



Corporate Supervision Department  
Company Law Division

SECP Before Abid Hussain – Executive Director (Corporate Supervision Department)

*In the matter of*

**Pak Media Foundation**

Number and date of notice: CSD/ARN/268/2015-2973-79, dated February 1, 2016

**ORDER**

**UNDER SECTION 492 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 **Pak Media Foundation** (the “Company”):

- |   |                            |
|---|----------------------------|
| 1. Syed Sajjad Hussain Bukhari, Chief Executive | 5. Ms. Rehana Rahi         |
| 2. Syed Ayub Shah                               | 6. Mr. Mohammad Saleem     |
| 3. Khawaja Yawar Naseer                         | 7. Syed Asad Feroz Bokhari |
| 4. Ms. Yasmeen Sajjad                           |                            |

These proceedings against the respondents were initiated through show cause notice (the “SCN”) dated February 1, 2016 under section 492 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that examination of audited financial statements (the “Accounts”) of Pak Media Foundation (the “Company”) for the year ended June 30, 2014 and 2015, revealed that having audited the Accounts, Zeeshan Ali & Co., Chartered Accountants (the “Auditor”) in their report to the members qualified their opinion on the following basis:

- i) Writing off the tax payable of Rs.944,485 to government and recognizing it as income instead of depositing it in treasury.
- ii) Non-apportioning and non-capitalization of the cost of flats which are completed but are included in ‘capital work in progress’ amounting to Rs.68,573,406 and not obtaining NOC from CDA.
- iii) Non-provisioning of income tax payable in Accounts 2015 despite the fact that the Company has not completed formalities related to filing of annual tax return and withholding statements, deduction, collection and payment of withholding taxes, which were necessary for availing tax credit after amendment in the income tax law.



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3. In response to the Commission's queries on Accounts 2014, the Company submitted replies through letters dated January 26, February 4 and May 18, 2015, perusal of which revealed the following with reference to the above qualifications:

- "Non-payment of tax during the year 2014 was caused by financial stress and is regretted. The Board of director discussed the matter in its meeting on 08-10-14 and decided to pay the taxes as soon as possible.
- With regard to capitalization of Rs.68,383,245, services of a firm specialized in such matters will be hired to sort it out after issuance of NOC from Capital Development Authority/ The NOC from CDA is pending despite vigorous efforts, several visits and verbal requests.
- Building was completed and flats were handed over to the allottees with possession letters after payment of costs by them.
- The auditorium has been recently completed, and functions have been arranged in the auditorium.
- Basement and ground floor portions are rented out."

4. It appeared that the Accounts 2014 and Accounts 2015 of the Company were, prima facie, misstated due to the following:

- (i) 2014 & 2015: Despite completion of construction work, wrong classification of the cost of the flats (*under possession of allottees*) and cost incurred on the construction of offices and auditorium used by the foundation under the same head i.e. Capital Work in Progress;
- (ii) 2014 & 2015: Non-capitalization and non-apportionment/separation of the cost of construction of offices and auditorium from total WIP;
- (iii) 2014 & 2015: Incorrect recognition of tax payable of Rs.944,485 as income for the current year, instead of payment of the same to the Government; and
- (iv) 2015: Non recognition of the tax liability for the current year despite the fact that due to non-filing of tax return, the Company was not eligible for tax credits under the law.

Since it appeared that, prima facie, misstatements in the Accounts were material vis-à-vis total balance sheet footing of Rs.72,312,264 and total revenues of Rs.3,183,682, therefore, the SCN was issued to the respondents.



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5. In response to the SCN, Mr. Munawar Hussain Rahi, the company secretary through his letter dated February 19, 2016 stated that delay in responding to the SCN was caused due to his severe illness from blood cancer and the issues highlighted in the SCN could not be sorted out. He further stated that the directors would be meeting very soon to decide on the issues that were caused due to some misunderstanding of the law etc. and the same was regretted. He requested for one months' time for finalizing the long outstanding issues. The Commission through letter dated February 19, 2016 allowed time till March 20, 2016 for submission of written reply by the respondents. Subsequently, through letter dated March 18, 2016, the company secretary on behalf of the respondents, submitted reply. A brief of reply with reference to contents of the SCN is as under:

- The respondents sincerely apologize for the inadvertent mistakes in the finalization of accounts of the Company for the years 2014 and 2015. The respondents are honorary directors and do not even claim travel charges for attending the meetings.
- With regard to completion of construction work, wrong classification and non-capitalization of the offices and auditorium, it is stated that the issue is directly related to the issuance of NOC from Capital Development Authority for which we are making continuous efforts, however, we have to face many bureaucratic hurdles in this regard. Documents and correspondence with CDA provided as Annexure A.
- The tax liability was wrongly written off, as we misconstrued it as income as per section 15(3) of the Income Tax Ordinance, 2001. However, we have realized our mistake and the tax has been paid to the treasury after our enrollment with Federal Bureau of Revenue ("FBR"). Copy of paid challan of Rs.944,485 is enclosed as Annexure B.
- We were already in the process of filing of tax returns and have completed the filing of tax returns for the years 2014 and 2015 along with annual statements. Now the requirements for exemption under section 100C of the Income Tax Ordinance have been fulfilled regarding the tax credit. Copies of tax returns and annual statements are attached as Annexure C.
- As the company had been facing financial difficulties and due to my serious health issues for last 2 years, I would like to humbly request you to kindly not to take any penal



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action against the organization and its directors who all are honorary directors and do not claim even travel charges for attending the meetings.

6. Before proceeding further, it is necessary to advert to the provisions of section 492 of the Ordinance which state as under:

*"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 fine not exceeding five hundred thousand rupees."*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 492 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance, International Financial Reporting Standards ("IFRS") including International Accounting Standards ("IAS") and my observations are as under:

- In terms of applicable IFRS, an item of property, plant and equipment is to be recognized as an asset when it is probable that future economic benefits associated with the asset will flow to the entity and the cost of the asset to the entity can be measured reliably. In the instant case, the Company should have separated the assets owned by it from those which have been sold out in shape of flats to allottees. The auditorium and other portion that have been completed and are under use of the Company include the auditorium a part of which has also been rented out. Therefore, these fulfill the definition of assets. On the other hand, cost of flats which have been handed over to allottees and payments have been received from them, should not be recognized as assets of the Company. Rather the Company should have realized the income on sale of such assets which should have been



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excluded from the Accounts. However, the Company has been reporting all the assets under one head i.e. 'capital work in progress', which constitutes incorrect reporting.

- Moreover, in terms of the IFRS, the depreciable amount of an item of property, plant and equipment is required to be allocated on a systematic basis over its useful life and the depreciation charge for each period must be recognized as an expense. However, the Company has not separately classified the assets owned by it and also has not charged depreciation on those as per IFRS. This has resulted in understatement of expenses and overstatement of profits in the profit and loss account. The documents provided by the Company reflect that there are some serious problems with regard to obtaining of NOC from CDA by the Company. It has been stated by the respondents that due to non-issuance of NOC from CDA, the correct classification is not possible. However, it is viewed that the Company should be able to allocate and apportion the cost of constructed assets to flats sold out and the auditorium and other portions of the building that are Company's assets. Accordingly, the Company should make adequate disclosures in the Accounts and adopt correct accounting treatment as per applicable financial reporting framework and to the satisfaction of the auditor. Although obtaining NOC and completion of formalities in this regard is important, but it should not stop the Company from apportionment of cost and making correct disclosures in the Accounts.
- With regard to wrongly writing off the tax liability to record it as income, the respondents have admitted their mistake and have now deposited the tax amount with the government's treasury to rectify the error.
- With regard to non-recognition of tax liability for the year 2015 despite the fact that tax credit was not available to the Company as it was a non-filer, it has been stated by the respondents that they were in process of filing of tax returns. It has been further stated that they have now completed the filing of tax returns for the years 2014 and 2015 along with annual statements to fulfill the requirements for tax credit under section 100C of the Income Tax Ordinance. Therefore, it appears that the respondents have taken steps to rectify the errors.

8. I deem it necessary to make some observations on the importance of adequacy and accuracy of disclosures in the financial statements and directors' duties and responsibilities in this

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regard. The financial statements are the most important source of reliable information for the shareholders who make their investment decision based on such information. The financial statements not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. Therefore, adequate and correct disclosures in the financial statements in line with applicable financial reporting framework are of utmost importance. It is the duty of the company and its directors to see that the disclosures made in the financial statements are adequate and correct and there is no omission of material facts. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding misstatements or omissions of material information in the financial statements. They also cannot avoid their responsibility of exercising due care and prudence while making investment decisions in line with the best practices, company's policy and market norms.

9. For the foregoing reasons, I am of the view that the respondents have made themselves liable under the provisions of section 492 of the Ordinance. However, I take cognizance of the facts that the Company is a not for profit organization, the respondents are honorary directors of the Company and they have shown willingness to rectify the non-compliances. Therefore, instead of imposing fines, I hereby conclude the proceedings with a warning to the respondents to be careful in future, ensure meticulous compliance with applicable legal provisions and to prepare the accounts as per applicable financial reporting framework to the satisfaction of the auditor.

**Abid Hussain**  
Executive Director (CSD)

**Announced:**  
April 14, 2016  
Islamabad