:

"Every company, shall hold, an annual general meeting within sixteen months from the date of its incorporation and thereafter once in every calendar year within a period of one hundred and twenty days following the close of its financial year. -

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, shall be held by a period not exceeding thirty days."

Sub-section (5) of Section 132 of the Act:

"Any contravention or default in complying with requirement of this section shall be an offence liable: -

(a) in case of a listed company, to a penalty of level 2 on the standard scale."

7. I have gone through the facts of the case, the submissions made in writing and during the hearing proceedings, and it is observed that:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 2 -

(i) **Applicability of Section 132 in the instant case:**

In terms of Section 132(1) of the Act, every company is required to hold its AGM once in every calendar year within a period of one hundred and twenty days following the close of its financial year: 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, shall be held by a period not exceeding thirty days. Moreover, the Commission through its circular number 6 of 2020 and circular number 10 of 2020 allowed 30 days extension to hold AGM for the year ended December 31, 2019 latest by May 29, 2020. In the instant matter, in terms of Section 147 of the Act, the Company was allowed to hold its AGM latest by June 30, 2020. However, AGM of the Company was held on August 11, 2020 i.e. with a delay of 41 days. The Company stated that delay in holding of AGM of FY 2019 was due to non-completion of audit, COVID-19 pandemic and unavoidable circumstances prevailing at the relevant time.

I am of the view, that in terms of Section 132(1) of the Act, the AGM of the Company for the FY 2019 was not held within the extended time. I am also of the view that in terms of circular number 6/2020 extended time of 30 days was allowed by the Commission in order to cope up with the difficult situation of COVID-19. Moreover, the Company through its letter dated April 28, 2020 sought directions under Section 147 of the Act and, the Commission through letter dated May 4, 2020 allowed to hold aforesaid AGM latest by June 30, 2020. . However, the Company failed to hold its AGM for the FY within the extended time. I am therefore of the view that the Company's failure to hold its AGM for the FY 2019 within the extended time attracts the violation of Section 132(1) of the Act.

(ii) **Cognizance taken by PSX:**

The Company has relied on the stance that PSX in accordance with the rule 5.7 of the PSX Rule Book has already taken cognizance for delay in holding of AGM for the FY 2019, and a penalty of Rs. 250,000/- was imposed. The Company in this regard, has also forwarded a copy of letter dated October 28, 2020.

In this regard, I am of the view that in terms of Section 132 of the Act, only the Commission can extend the time of holding of AGM in case of listed companies. The cognizance of default in terms of Section 132 of the Act is prerogative of the Commission. The imposition of fine by PSX on the Company pertains to the default for not intimating the date of AGM for FY 2019, which is for the purpose of disclosure of relevant information to the members and the PSX to avoid that AGMs of two companies coincide. Moreover, the cognizance taken by PSX through subsidiary requirements of PSX Rule Book cannot be construed as proceedings initiated for violation of the Act. Hence, the view of the Respondent that penal action in this regard has already been taken by PSX is not cogent.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 3 -

(iii) Holding of AGM within the stipulated time is of significance:

The holding of AGM is a vital statutory requirement as it provides opportunity to the members to participate in the discussion and vote on agenda items of the general meeting which includes consideration and approval of the company's financial statements. In order to ensure transparency and protect the shareholders' rights, company must meticulously adhere to the law by following the procedure prescribed under the Act for holding of AGMs. The Respondent cannot absolve itself from its statutory duties pertaining to holding of AGMs, in a timely manner as specified under the law.

(iv) The Respondent's stance that for the FY 2021 the Commission did not take punitive action for delay in holding of AGM was based on peculiar nature of reasons provided which cannot be applicable for the default committed in other years, therefore, does not correlate with the reason of delay in holding of AGM 2019.

8. In view of the preceding facts, I am of the considered view that by failing to hold its AGM for the year ended December 31, 2019 within the extended time as stated above, the Company is in contravention of sub-section (1) of Section 132 of the Act, which renders it liable to penal action under sub-section (5) of Section 132 thereof. Therefore, in exercise of the powers conferred under sub-section (5) of Section 132 of the Act, I hereby impose a penalty of **Rs. 500,000/- (Rupees Five Hundred Thousand)** on the Respondent, i.e. **Hascal Petroleum Limited**.

9. The aforementioned penalty must be deposited in the designated bank account maintained with MCB Bank Limited / United Bank Limited in the name of the **Securities and Exchange Commission of Pakistan** within thirty (30) days from the receipt of this Order, and the bank challans must be furnished to the Commission. In case of non-deposit of the penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

10. 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/Head of Department
Adjudication Department - I

Announced:
October 11, 2023
Islamabad