



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan – Director/Head of Department

In the Matter of

Dewan Mushtaq Textile Mills Limited

Number and Date of SCN: CSD/ARN/206/2015-15 dated January 4, 2024

Dates of Hearing: February 21, 2024 & March 6, 2024

Present: Mr. Mehmood-ul-Hassan Asghar - Director
Mr. Hanif German - Company Secretary
(Authorized Representatives)

ORDER

UNDER SECTION 132 OF THE COMPANIES ACT, 2017 READ WITH SECTION 479 THEREOF

This Order shall dispose of the proceedings initiated against Dewan Mushtaq Textile Mills Limited (**the Company**) and its Board of Directors and the Company Secretary (collectively referred to as the **Respondents**) through Show Cause Notice (**the SCN**) dated January 4, 2024 issued under Section 132 of the Companies Act, 2017 (**the Act**) read with Section 479 thereof.

2. Brief facts of the case are that the Company has failed to hold its Annual General Meeting (**the AGM**) for Financial Year (**FY**) ended June 30, 2023 within a period of one hundred and twenty (120) days following the closure of its financial year.

The Company vide application dated October 2, 2023 sought extension of thirty (30) days to convene its AGM, which the Commission acceded to through its letter dated October 17, 2023 advising the Company to hold its AGM by November 27, 2023; the Company, however, has failed to hold its AGM for FY 2023 to date. The said failure on part of the Respondents is violation of sub-section (1) of Section 132 of the Act.

3. While taking cognizance of the said violation, the SCN was issued to the Respondents requiring them to show cause in writing as to why penal action may not be taken against them for the aforesaid non-compliance. The Respondents, however, failed to submit a written response to the SCN.

4. Consequently, hearing in the matter was fixed for February 21, 2024 which was adjourned upon the request of the Respondents and re-fixed and held before the undersigned on March 6, 2024 wherein Mr. Mehmood-ul-Hassan Asghar, Director and Mr. Hanif German, Company Secretary of Dewan Mushtaq appeared on behalf of the Respondents as their Authorized Representatives (**the Representatives**).

Over the course of the hearing, the Representatives attributed the delay in holding of the AGM to the loss of Company data due to server problems resultant of a fire that occurred a few years ago on the premises of the Dewan group offices. The Representatives asserted that this incident caused loss of significant Company data with persisting technical problems and the Company, already in dire financial straits, lacked sufficient liquid funds to finance the data retrieval process. The Company was thus unable to prepare and finalize its financials for FY 2023.



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When questioned about the anticipated date of holding the AGM, the Representatives stated that currently the Company is in the process of data restoration and reconciliation, completion of which will enable the external Auditors to initiate the necessary audit procedures; thereafter, the Company will seek direction under Section 147 of the Act and is hopeful to hold its AGM by June 2024.

In conclusion, the Representatives requested the Commission to condone the proceedings in light of the afore-narrated facts and conclude the proceedings by taking a lenient view of the matter.

5. The Representatives, submitted a post-hearing reply dated March 6, 2024, *inter alia*, stating that:

- (i) The AGM could not be held as planned due to unforeseen technical issues. Few years ago, fire broke which destroyed 7th & 8th floor of building where offices of Yousuf Dewan Companies were situated; our IT server room was also placed at 7th floor which was badly affected and since then we are continuously facing technical issues related to our IT server;
- (ii) The financial crunch being faced by Company and the required investment on IT department could not be made;
- (iii) Our IT team was scheduled to the task on the main server and a significant portion of the data could not be retrieved due to which we could not finalize the books of Accounts. We have successfully restored 95% of the data from the backup and are currently in the process of reconciling it with other records, after which we will promptly send the data and reports to the External Auditors for their necessary audit procedures;
- (iv) We are quite hopeful that we will be able to conduct a board meeting and convene the AGM for year ended June 30, 2023 before June 30, 2024 and for this we will seek direction under Section 147 of the Act; and
- (v) It is requested that you may please take the lenient view in this regard by considering the exceptional circumstances faced by us.

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."



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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. At this stage, it is essential to address the following questions:

- (i) Why holding of AGMs by listed companies in accordance with the prescribed timelines is of utmost importance and what are the consequences of non-compliance?
- (ii) How does timely holding of AGMs demonstrate a listed company's commitment to robust corporate governance and transparency ensuring effective shareholder participation, engagement and communication?
- (iii) Do technical issues relating to server problems and data loss absolve the Respondents from holding the AGM within the statutory timeframe?

8. I have considered the facts of the case in light of the relevant provisions of the Act, the arguments set forth during the hearing as well as the Respondents' written submissions. At this juncture, it is imperative to address the following:

- (i) Why holding of AGMs by listed companies in accordance with the prescribed timelines of utmost importance and what are the consequences of non-compliance?

Timely holding of AGMs ensures that shareholders are provided with updated information about the company's performance, financial position, strategy and future outlook. Holding general meetings in a timely manner ensure that shareholders receive up-to-date information that can help them make informed decisions about their investments. In addition, it allows shareholders to exercise their rights, including voting on key agenda items including consideration and approval of the company's financial statements and election of directors.

The Respondents cannot absolve themselves from their statutory duties pertaining to holding of AGMs within the statutory timeframes. Holding AGMs within the stipulated time ensures compliance with regulatory requirements which is indicative of the Company's commitment to uphold ethical and responsible business practices. Conversely, failure to hold general meetings within the statutory timeframe can be detrimental to the company's reputation and credibility, eroding investor confidence and trust, thus leading to potential negative impacts on its the long-term sustainability and growth.



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- (ii) **How does timely holding of AGMs demonstrate a listed company's commitment to robust corporate governance and transparency ensuring effective shareholder participation, engagement and communication?**

Timely holding of AGMs is a fundamental aspect of good corporate governance as it promotes transparency, accountability and shareholder engagement. It allows shareholders to hold the management accountable for their actions and decisions, fostering trust and confidence in the company's management. General meetings provide transparency and accountability to shareholders and ensure that the company is operating in the best interests of its shareholders. Likewise, timely AGMs facilitate open communication and dialogue, allowing shareholders to raise questions, express concerns and provide feedback. Thus, listed companies must adhere to the law by following the procedure prescribed under the Act for holding of general meetings.

- (iii) **Do technical issues relating to server problems and data loss absolve the Respondents from holding the AGM within the statutory timeframe?**

No. The Respondents cannot absolve themselves from their statutory duties pertaining to holding of AGMs within the statutory timeframes. Non-recovery of data due to server problems does not, in essence, serve as a blanket excuse from the Company's statutory obligations. In this day and age of modern technology, listed companies are expected to have robust data protection guidelines and procedures in place, including but not limited to regular backups and incident response plans. In addition, the Respondents should inform their shareholders about the delay and the reasons for it. Transparency and timely communication can help mitigate the impact of such issues and ensure compliance with the statutory obligations.

The Representatives have vaguely stated the time of occurrence of the said fire incident. Nonetheless, the Company's IT personnel/support technicians should have been vigilant and competent enough, i.e., at the very least, have the necessary training to be cognizant of their roles and responsibilities to immediately report the server problems and data loss in order to diagnose the issue and initiate recovery procedures.

While unforeseen circumstances such as server issues or data loss may present challenges in preparing for and conducting an AGM, the Respondents have the responsibility and legal obligation to take appropriate measures to address these problems promptly and hold the AGM within the statutory timeframe.

9. The Company failed to hold its AGM for the fiscal year ended June 30, 2023 within the stipulated time period of one hundred and twenty (120) days following closure of the said FY; review of Company records, however, transpire that it has failed to hold its AGM for FY 2023 till the date of this Order.



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In view of the preceding facts, I am of the considered view that by not holding its AGM for the year ended June 30, 2023 within the time period as stipulated under sub-section (1) of Section 132 of the Act, the Respondents have contravened the said provisions of the Act, which renders them liable to penal action under sub-section (5) of Section 132 thereof.

Therefore, in the exercise of powers conferred under sub-section (5) of Section 132 of the Act, I hereby impose a penalty of Rs. 100,000 (Rupees One Hundred Thousand only) on **Dewan Mushtaq Textile Mills Limited**, and warn the remaining Respondents to ensure meticulous compliance of the law in the future in letter and spirit.

10. The aforementioned penalty must be deposited in the designated bank account maintained with United Bank Limited or MCB Bank Limited in the name of the **Securities and Exchange Commission of Pakistan** within thirty (30) days from the receipt of this Order, and receipted bank vouchers 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.

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

SHAHZAD AFZAL KHAN
Director/Head of Department
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Announced:
April 18, 2024
Islamabad

