



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Say No to Corruption

Before Shahzad Afzal Khan - Director/ Head of Department

In the Matter of

Dewan Farooque Motors Limited

Number and Date of SCN: CSD/ARN/294 /2016-54 dated May 18, 2023

Dates of Hearing: June 07, 2023

Present: Syed Maqbool Ali - Director
Mr. Mehmood ul Hassan Asghar - Director
Mr. Muhammad Hanif German (Company Secretary)

ORDER

UNDER REGULATION 6 OF THE LISTED COMPANIES (CODE OF CORPORATE GOVERNANCE) REGULATIONS, 2019 READ WITH SECTION 166 (2) OF THE COMPANIES ACT, 2017 AND SECTION 169 THEREOF

This Order shall dispose of the proceedings initiated against the following directors (collectively referred to as the "Respondents") of Dewan Farooque Motors Limited (the "Company") through Show Cause Notice (the "SCN") dated May 18, 2023 issued under Regulation 6 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the "Regulations") read with Section 166 (2) of the Companies Act, 2017 (the "Act") and Section 169 thereof:

Sr. #	Name of Directors
1.	Mr. Ghazanfar Baber Siddiqui
2.	Mr. Abdul Basit
3.	Mr. Muhammad Saleem Baig
4.	Mr. Imran Ahmed Javed
5.	Ms. Nida Jamil
6.	Mr. Waseem-ul-Haque Ansari
7.	Mr. Aziz-ul-Haque
8.	Dewan Sugar Mills Limited through its CEO

2. Brief facts of the case are that the Company appointed only one independent director on its board namely Mr. Aziz-ul-Haque, instead of two, which is *prima facie*, contrary to the requirements of Regulation 6(1) of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the CCG Regulations). Furthermore, the independent director namely Mr. Aziz-ul-Haque, appointed on December 19, 2022, also does not fulfil the criteria of

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independent director as provided in Section 166 (2) (g) of the Act, as he has served on the board for more than three consecutive terms.

3. In view of the aforesaid, the Company has, *prima facie*, contravened the requirements of regulation 6 of the Regulations and Section 166 (2) of the Act, therefore, taking cognizance of the alleged non-compliance, proceedings under regulation 6 of the Regulations and Section 166 (2) of the Act read with Section 169 thereof, were initiated against the Respondents through serving the SCN requiring them to show cause in writing within ten (10) days, as to why penalty, as provided, should not be imposed on them.

4. Although no response to the aforementioned SCN was submitted by the Company; an opportunity of personal representation, hearing in the matter was fixed for June 07, 2023, wherein Syed Maqbool Ali, Mr. Mehmood-ul-Hassan Asghar and Mr. Muhammad Harif German, appeared before the undersigned on behalf of the Respondents as their Authorized Representatives (the "Representatives") and submitted that:

- The Company has been facing financial difficulties over a period of time and hasn't been able to appoint an independent director in compliance of the law.
- The company is in the process of restructuring and therefore requires time to appoint its independent directors.
- The restructuring is expected to be concluded by December 2023.
- The company is always positive towards compliance of law and therefore assures to comply the law and appoint the independent directors in compliance of law.
- Mr. Aziz ul Haque will be removed accordingly and new directors will be appointed.

5. Subsequent to the hearing held on June 07, 2023, the Company submitted a response vide letter dated June 7, 2023. The extracts of the letter are as follows:

"In respect of the -requirement of the Code of Corporate Governance of at least two Independent Director on the Board, at present, the Company appointed Mr. Aziz-UI-Haque as Independent Director of the Company. We are also approaching many individuals who are listed in the databank maintained by the Pakistan Institute of Corporate Governance and are waiting for their responses and consents for being independent Director of the Company.

We have informed you in the hearing that some of the lenders are in litigation with the Company, which are pending before Banking Court and High Court of Sindh at Karachi, we further submitted that the Credit Information Bureau (CIB) report of the Company is



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negative, which bears reputational risk for all the directors of the Company and have become reasons of reluctance for the prospective Independent Directors.

Moreover, considering the fact of the present financial situation of the Company and its ongoing litigations with the lenders, the individuals don't seem to be interested to come on the Board as Independent Directors.

Recently the Company had executed Technical License Agreement (TLA) with KIA Corporation Seoul, Republic of Korea for its operational activities of manufacturing of commercial vehicles, we are going to restart the operations, and are hopeful that we will receive positive response and consent from the eligible persons for being appointed as Independent Directors of the Company.

We have informed in the hearing that Steering Committee of the Banks have taken up the restructuring of all of the Croup Companies as a whole and we are very much hopeful and confident that it will be finalized on or before December 2023. We hereby undertake that we comply with the provisions of the Independent Director as per the legal requirements of the Code of Corporate Governance Regulations."

6. Relevant legal provisions are reproduced as hereunder:

Regulation 6 of Listed Companies (Code of Corporate Governance) Regulations, 2019:

"6. Independent Director.- (1) It is mandatory that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors.

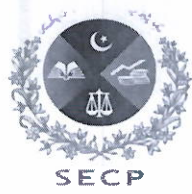
Explanation. – For the purposes of this sub-regulation, a listed company shall explain the reasons, in the compliance report, if any fraction contained in such one-third number which is not rounded up as one."

Section 166 (2) of the Companies Act, 2017:

"166 (2) For the purpose of this section, an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest:

Provided that without prejudice to the generality of this sub-section no director shall be considered independent if one or more of the following circumstances exist –

(g) he has served on the board for more than three consecutive terms from the date of his first appointment, and for more than two consecutive terms in case of a public sector company provided that such person shall be deemed "independent director" after a lapse of one term;"



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Section 169 of the Companies Act, 2017:

"Whoever contravenes or fails to comply with any of the provisions of section 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director for a period not exceeding three years."

Regulation 37 of Listed Companies (Code of Corporate Governance) Regulations, 2019 and Section 512 of the Companies Act, 2017:

"37. Penalty.- Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act."

"512. Power to make regulations.-

(1)...

(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."

7. From the above discussion and after careful consideration of relevant requirements of law and relevant facts of this case, I am of the view that that the Respondents have acknowledged non-compliance of regulation 6 of the Regulations and Section 166 (2) of the Act, therefore, are liable for penalty under regulation 37 of the Regulations read with Section 169 of the Act. Therefore, in view of foregoing, I hereby impose an aggregate penalty of Rs. 10,000/- (Rupees Ten Thousand only) on the Company and Warn the remaining Respondents.

8. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

9. 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/ HOD
Adjudication Department-I

Announced:
June 27, 2023
Islamabad