



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

Before

Shahzad Afzal Khan

Director/

Head of the Adjudication Department-I

*In the Matter of*

**Hascol Petroleum Limited**

Number and Date of SCN: CSD/ARN/554/2018-300 dated May 30, 2024

Hearing Dates: July 4, 2024

Present: Mr. Farhan Ahmad, Company Secretary and  
Mr. Amad Uddin, CFO as Authorized Representatives

#### ORDER

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

This Order shall dispose of the proceedings initiated through the Show Cause Notice dated May 30, 2024 (**the SCN**) issued under Section 132 of the Companies Act, 2017 (**the Act**) read with Section 479 thereof, to Hascol Petroleum Limited (**the Company**) through its Chief Executive, the Board of Directors (**BOD**) and the Company Secretary (collectively referred to as the **Respondents**).

2. The 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, 2023 within stipulated period of one hundred and twenty days (120) following the closure of the said FY. However, the Company failed to hold the AGM within the stipulated time.

3. The Company through its application dated March 29, 2024 sought extension of thirty (30) days to convene its overdue AGM, which the Securities and Exchange Commission of Pakistan (**the Commission**) did not accede to through its letter dated April 5, 2024; advising the Company to ensure compliance with the relevant provisions of the Act. Consequently, the SCN requiring to show cause in writing within (14) days, as to why penalty, as provided, should not be imposed on the Respondents.

4. In this regard, through the letter dated June 13, 2024, the CFO and the Company Secretary, on behalf of the Respondents, *inter alia*, submitted that:

- The delay is regretted in issuing the financial statements for the year ended December 31, 2023. The reasons for the delay are the same as provided along with application dated March 29, 2024 of the Company for seeking an extension in holding of AGM.
- The Board of Directors in its meeting held on June 12, 2024 asked the management to schedule the board meeting for approval of annual accounts for FY 2023. The management after discussion with the external auditor scheduled the board meeting



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for approval of the annual accounts for FY 2023 on June 28, 2024. Accordingly, the AGM of the Company would be planned during the week starting on July 22, 2024.

- The Commission is requested to condone the delay in holding of the AGM.

5. To provide opportunity of personal representation, hearing in the matter was fixed for July 4, 2024. On the date of hearing, Mr. Farhan Ahmad, Company Secretary and Mr. Amad Uddin, CFO appeared as authorized representatives of the Respondents. As per the extract of the board resolution dated June 12, 2024, both were Authorized Representatives of the Respondents in the matter of the SCN. The Authorized Representatives highlighted note 1.2 to the board's approved financial statements of the Company for the year ended December 31, 2023 (**the Accounts**), wherein the reasons for delay in holding the AGM and finalization of the Accounts have been provided. The relevant note, *inter alia*, is given as below:

Quote:

*During the current year, the Company incurred a net loss of Rs. 17.81 billion (2022 - Rs. 14.44 billion), resulting in net shareholders deficit of Rs. 78.98 billion (2022 - Rs. 61.18 billion) as of the statement of financial position date. Further, as of that date the current liabilities of the Company exceeded its current assets by Rs. 94.08 billion (2022 - Rs. 76.65 billion) and has defaulted in majority of its outstanding loans with banks. These conditions may cast significant doubt on the Company's ability to continue as a going concern. However, in order to ensure the Company's ability to operate as a going concern, certain plans and measures have been taken to improve its liquidity and financial position which includes, but not limited to, the following:*

- a) The Board of Directors (the board) have carried out a detailed review of the profitability and cashflow forecast of the company for the twelve months following the date of balance, at the date of approval of these financial statements.*
- b) The expected inflow from the IFEM pool and the assurance of supply continuity was taken into account by the board to arrive at a conclusion that the company will continue to operate as a going concern and there are no current plans to file for liquidation for at least one year (12 months) from the date of the balance sheet being authorised for issue.*
- c) Except for, where a regulatory action from government department or proceedings of liquidation from a creditor (s) are initiated, wherein, the banking accounts of the company are attached and/ or seized by the relevant action of the regulator or creditor. In such case, the company may face disruptions in its operations and may come to a halt of business operations thus challenging the going concern of the company.*

Unquote:

6. Subsequent to the hearing, the Company through email dated July 4, 2024 furnished a copy of the aforesaid Accounts and referred its note 1.2 in support of the arguments.



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7. The following points need to be addressed in the instant proceedings:

- (i) Whether the AGM of FY 2023 was held within the stipulated timeframe?
- (ii) Whether the application for extension has any effect on the instant proceedings?
- (iii) What is the past track record of compliance of Section 132 of the Act?
- (iv) Whether the holding of AGM within the stipulated time is of significance?

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

- (i) Whether the AGM of FY 2023 was held within the stipulated timeframe?

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.

In case of the Company, the AGM for the FY 2023 was not held within the stipulated time of 120 days.

Moreover, the application under Section 132 of the Act of the Company seeking an extension of 30 days period in holding of the AGM for the FY 2023 was not acceded to by the Commission.

Thereafter, the AGM for the FY 2023 was held on July 24, 2024 i.e. with a delay of 86 days from the due date. The reasons stated by the Respondents that the delay in the holding of AGM was mainly due to finalization of the Accounts are not cogent. Therefore, the violation of Section 132(1) of the Act is attracted.

- (ii) Whether the application for extension has any effect on the instant proceedings?

The Respondents have relied on the ground that for holding of the AGM in the extended time of 30 days for FY 2023, an application under Section 132 of the Act was made before the Commission. However, the Commission did not accede to the request of the Company.

In this regard, the record transpires that the AGM for FY 2023 was held with a delay of 86 days from the due date, therefore, application of the Company does not have any effect, as the AGM was held beyond 30 days period for which an extension can be allowed. Hence, the said argument of the Respondents is not cogent.



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(iii) **What is the past track record of compliance with Section 132 of the Act by the Company?**

As per the available record, the past record of the Company also reflects non-compliances of the provisions of Section 132 of the Act, as highlighted below:

AGM for the year	Due Date	Held on	Delay in Days from due date as per Section 132(1)
FY 2023	April 29, 2024	July 24, 2024	86 days
FY 2022	April 29, 2023	August 31, 2023	124 days
FY 2021	April 29, 2022	September 13, 2022	137 days

Therefore, I am of the view that the violation of Section 132 of the Act is attracted and is repetitive.

(iv) **Whether the holding of AGM within the stipulated time is of significance?**

The holding of the AGM is a vital statutory requirement as it provides an 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 case of C.O.No.73846 of 2021 (Tariq Aziz vs. Makhdum Ahmed Mahmud and others) the honorable Lahore High Court has enshrined the principle that the AGM is hallmark of the corporate democracy and the requirement to hold AGM is binding and no departure is permissible from the compliance of the mandatory requirements. The aforesaid Order has stated that:

*The Court in "Mian MUHAMMAD ILYAS MEHRAJ and 17 others Versus APPELLATE BENCH No.III, SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN, ISLAMABAD and 6 others" (2009 CLD 883) highlighted and duly emphasized the significance of holding the annual general meeting by a company as a hallmark of corporate democracy and held that the binding nature of the requirement to hold Annual General Meeting is clearly discernable from the fact that failure to hold such meeting consecutively for two years made a company liable to be wound up under the Act. The Court held as under:-*

*Section 158(4) of the Companies Ordinance, 1984, in unqualified terms, provides for holding of Annual General Meeting. No departure is permissible from the compliance of the mandatory provisions of section 158. The company is artificial person and those who manage it's affairs are under legal as well as fiduciary obligation, to run the affairs of the company as the law (Companies Ordinance,*



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*1984) requires. Corporate democracy is the essence of the corporate personality of a juristic person. The legislature in its wisdom was conscious of the importance of holding of Annual General Meeting and that is why a company is made liable to be wound up, if fails to hold two consecutive Annual General Meetings. (Emphasis supplied)*

Given the aforesaid, the holding of AGM within the stipulated time is of significance. The holding of AGM with a delay may deprive the members of their statutory right, to know about the affairs of the Company and their inability to participate in the decision making. By giving mere disclosures in note 1.2 to the Accounts, the Respondents cannot absolve themselves from their statutory duties pertaining to holding of the AGM, in a timely manner as specified under Section 132 of the Act. Therefore, the arguments given in this regard are not cogent.

9. 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, 2023 within the stipulated time i.e. within 120 days from the close of the financial year, rather it was held with a delay of 86 days, therefore, 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.

10. Keeping in view, in exercise of the powers conferred under sub-section (5)(a) of Section 132 of the Act, I hereby impose a penalty of **Rs. 500,000/- (Rupees Five Hundred Thousand only)** on the **Respondent Company i.e. Hascol Petroleum Limited**. The remaining Respondents are hereby warned for the aforesaid delay in holding of the AGM.

11. The aforementioned penalty must be deposited in the designated bank account maintained with 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.

12. 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:**  
August 2, 2024, Islamabad

