



Corporate Supervision Department  
Company Law Division

Before Tahir Mahmood – Commissioner (Company Law Division)

*In the matter of*

**Apna Microfinance Bank Limited**

Number and date of notice: CSD/ARN/182/2015-86-92, dated July 6, 2015

**ORDER**

**UNDER SECTIONS 492 AND 495 READ WITH SECTION 476 OF THE COMPANIES  
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including the chief executive (the “respondents”) of **Apna Microfinance Bank Limited** (the “Company”):

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1. Mr. Muhammad Akram Shahid,        | 1. Mr. Qamar-uz-Zaman            |
| 2. Mr. Muhammad Saleem Shaikh, Chief | 2. Mr. Muhammad Farooq Abid Tung |
| 3. Mr. Muhammad Azam Cheema          | 3. Mr. Imad Muhammad Tahir       |
| 4. Ms. Shahida Bilquis               |                                  |

The proceedings were initiated against the respondents through show cause notice (the “SCN”) dated July 6, 2016 that was issued under sections 492 and 495 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company made an application dated February 7, 2014 to the Securities and Exchange Commission of Pakistan (the “Commission”) seeking approval for issuance of 80 million right shares at 50% discount and relaxation from the requirements of rule 5 of the Companies (Issue of Capital) Rules, 1996 (the “Rules”). The Company in the application had stated that the sponsors had already deposited Rs403 million in the non-checking ‘share deposit money account’ to underwrite the right shares and that the external auditor had verified the amount. The Company vide letter dated February 12, 2014 again confirmed that the sponsors had deposited 100% equity amounting to Rs403 million for subscription of 80 million shares at discount of Rs5 per share and following details of sponsors were also provided in the letter:

<u>Name of Sponsor</u>	<u>Shareholding at that time</u>
Muhammad Akram Shahid	5.998 million shares
Muhammad Azam Cheema	5.977 million shares
Jamshed Iqbal	5.977 million shares
United Insurance Company of Pakistan Limited	5.144 million shares
Qamar uz Zaman	3.276 million shares
Shahida Bilquis	2.11 million shares
<b>TOTAL</b>	<b>28.488 million shares (94.96%)</b>



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3. Based on the aforesaid submissions regarding 100% subscription money deposited by the sponsors, the Commission accorded approval dated April 1, 2014 for issuance of 80 million right shares at discounted price of Rs5 per share (50% discount) and also relaxed the requirements of rule 5 of the Rules allowing the Company to proceed with the proposed right issue without making arrangements for underwriting. The aforesaid approval dated April 1, 2014 was granted subject to the conditions including, inter alia, the following:

*“iii. The total shareholding of sponsors and their relatives after issuance of shares in consequence of this approval shall not be traded or sold for a period of two years after the date of issuance of this letter.*

*iv. The Company shall submit a report to the Commission within 15 days of completion of right issue process reflecting shares subscribed by shareholders”*

In terms of the Commission's approval dated April 1, 2014, which was accorded based on Company's confirmation of 100% subscription money deposited by sponsors, any unsubscribed portion of right issue was to be subscribed by the sponsors who were bound to retain their shareholding after issuance of right shares for a minimum period of two years after the approval date.

4. The Company vide letter dated September 19, 2014 submitted that the Company had issued 80 million right shares at discount of Rs5 against par value of Rs10, and the said shares were fully subscribed and paid and had since been credited in Central Depository System (CDS) on July 11, 2014. The Company vide its letter dated May 11, 2015 informed that right shares in terms of the Commission's approval dated April 1, 2014 were issued on July 10, 2014 to the following investors, who were not the shareholders before such right issue, out of the unsubscribed portion of sponsors/directors/ general public:

Name	Amount Deposited	Shares issued
Mr. Abdul Hadi Shahid	2,500,000	500,000
Mr. Inam ul Haq	3,000,000	600,000
Mr. Bashir Ahmed Awan	300,000	60,000
Syed Qaiser Anis	2,500,000	500,000
<b>TOTAL</b>	<b>8,300,000</b>	<b>1,660,000</b>

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In response to the Commission's letter dated May 21, 2015 whereof explanation was sought from the Company for issuing shares to persons other than existing shareholders in contradiction with its earlier submissions, the Company vide letter dated May 25, 2015 further submitted as under:

*"Our external auditors, Riaz Ahmed & Company, confirmed 100% deposit of amount of equity i.e. Rs403 million as full amount of right issue of 80 million shares at Rs5 per share consisting of:*

<i>Sponsors/directors</i>	<i>Rs394.70 million</i>
<i>Mr. Inam ul Haq</i>	<i>Rs8.30 million</i>

*The board of directors vide their resolution dated June 20, 2014 allowed to some outsiders, who were close friends of BOD members to take small portion of 1.49% shares from the un-subscribed portion of the general public share, considering to maintain little portion of free float after the completion of two years restricted period.....*

*We confirm that the 1.49% shareholding issued to four new investors from the unsubscribed portion of the general public share, are intact with them.....continued"*

5. The respondent, prima facie, made misstatements and omission of material facts in the correspondence with the Commission and financial statements for relevant periods by:

- Making incorrect disclosure to the Commission that the sponsors had deposited 100% equity amounting to Rs403 million for subscription of 80 million shares at discount of Rs5 per share; and
- Omitting the disclosures regarding issuance of shares to persons other than existing shareholders of the Company in the correspondence dated September 19, 2014 with the Commission, subsequent to the approval.

The respondents also, prima facie, contravened the directions of the Commission given vide approval dated April 1, 2014 by issuing shares to persons other than the existing shareholders of the Company and not submitting the report to the Commission within fifteen days of completion of right issue process reflecting shares subscribed by shareholders. Consequently, the SCN was issued to the respondents.

6. In response to the SCN, Mr. Rafat Abbas, the Company Secretary, through letter dated July 13, 2015 requested for fixing of hearing to explain the matter in person by the representative of the respondents. A hearing in the matter was fixed on March 7, 2016. In response to the hearing notice the Company Secretary submitted written reply to the contents of the SCN and mainly



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reiterated the earlier written submissions, disclosed in the preceding paragraph. Additionally, he also made the following statements:

- The board of directors ("BOD") vide their resolution dated June 20, 2014 allowed / resolved to issue some shares to outsiders, who were close friends of BOD's members out of small portion of 1.49% shareholding of the unsubscribed portion of the share offered to general public with intent to maintain some portion of free float after the completion of two year restricted period.
- Under the Commission's directions vide letter dated April 1, 2014, the Company through its letter dated May 11, 2015 sought Commission's approval to ensure compliance with Commission's directions.
- It is confirmed that 1.49% shareholding issued to the four new investor from the unsubscribed portion of general public is intact with them.
- The intention of the BOD was just not to violate any direction of regulator but to maintain small free float of shares in the market and their shares shall remain with them for two years from the Right Issue.

In view of the aforesaid submissions, the respondents requested for favorable consideration by condoning the matter.

7. Before proceeding further, it is necessary to advert to the provisions of the Ordinance:

Section 492 of the Ordinance states as under:

*"Penalty for false statement. -Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with a fine not exceeding five hundred thousand rupees."*



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Sub-section (1) of section 495 of the Ordinance provides as under:

*“Punishment for non-compliance of directive of Court, etc.- (1) Where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, noncompliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues.”*

In terms of the Commission’s notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 495 of the Ordinance have been delegated to the Commissioner (Company Law Division) for violation of directions given by him. Powers to adjudicate cases under section 492 of the Ordinance have been delegated to Executive Director (CSD), however, since the current proceedings involve alleged misstatement / omission of material facts along with violation of directions of the Commissioner’s approval, therefore, the case is adjudicated by the undersigned.

8. I have analyzed the facts and circumstances of the case, submission of the respondents and relevant provisions of the Ordinance and my observations are as under:

- The Commission’s approval dated April 1, 2014 was granted to the Company for issuance of 80 million right shares at discounted price of Rs5 per share (50% discount) and relaxation from the requirements of rule 5 of the Rules allowing the Company to proceed with the proposed right issue without making arrangements for underwriting. The aforesaid approval was granted subject to the conditions including, inter alia, the following:

*The total shareholding of sponsors and their relatives after issuance of shares in consequence of this approval shall not be traded or sold for a period of two years after the date of issuance of this letter.*

*The Company shall submit a report to the Commission within 15 days of completion of right issue process reflecting shares subscribed by shareholders”*



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The approval was accorded based on Company's confirmation of 100% subscription money deposited by sponsors and as per approval any unsubscribed portion of right issue was required to be subscribed by the sponsors who were bound to retain their shareholding after issuance of right shares for a minimum period of two years after the approval date. However, subsequently, it transpired that the unsubscribed portion of general public was offered to outsiders by the BOD.

- It is evident that the respondents have caused the misstatements and omission of material facts in the correspondence with the Commission and financial statements for relevant periods as the incorrect disclosure was made to the Commission that the sponsors had deposited 100% equity amounting to Rs403 million for subscription of 80 million shares at discount of Rs5 per share. Moreover, disclosure regarding issuance of shares to persons other than existing shareholders of the Company was omitted in the correspondence dated September 19, 2014 with the Commission, subsequent to the approval. It is also clear that the respondents contravened the Commission's direction given vide approval dated April 1, 2014 by issuing shares to persons other than the existing shareholders of the Company and by not submitting the report to the Commission within fifteen days of completion of right issue process.
- It also transpires that the Company issued 1.66 million shares to persons other than existing shareholders and it constitutes approximately 2% only of the total size of the right issue comprising 80 million shares. As confirmed by the Company the total shareholding of these persons other than existing shareholders is 1.49% of total shareholding. The respondents have further confirmed that those persons shall maintain this shareholding for a period of two year which is applicable to the sponsors in terms of the Commission's approval. Moreover, the respondents have submitted that they did not intend to violate the directions of the Commission and their only intention was to maintain a small portion of free float by issuing shares to outsiders i.e. other than directors.

9. For the foregoing reasons, I am of the view the respondents have violated the provisions of section 492 and 495 of the Ordinance. However, taking cognizance of the submissions made by



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the respondents and the insignificant proportion of share allotted to persons other than the directors, instead of imposing fines, I hereby conclude the proceeding with a warning to the respondents to be careful in future and exercise utmost care to ensure accurate and complete disclosures in terms of applicable law.

**Tahir Mahmood**  
Commissioner (Company Law Division)

**Announced:**  
April 5, 2016  
Islamabad