



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Moonlight (Pak) Limited

Number and date of notice: No. CSD/ARN/211/2015-3097, dated September 16, 2015
Date of hearing: February 16, 2016
Present: Mr. Noman Musfata Zuberi, Liquidator

ORDER

**UNDER SECTIONS 160, 164, 246 AND SRO 1227 /2005 READ WITH 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the liquidator (the “respondents”) of **Moonlight (Pak) Limited** (the “Company”). The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated September 16, 2015 issued under the provisions of sections 160 and 164 read with section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts leading to this case are that the Commission received letter dated September 1, 2015 from National Investment Trust (“NIT”) whereof a copy of notice dated August 20, 2015 of the extraordinary general meeting (“EOGM”) of the Company scheduled to be held on September 11, 2015, was forwarded to the Commission. The agenda of the EOGM included the following business:

- (i) Briefing of Mr. Noman Mustafa Zubairi on the status of liquidation of the Company;
- (ii) Briefing of Mr. Noman Mustafa Zubairi on the proposal received by the Company for merger with / into Bunny’s Limited;
- (iii) A comparison for shareholders about the pros and cons of continuation of liquidation process of the Company and proposed merger option; and
- (iv) Voting of members on continuation of liquidation process or abandoned to proceed for proposed merger option.

Perusal of the notice of the EOGM revealed that despite the aforesaid special business to be transacted at the meeting, no other information including statement of material facts was provided or referred to in the notice of the EOGM, in relation to those agenda items. It appeared that the Company, prima facie, contravened the provisions of section 160 (1) (b) of the Ordinance by not annexing to the notice of the EOGM the statement of material facts containing information



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

concerning the agenda of the EOGM, and hence depriving the shareholders of the mandatory material information required to make a well informed decision. Moreover, the aforesaid notice of the EOGM also did not include draft resolution/(s) that was/were to be presented for approval by shareholders as required in terms of sub-section (1) of section 164 of the Ordinance. Consequently, the SCN was issued to the respondent requiring him to show cause as to why penal action may not be taken against him for the alleged violations of sections 160 and 164 of the Ordinance.

3. Since, the respondent did not submit reply to the SCN, the case was fixed for hearing on February 16, 2016 and the respondent appeared before the undersigned on due date. With reference to the contents of the SCN, he stated that the EOGM held on September 11, 2015 was adjourned due to absence of required document till further notice and will be convened accordingly in due course of time and the requisite information and documents will be provided to the shareholders along with the notice. The respondent through his earlier letter dated September 15, 2015 had submitted that he was unable to send notice of EOGM to the Commission in compliance with Circular No. 10 of 2012 along with statement of material facts and draft resolutions and disseminate the same to the shareholders because being a tax consultant he was experience extensive workload and overlooked the requirements. In view of the respondent's submissions, he was advised to provide copy of minutes of the EOGM in a weeks' time. Subsequently, a reminder was also issued to him on March 4, 2016 advising him to provide the requisite minutes of the EOGM, but he did not respond to the reminder.

4. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance.

Section 160 (1) (b) of the Ordinance, inter alia, provides that *where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department Company Law Division

Continuation Sheet - 2 -

meeting, the time when and the place where the document may be inspected shall be specified in the statement.

Sub-section (1) of section 164 of the Ordinance provides that *with the notice for a meeting, the company shall send to the members copies of draft resolutions, other than routine or procedural resolutions, which are proposed for consideration in the meeting.*

Sub-section (8) of section 160 of the Ordinance, inter alia, provides that *every officer of a listed company who knowingly or willfully fails to comply with any of the provisions of section 160 shall be liable to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues.*

Sub-section (3) of section 164 of the Ordinance provides that *in the event of any default in complying with any of the provisions of this section, the company and every officer of the company who is knowingly or willfully a party to such default shall be liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relate to any other company.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under sections 160 and 164 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance and submissions made by the respondent. It has transpired that the notice of the EOGM contained agenda items that constituted special business in terms of section 160 (1) (b) of the Ordinance which clearly specifies any business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, as a special business. Therefore, the Company was required to attach a statement of material facts along with the notice of the EOGM. Moreover, it was mandatory for the Company to circulate the draft resolution in respect of the agenda items, in terms of section 164 of the Ordinance, which requires the company to send to the shareholders copies of draft resolutions, other than routine or procedural resolutions, which were proposed for consideration in the meeting. The respondent



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

being the liquidator of the Company was responsible to ensure compliance with the mandatory requirements. However, he failed to discharge his duties. It is important to highlight here that being responsible for managing the affairs of the Company, it is the responsibility of the liquidator to ensure that all the legal requirements are complied with in letter and spirit. It is the liquidator's responsibility to oversee the functioning of the company and ensure that proper systems are in place to ascertain due compliance of laws and regulations. A liquidator is also supposed to have proper knowledge of laws and regulatory framework and is fully liable in respect of defaults committed by the company with regard to any law or regulation.

6. For the foregoing reasons, I am of the view that the provisions of sections 160 (1) (b) and 164 (3) have been contravened. However, I take cognizance of the fact that the EOGM was adjourned and the respondent ensured that whenever the meeting is held due compliance of law will be ensured. Therefore, keeping in view the acquiescence of default by the respondent and his assurance for future compliance, I take a lenient view in the matter and instead of imposing maximum fines, I hereby impose a token fine of Rs10,000 (Rupees ten thousand only) on the respondents for violating the provisions section 160 (1) (b).

In respect of violation of sections 164 of the Ordinance, the respondent is hereby warned to be careful in future and ensure meticulous compliance with applicable legal provisions.

The aforesaid fine 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 days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalty is imposed on the respondent in his personal capacity; therefore, he is required to pay the said amount from personal resources.

Amina Aziz
Director (CSD)

Announced:
April 19, 2016
Islamabad