



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

D.S. Industries Limited

Number and date of notice: CSD/ARN/233/2053-54, dated December 11, 2015
Date of hearings: February 19, 2016
Present: Mr. Furqan Naveed, Mr. Salman Farooq, authorized representatives

ORDER

**UNDER SECTION 187 READ WITH SECTIONS 189 AND 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against Mr. Pervez Ahmed and Mr. Ali Pervez (the "respondents"), directors of **D.S. Industries Limited** (the "Company"). The proceedings against the respondents were initiated through show cause notice (the "SCN") dated December 11, 2015 under section 187 read with sections 189 and 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that as per record, both of the respondents are directors of Pervez Ahmed Capital Private Limited ("PACPL") and Mr. Ali Pervez is also a director of Ali Pervez Capital Private Limited ("APCPL"). Both PACPL and APCPL are the corporate brokerage houses. Both the respondents also hold directorships in the Company which is a listed company. In terms of section 187 (j) of the Ordinance, being directors of corporate brokerage houses, the respondents were not qualified to be appointed as directors of a listed company. Despite not being qualified to be directors of a listed company, the respondents have been holding office of director of the Company, prima facie, in contravention with the legal provisions. Consequently, the SCN was issued to the respondents under section 189 of the Ordinance, which prescribes penalties for unqualified persons who describes or represents himself or acts as a director of a company.

3. In response to the SCN, the Company Secretary through letter dated January 2, 2016 submitted reply. A brief of reply with reference to the contents of the SCN is given below:

- Pervez Ahmed Securities Limited is a corporate brokerage house and member of Lahore Stock Exchange Limited but since 2009 its brokerage license has been suspended / not renewed due to inadequacy of the Net Capital Balance and as such it has not conducted any brokerage



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

business for the last six years

- Ali Pervez Capital (Private) Limited is neither a corporate brokerage house nor a member of any stock exchange and as such can't conduct any brokerage business without having membership / TREC of the stock exchange.
- In the light of aforementioned explanation, it is clear that the respondents did not contravene provisions of section 187(j) of the Ordinance.

However, the respondent did not submit any reply regarding brokerage house status of PACPL, which was the clearly mentioned in the SCN. PACPL is a corporate brokerage house and is included in the TREC holders list of Pakistan Stock Exchange ("PSX"). Both of the respondents are directors of PACPL. The explanation provided regarding the respondents' directorship in Pervez Ahmed Securities Limited not being the subject matter of the SCN, is irrelevant. In respect of the respondents' directorship in APCPL, which is mentioned in the SCN, it is not included in the TREC holders' list of PSX.

4. The case was fixed for hearing on January 28, 2016 and February 8, 2016, but the respondents requested for adjournment. A hearing in the matter was finally held on February 19, 2016 and Mr. Furqan Naveed and Mr. Saman Farooq, the authorized representatives of the respondents appeared before the undersigned on the due date. The authorized representatives stated that both the respondents have been directors of the PACPL, which is a corporate brokerage house and a current TREC holder of the PSX. They emphasized that the PACPL has never traded in the Company's shares. They further submitted that both the respondent will resign from the directorship of the PACPL to ensure due compliance of the law. In respect of APCPL, they reiterated that it was not a corporate brokerage house as it did not hold TREC of PSX. Moreover, they admitted the default and requested for a lenient view in the matter. The authorized representatives were advised to submit a written reply along with confirmation of resignation of the respondents from directorship of PACPL within two weeks. As no written reply was submitted subsequent to the hearing, the respondents, through letter dated April 13, 2016 were again advised to submit the aforesaid information. The respondents through letter dated April 19,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

2016 submitted the written replies which were consistent with the submissions made by them during hearing. However, instead of submitting evidence of their resignations from directorship of PACPL, they stated that election of directors of PACPL was scheduled to be held on August 30, 2016 in which new directors will be elected. The respondents further submitted that they will not be re-elected as directors of PACPL. Based on their submissions, they requested for a lenient view in the matter.

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

Section 187 (j) of the Ordinance provides as under:

"no person shall be appointed as a director of a listed company if he is engaged in the business of brokerage, or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house."

Section 189 of the Ordinance provides as under:

"If a person who is not qualified to be a director or chief executive or who has otherwise vacated the office of director or chief executive describes or represents himself or acts as a director or chief executive, or allows or causes himself to be described as such, he shall be liable in respect of each day during which he so describes or represents or acts, or allows or causes himself to be described, as such, to fine which may extend to two hundred rupees."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 189 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

6. I have analyzed the facts of the case, relevant provisions of the Ordinance and the arguments put forth by the respondents and my observations are as under:

- a) PACPL is a corporate brokerage house and is a TREC holder of the PSX. Both of the respondents are directors of PACPL. Their directorship in the corporate brokerage house renders them unqualified to act as directors of a listed company. Therefore, they cannot hold simultaneous directorship in the Company and the corporate brokerage house, in terms of section 187 (j) of the Ordinance.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

- b) As per record, Mr. Ali Pervez and Mr. Pervez Ahmed have been directors of PACPL since the year 2006. They have also been directors of the Company since before the year 2008, when the provisions of section 187 were amended such that the officers and directors of corporate brokerage houses were prohibited to act as directors of listed companies. Therefore, the respondents have been in default of the provisions of section 187 (j) of the Ordinance since July 1, 2008 till date.
- c) The authorized representatives of the respondents during the hearing stated that the respondents will tender their resignations from directorship of the PACPL, however, later on instead of providing evidence of resignation from PACPL, they stated that the respondents will not get themselves re-elected as directors of PACPL in the election of directors of PACPL scheduled to be held on August 30, 2016.
- d) The respondent have been in violation of the law over a long period of time since the amendments made in section 187 (j) effective from July 1, 2008. Directors of a listed company while filing their consents to act as directors, inter alia, give an undertaking that they are aware of their duties under the Ordinance and that they have read the relevant provisions contained therein. It is mandatory for the directors of a listed company to have knowledge of provisions of the applicable laws. Therefore, it is directors' own responsibility to determine and fulfil their obligations under the provisions of the applicable laws. Therefore, there is no tenable justification on the part of the respondents for violation of the provisions of the Ordinance by simultaneously acting as directors of the Company and a corporate brokerage house.

7. For the foregoing reasons, I am of the view that the respondents have been in violation of provisions of section 187 (j) of the Ordinance over a period from July 1, 2008 till date, as they are ineligible to be directors of the Company while they have been directors of a corporate brokerage house. By holding simultaneously directorship in the Company and the PACPL, the corporate brokerage house, they have made themselves liable for action under the provisions of section 189 of the Ordinance. Therefore, in exercise of the powers conferred by section 189 of the Ordinance, I hereby impose a fine of Rs.100 per day for 2,889 days of default on each of them starting from July



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

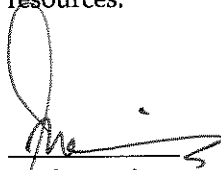
Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

1, 2008 till today. The respondents are directed to deposit the aggregate fine of Rs.577,800 (Rupees five hundred seventy seven thousand eight hundred only) in the following manner:

Name of Respondents	Amount in Rupees
Mr. Pervez Ahmed	288,900
Mr. Ali Pervez	288,900
Total	577,800

The aforesaid fines 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 furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalties are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.


Amina Aziz
Director (CSD)

Announced:
May 30, 2016
Islamabad