



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION

original

BEFORE COMMISSIONER (SPECIALIZED COMPANIES DIVISION)

**IN THE MATTER OF SHOW CAUSE NOTICE DATED MARCH 16, 2016 ISSUED
TO DIRECTORS AND CEO OF SAUDI PAK LEASING UNDER SECTION 158
READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

Date of first hearing

April 11, 2016

Respondent

- i. *Mr. Niaz Ahmad Khan*
- ii. *Ms. Parveen A Malik*
- iii. *Mr. Arsalan Iftikhar Khan*
- iv. *Mr. Hazrat Wali*
- v. *Mr. Sardar Muhammad Ghazi*
representative of Mr. Muhammad Tariq
Masud (CEO)

Assisting the Commissioner (SCD)

- i. *Mr. Imran Inayat Butt (Executive Director)*
- ii. *Ms. Saima Ahrar (Joint Director)*

Date of second hearing

May 25, 2016

Respondent

- i. *Mr. Muhammad Tariq Masud (CEO)*

Assisting the Commissioner (SCD)

- i. *Mr. Imran Inayat Butt (Executive Director)*
- ii. *Ms. Saima Ahrar (Joint Director)*
- iii. *Mr. Muhammad Jehangir (Joint Director)*
- iv. *Mr. Ibrar Saeed (Joint Director)*

ORDER

This order shall dispose of the proceedings initiated against the following directors and the chief executive (hereinafter referred to as "CEO") of **Saudi Pak Leasing Company Limited** (hereinafter referred to as the "Company"):



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S.#	Names of Director
1	Mr. Niaz Ahmad Khan
2	Mr. Muhammad Tariq Masud (CEO)
3	Ms. Parveen A Malik
4	Mr. Arsalan Iftikhar Khan
5	Mr. Hazrat Wali

The proceedings against the Directors and CEO were initiated through Show Cause Notice (the "SCN") dated March 16, 2016 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that in terms of sub-section (1) of section 158 of the Ordinance the Company was required to hold its annual general meeting ("AGM") for the year ended June 30, 2015 on or before October 31, 2015, which the Company failed to convene within the stipulated time. The Company was initially granted one month extension by the Securities & Exchange Commission of Pakistan (the "SECP") to conduct AGM by November 30, 2015; as permitted under the Ordinance. However, the Company failed to conduct AGM within this period and requested for another extension which was accordingly granted with the direction under Section 170 of the Ordinance to convene the delayed AGM latest by December 31, 2015. But the Company failed to hold AGM even by this extended timeline. Consequently, the SCN dated March 16, 2016 was served on the Directors and CEO of the Company whereby they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time. The Directors and CEO were required to submit their respective replies to the SCN by March 26, 2016 and the hearing was fixed for March 31, 2016. CEO and Mr. Arsalan Iftikhar submitted their written response on March 21, 2016 and March 24, 2016 respectively. Meanwhile, upon request of other Directors namely Mr. Niaz Ahmed Khan Toru, Ms. Parveen Akhtar and Mr. Hazrat Wali Khattak, further time upto April 05, 2016 was granted for submission of written response and hearing was re-fixed for April 11, 2016.

3. Mr. Niaz Ahmed Khan Toru, Ms. Parveen Akhtar and Mr. Hazrat Wali Khattak submitted their respective written responses vide letters dated April 04, 2016. All the Directors opted for personal hearing whereas, the CEO opted to be represented by authorized



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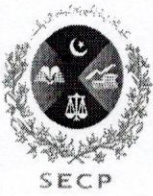
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representative. All the Directors and representative of the CEO appeared before the undersigned on the date of hearing i.e. April 11, 2016.

4. The summary of written submissions, as well as verbal arguments and contentions made during the course of hearing by the Directors and the representative of CEO are as follows:

(i) Submissions by Ms. Parveen Akhtar

- a) 25th AGM of the Company was held on 22.3.2016 in which accounts for the year ended June 30, 2015 were approved. This AGM was held within 15 months of the last AGM i.e 26-12-2014 and hence requirement of Section 158(1) has been complied. Reliance was placed on 'Muhammad Salim vs. Lahore Race Club' PLD 1978 Lahore page 1098.
- b) It is prime responsibility of the management to manage affairs of the Company in a manner so that there are neither any regulatory violation nor operations of the company are damaged. In the current case, though on paper (minutes, correspondence with SECP and other forums of interest of the management) emphasis is placed on adherence of regulatory requirements and code of corporate governance etc. but practically affairs of the Company were being managed otherwise, primarily to weaken the Company and put blame on Board of directors.
- c) During tenure of the current management, no plan was presented to the Board to address issues of the Company, there were no efforts towards recovery of stuck up loans and leases as well as to reduce liabilities of the Company through settlements/negotiations with creditors.
- d) The Board deferred the accounts in the best interest of the Company as well as of shareholders. The Board was concerned regarding deteriorating financial health of the Company and approved appointment of two consultants Grant Thornton and Zahid Latif Securities for recovery / settlement and identification of prospective buyer / investor for injection of equity and authorized current CEO to enter into agreement and proceed but things did not move forward and no progress was made rather Zahid Latif Securities was annoyed with attitude of management and conveyed its regrets to handle the assignment.
- e) Mr. Iqbal Hussain ex-Chairman of the Company resigned from the Board because of attitude of the management. Afterwards, Mr. Ahsanullah resigned due to same reason. No one was willing to be director on the Board of the Company because of



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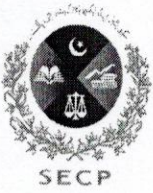
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- nasty attitude of the management as such casual vacancies could not be filled despite efforts.
- f) While blaming the management, for the current financial health of the Company, she further contented that since the appointment of new management in June, 2014, the matters of the Company have been handled in a manner to show bleak picture through financials of the Company.
 - g) During the tenure of the current management, the recovery rate drastically dropped and it came into knowledge of the Board that parties were approaching the management of the Company for settlements but they were not being entertained at Company level.
 - h) There were no further settlements of liabilities with creditors, even there were defaults in re-scheduled / restructured credit.
 - i) The Board also took notice of adverse opinion of external auditor and advised the management to renew the expired FSVs of assets which are available and can be traced/ located as well as to prepare a business plan incorporating the effects of fresh valuation of FSVs, expected recoveries and settlements with creditors. Revision of accounts resulted into additional forced sale value benefit of about Rs.79 million and net loss reduced from Rs.272 million to about Rs. 192 million. However, the external auditors, KPMG continued their adverse opinion in the absence of any business plan as the same was not prepared by the management despite advice of the Board.
 - j) The minutes were also not prepared properly and BOD minutes were treated CEO's minutes.
 - k) She further added that delay in holding AGM is either because of handling of day to day affairs of Company in a non-professional manner by the management and/or concerns of the Board on accounts and efforts to improve the same in the best interest of the Company/shareholders.

(ii) *Submissions by Mr. Niaz Ahmed Khan Toru*

Mr. Niaz Khan Toru agreed to the contentions and submissions of Ms. Parveen Akhtar and talking on merits, he also raised issues of non-cooperation by the management of the Company. He added that delay in holding AGM was beyond our control due to deficiencies and short comings of accounts and failure of the management for timely arrangement of meetings.



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(iii) *Submissions by Mr. Hazrat Wali Khattak*

Mr. Hazrat Wali Khattak also agreed to the defense taken by the other Directors and raised issues like non-cooperation by the management, failure of timely arrangement of meetings, failure to adhere to the instructions of the Board of Directors despite repeated reminders etc. Mr. Wali informed that keeping in view the unsatisfactory responses against the queries on part of CEO, he did not approve the Financial Statements for the year ended June 30, 2015 and opted for dissenting note. Mr. Wali further stated that the management also failed to obtain further extension from SECP despite approval of Directors for the same by way of a resolution through circulation dated February 08, 2016.

(iv) *Submissions by Mr. Arsalan Iftikhar*

Mr. Arsalan Iftikhar agreed to the contentions of the other Directors and showed his concerns on not getting further extension from SECP for holding AGM as the same was approved by the Directors through circulation.

(v) *Submissions by the representative of CEO*

- a) The Company and its CEO performed their obligations in professional manner and with conscious to meet the regulatory timeline.
- b) The Company (an entity) obliged its direction in all respect, *interalia*, convening Board Meetings, arrangement, payment of personal expense and fees etc. for the Directors to attend scheduled meetings and to comply the Regulatory requirements.
- c) Certain Directors with their personal and motivated interest failed to comply with the provisions of law/Regulatory requirements and with their malafide intents forced the Company and its management to land in this statement of affairs.
- d) Company and its Management always made the Directors to realize their fiduciary duty and for compliance of provisions of Law/Regulatory requirements.
- e) Two Directors, directly involved in committing regulatory violations and who have only been looking for their personal ends, have now filed suits in Courts against SECP and the Company.



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- f) The responsible Directors should be restrained from holding any position in any limited Company.

5. Subsequent to the first hearing, the CEO approached the undersigned and requested for personal hearing. His request was accepted and he was called for personal hearing on May 11, 2016 but due to unavoidable circumstances, the hearing was rescheduled for May 25, 2016. The CEO appeared on the date of hearing and submitted the following arguments:-.

- a) The Company and its Management consciously and realizing their fiduciary responsibility made serious and sincere efforts to comply the regulatory framework but unfortunately and again non-seriousness and having personal motives of certain current and ex-Directors, the mandatory timeline has not been met.
- b) The Company's management under very stressful conditions and without having any CFO and qualified staff at Finance & Accounts Department finalized its financial statements for the years ended June 30, 2015 and invited KPMG to conduct and conclude statutory audit;
- c) KPMG started its audit, all the information/documents requested were provided to them and they submitted the statements on September 15, 2015. Thereafter, audit committee meetings were arranged on September 17, 2015. Subsequently, BODs meeting scheduled for September 18, 2015 was not held due to lack of quorum and was re-arranged on September 28, 2015. During the meeting, Chairperson audit committee requested the Chairman to defer the approval of accounts with the following observations:
 - Fresh valuation of cases which have been stuck-up under long litigation may also be arranged to take the benefits of FSVs if any, to improve the Balance Sheet condition.
 - Cash projections for the years 2016-2018 already provided to KPMG may be revised on the assumption that strategic investor being finalized by SAPICO-Islamabad (Shareholder) shall inject necessary liquidity of Rs.1.500 billion in the Company.



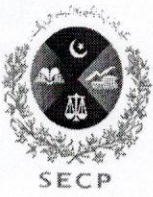
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- SECP may be approached for allowing extension in timeline of holding the AGM which was due to be held by 30-10-2015.
- d) Accordingly, the above three factors were appropriately taken care by the Management and after compliance of taking into account the FSV benefit of a few long stuck up cases under litigation as required by Chairperson Audit Committee, the External Auditors were approached again for re-audit of re-adjusted Financial Statements.
- e) KPMG provided the re-adjusted and re-Audited Financial Statements on November 04, 2015 and thereafter the board meeting was arranged which was deferred by the Chairperson audit committee without assigning any reason. After due efforts, the Chairman of Board and Chairperson of Audit committee gave their consent to hold the Board meeting on Jan 6, 2016 in which the same Accounts were approved by these concerned Directors which were earlier deferred in the Board by these members without assigning any reason. Thereafter, the signed resolutions of the Board were deliberately delayed by the Chairman of Board and Chairperson of Audit Committee and were provided on Jan 28, 2016. The KPMG provided signed copy of Accounts/report only on Feb 3, 2016 and covering letter/report on Feb 8, 2016. After all of this a lot of work load was thrown on the company i.e., printing, publishing of Annual Report, notices etc because of which the holding of 25th AGM was forced to be held only on March 22, 2016.
- f) The CEO from time to time had expressed/communicated to Directors about these issues which necessarily required the compliance and the respect of provisions of laws, Code of Corporate Governance, and good corporate practices. The Company, its CEO and management performed their duty for compliance of legal requirements; however it remained on the part of certain Directors who failed to perform their fiduciary duty.

6. I have analyzed the facts of the case, relevant provisions of the Ordinance, written and verbal submissions made by the Respondents. The law on non-holding of AGM is explicit and sets out definite time limits to be followed whereby a Company is required to hold its AGM once at least in every calendar year within a period of four months following the close of its financial year, and not more than fifteen months after the holding of its last preceding



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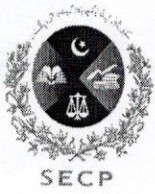
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annual general meeting. Non-compliance of any provisions of sub-section 1 of section 158 of the Ordinance would be considered as omission on the part of the Company *viz a viz* its directors which would be liable to fine as enshrined in sub-section 4 of section 158 of the Ordinance. Therefore, in my opinion, the preliminary objection by some of the Directors is not tenable under the law.

7. Holding of the AGM is a very important statutory event and provides an opportunity to the shareholders including those in minority, to participate in discussion and voting on agenda items of the AGM that include consideration and approval of a Company's financial statements. The financial statements not only show the financial position and performance of a Company but also show the results of management's stewardship of resources entrusted to it. In order to ensure minority participation and transparency, all the Companies must meticulously follow the procedure prescribed by the Ordinance for holding an AGM. In the current case, an important reason for delay in holding AGM was the disputes and rift going on between the directors and the management including the CEO. Being a public listed entity with outstanding deposits on its books, such an attitude of the directors as well as the CEO is disappointing.

8. It is a settled principle of law that a Company is artificial Company and those who manage its affairs are under a legal as well as fiduciary obligation, to run the affairs of the Company as the law requires. Furthermore, in addition to the responsibility of overseeing and managing affairs of the Company, the Directors also have fiduciary duties towards the Company and its shareholders. 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. 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 and in terms of the Ordinance the Directors are primarily responsible for holding the AGM. In this context, the Director and the CEO cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts. Moreover, the CEO, being the top tier of management, is responsible that the affairs of the Company should not be conducted in a manner prejudicial to the interest of the Company and its stakeholders.

9. In view of the above stated facts, I have concluded that the provisions of the law have been violated by the Respondents as they have failed to hold the AGM of the Company for



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the year ended June 30, 2015 within the stipulated time period. Therefore, in exercise of powers conferred under sub-section (4) of section 158 of the Ordinance, I hereby impose an aggregate fine of Rs. 300,000/- (Rupees three hundred thousand only) on the Respondents, as per following details:

S.#	Names of Director	Amount
1	Mr. Niaz Ahmad Khan	Rs. 50,000/-
2	Ms. Parveen A Malik	Rs. 50,000/-
3	Mr. Arsalan Iftikhar Khan	Rs. 50,000/-
4	Mr. Hazrat Wali	Rs. 50,000/-
5	Mr. Muhammad Tariq Masud (CEO)	Rs. 100,000/-

10 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 (30) days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of failure of the Respondents to deposit the imposed fine, proceedings for recovery of the fine as arrears of land revenue will be initiated against the respondents. It may also be noted that the aforesaid fines are imposed on the Respondents in their personal capacities; therefore, they are required to pay the said amounts from personal resources.


Zafar Abdullah
Commissioner (SCD)

Announced:

June 14, 2016, Islamabad