



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan - Director/Head of Department

In the matter of

Dewan Farooque Motors Limited

Show Cause Notice No. & Date: No. CSD/ARN/210/2015-147 dated February 20, 2024

Date of hearing: April 24, 2024

Hearing attended by: Mr. Muhammad Hanif German (Company Secretary)

ORDER

Under Section 512(2) of the Companies Act, 2017 read with the regulation 3 of the Companies (Postal Ballot) Regulations, 2018 and regulation 11B thereof

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/294/2016-180 dated March 29, 2024 (the SCN) issued under Section 512 of the Companies Act, 2017 (the Act) read with Regulation 3 of the Companies (Postal Ballot) Regulation, 2018 (the Regulations) and Regulation 11B thereof against Dewan Farooque Motors Limited (the Company) and its Board of Directors, hereinafter referred to as the Respondents.

2. Notice of Annual General Meeting (the AGM) of the Company held on October 26, 2023, mentions the following special business:

"To consider and approve short term loans/advances to an associated company in compliance with the provisions of Section 199 of the Companies Act, 2017"

3. The notice of AGM revealed that the Company did not provide right of vote to members through postal ballot for special businesses.

4. The Company was approached by the Securities and Exchange Commission of Pakistan (the Commission) vide email dated December 07, 2023 to clarify its position. The Company submitted through email dated December 18, 2023, that due to its server maintenance the Company could not offer the option to the members.

5. Analysis of Company's reply revealed that, the Company has not provided any explanation regarding the non-provision of the right to vote through postal ballot to its members in terms of regulation 3 of the Regulations.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division
Adjudication Department-I

Continuation Sheet - 2 -

6. In view of above, *prima facie*, the Company has violated regulation 3 of the Regulations which requires that right to vote through postal ballot shall be provided to the members. The said regulation 3 is reproduced as under:

3. Applicability. - *The right of vote through postal ballot shall be provided to members of-*
(a) every company, subject to the requirements of sections 143 and 144 of the Act;
(b) a listed company [for all business classified as special business under the Act and in case of election of directors, if the number of persons who offer themselves to be elected is more than the number of directors fixed under sub-section (1) of section 159 of the Act.]

7. The Company, *prima facie*, failed to comply with the requirements of regulation 3 of the Regulations punishable under regulation 11(B) of the Regulations and Section 512 of the Act, respectively.

8. Section 512 of the Act and regulation 11(B) of the Regulations, are reproduced as under:

"512. Power to make regulations. —

(2) Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."

"11B. Penalty for contravention of these regulations. — (1) Whoever fails or refuses to comply with, or contravenes any provision of these regulations, or authorizes or permits such failure, refusal or contravention shall be punishable with penalty as provided in sub-section (2) of section 512 of the Act."

9. In response, to the aforementioned SCN company vide its letter dated April 24, 2024 submitted the following response which is provided hereunder;

"In this regard, we have already mentioned the reason in, our email dated December 7, 2023, that in the month of October, our IT department was busy with server issue & maintenance and could not providing the network facility at that time' (enclosed herewith circular issued by our IT Department for your information). Unfortunately, due to circumstances, we encountered challenges in providing the option of video link facility and 'electronic means arrangements to our esteemed members during that period for attending the Annual General Meeting. We deeply regret any inconvenience caused by our inability to offer this option during the specified time frame.

Without prejudice to the above we would like to state that the Annual General Meeting was held for the Financial Statements of the Company while meeting the quorum requirements wherein businesses on the agenda were appropriately transacted as per law.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division
Adjudication Department-I

Continuation Sheet - 3 -

However, we will in future provide the option for the shareholders to attend the Annual General Meeting through electronic means like video link, webinar or other electronic means.

Kindly take the lenient view in this regard by considering the exceptional circumstances during the specified period. We assure you that in future we will comply with the relevant law."

10. In order to provide an opportunity of hearing to the Respondents, the matter was fixed for hearing to be held on April 24, 2024. On the date of hearing, Mr. Muhammad Hanif German (Company Secretary), appeared as Authorized Representative on behalf of the Respondents (the Representative). The Representative reiterated the stance as provided through reply letter dated April 24, 2024 and submitted that the default was not deliberate and requested for a lenient view.

11. I have reviewed the facts of the case, considered the written and verbal submissions made by the Respondents and the Representative in the light of the applicable legal provisions and available record before me. In this regard, it is observed that:

a. Whether the right to vote through postal ballot was required to be provided to members of every listed company for all businesses classified as special business:

Yes. In terms of regulation 3 of the Regulations, the right to vote through postal ballot shall be provided to members of every listed company for all businesses classified as special business. Provision of the right to vote through postal ballot ensures participation of the members especially where special business is being considered in the meeting. Hence, under the Regulations it is obligatory for all listed companies to ensure provision of the voting facility in general meetings where a business is classified as a special business.

b. Whether any assurance for the subsequent compliance, absolves the Respondents from the non-compliance made:

No. The Respondents' assurance for subsequent compliance of the given requirements of Regulation 3 does not exonerate them for the violations as stated above.

12. Keeping in view of the aforesaid contraventions, the Respondents are liable under Sections 512(2) of the Act. Therefore, in exercise of the powers conferred under the said provision, I hereby impose a penalty of Rs. 100,000/- (Rupees One Hundred Thousand only) on the Company i.e. **Dewan Farooque Motors Limited**. I also Warn the remaining Respondents to be careful and to ensure the compliance of applicable regulatory framework in letter and spirit.

13. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the *Securities and Exchange Commission of Pakistan* within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division
Adjudication Department-I

Continuation Sheet - 4 -

14. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, is positioned above a horizontal line.

Shahzad Afzal Khan
Director/Head of Department
Adjudication Department-I

Announced: April 26, 2024
Islamabad