



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan – Director/Head of Department

In the Matter of

Diamond Industries Limited

Number and Date of SCN: CSD/ARN/562/2018-21 dated January 10, 2024
Hearing Dates: February 22, 2024, March 11, 2024 & March 19, 2024
Present: Mr. Zahur Ahmed - Company Secretary
Mr. Munawar Hussain - CFO
(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 Diamond Industries 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 10, 2024 issued under Section 132 of the Companies Act, 2017 (**the Act**) read with Section 479 thereof.

2. Brief facts of the case are as follows:
 - a. The Company 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;
 - b. The Company vide application dated October 3, 2023 sought extension of thirty (30) days to convene its AGM, which the Commission did not accede to through its letter dated October 6, 2023 advising the Company to ensure compliance with the applicable provisions of the Act;
 - c. Subsequently, the Company vide application dated November 14, 2023 sought direction under Section 147 of the Act to convene its overdue AGM by December 9, 2023, which the Commission disposed of through its letter dated December 4, 2023, *inter alia*, stating that "the company has already issued notice of AGM for the year ended June 30, 2023 to be held on December 9, 2023, therefore since the company has already proceeded with holding the AGM, the requirement for direction u/s 147 of the Act does not exist and the application is disposed of.";
 - d. 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 afore-stated non-compliance. The Respondents, however, failed to submit a written response to the SCN.

Consequently, hearings in the matter were scheduled for February 22, 2024 and March 11, 2024 which were adjourned upon the Respondents' request and rescheduled and held before the undersigned on March 19, 2024 wherein Mr. Zahur Ahmed, Company Secretary and Mr. Munawar Hussain, CFO of Diamond Industries being the Authorized Representatives (**the Representatives**) appeared on behalf of the Respondents.



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The Representatives attributed non-holding of the AGM within the prescribed timeframe to the Company's statutory auditors' refusal to issue the audit report without obtaining independent and objective evidence concerning the existence, accurateness and completeness of information contained in the Company's financials via receipt of third-party confirmations. This hindered the timely completion of the audit process and finalization of financial statements. Consequently, the Company applied for a thirty (30) day extension to hold its AGM, however, the same was not acceded to by the Commission. Subsequently, the Company sought direction under Section 147 of the Act to hold the AGM by December 9, 2023 which was disposed of by the Commission since the Company had already announced its AGM Notice via the PSX on November 17, 2023.

When questioned about the status of compliance with respect to the subject violation, the Representatives stated that the Company has held its AGM for FY 2023 on December 9, 2023. In conclusion, the Representatives gave a binding assurance of future adherence to the law on behalf of the Respondents, requesting the Commission to condone the proceedings in light of the afore-narrated facts and circumstances.

4. 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."

5. I have considered the facts of the case in light of the applicable provisions of the Act, and the arguments set forth during the hearing and state that:

- i. The 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;
- ii. Timely holding of AGMs ensures that shareholders are provided with updated information about the company's performance, financial position, strategy and future outlook. This ensures that shareholders receive up-to-date information that can help them make informed decisions about their investments;
- iii. The Respondents cannot absolve themselves from their statutory duties pertaining to holding of AGMs within the statutory timeframes. Timely holding of AGMs ensures compliance with regulatory requirements, suggestive of the Company's commitment to uphold ethical and responsible business practices;
- iv. General meetings provide transparency and accountability to shareholders ensuring that the Company is operating in the best interests of its shareholders. AGMs also facilitate



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- open communication and dialogue allowing shareholders to raise questions, voice their concerns and provide feedback. Therefore, listed companies should duly comply with the relevant laws and regulations by virtue of following the procedure prescribed under the Act for holding general meetings;
- v. The Company failed to hold its AGM for FY ended June 30, 2023 within the statutory timeframe of one hundred and twenty (120) days following closure of its FY, owing to non-completion of the audit process as a consequence of delay in receipt of third-party confirmations to the Company's external auditors;
 - vi. Consequently, the Company applied for a 30-day extension to hold its AGM which was denied by the Commission; subsequently, the Company sought direction under Section 147 of the Act to hold its overdue AGM by December 9, 2023;
 - vii. The Company maintained open communication with the Commission by promptly addressing the reasons for delay which can be seen as a proactive and reasonable effort on its part, indicative of its cooperation and commitment to compliance, and can thus be considered as a mitigating factor;
 - viii. The Company has a satisfactory compliance history in terms of holding of AGMs as general meetings for the preceding three years, i.e., for FY 2020, FY 2021 and FY 2022 have been held in a timely manner on October 24, 2020, October 27, 2021 and October 27, 2022 respectively; and
 - ix. Review of Company records transpire that it has held its AGM for the financial year ended June 30, 2023 with a slight delay on December 9, 2023.

6. In view of the preceding facts, it is observed that the Respondents have held the AGM for FY 2023 on December 9, 2023. Whilst no penalty is imposed due to the Company's satisfactory compliance history, I hereby conclude the proceedings with a warning to the Respondents reminding them to adhere to their fiduciary duties and responsibilities towards all stakeholders. The Respondents are also advised to ensure meticulous compliance with their statutory obligations which includes holding of general meetings in a timely manner, and warrant all practical efforts to prevent any future non-compliance.

7. 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:
May 27, 2024
Islamabad