



**Before Mr. Abid Hussain, Executive Director**

***In the matter of***

**Aik Hunar Aik Nagar**

Number of show cause notice  
Date of show cause notice  
Dates of Hearing  
Present

SCN-101/2016-CLD/RD/CO-42/50/2007

July 20, 2016

2016: August 05, September 27, October 21, November 23

1. Mr. Naveed Sheikh, CEO
2. Mrs. Shireen Arshad Khan, Chairperson
3. Mr. Ashraf Tiwana, authorized representative of Chairperson and Directors (Ms. Naheed Masood, Mr. Sohail Lashari & Ms. Arayna Khan)
4. Mr. Muhammad Alamgir Khan, Director
5. Mr. Shaheen Tahir, authorised representative of Mr. Alamgir Khan
6. Mr. Shahzad Ahmed Durrani, authorized representative of Ms. Maria Butt, Director

***ORDER***

**Under Rule 6 read with Rule 35 of the Companies (General Provisions and Form) Rules, 1985 and Section 506 (2) of the Companies Ordinance, 1984**

This order shall dispose of the proceedings pertaining to contravention of Rule 6 read with Rule 35 of Companies (General Provisions and Form) Rules, 1985 (“the Rules”) and Section 506 (2) of the Companies Ordinance, 1984 (“the Ordinance”), arisen out of the show cause notice under aforementioned proceedings served on following Directors and CEO (also referred as “respondents”) of Aik Hunar Aik Nagar (“AHAN”):

1.	Mr. Naveed Sheikh , The Chief Executive	7.	Khalid Mahmood Chadda, Director
2.	Shireen Arshad Khan, The Chairperson / Director	8.	Hina Tayyaba, Director
3.	Maria Butt, Director	9.	Naheed Masud, Director
4.	Sohail Lashari, Director	10.	Zarar Haider Jhan, Director
5.	Tasneem Zahir Shah, Director	11.	Alamgir Chaudhry, Director
6.	Aryana Khan, Director	12.	Sardar Ahmed Nawaz Sukhera, Director

SECURITIES AND EXCHANGE  
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2. The Company was registered on October 17, 2007 with the Company Registration Office, Lahore in pursuance of licence granted under Section 42 of the Ordinance read with Rule 6 of the Rules.

3. The appellate bench of the Commission vide its Order dated July 12, 2016 in matter of Appeal no. 35 of 2016 set aside the Order, passed by Director, Corporatization and Compliance Department (CCD) under Rule 6 read with Rule 35 of the Rules and Section 506 (2) of the Ordinance dated May 31, 2016 (CCD Order -2016), on grounds of improper service of show cause notice. Consequently, a show cause notice dated July 20, 2016 (subject show cause notice) was issued by authorised officer, Mr. Mubasher Sadozai, Director (CCD) to all Directors & Chief Executive of AHAN. The subject show cause notice stated that CCD Order - 2016 was set aside by appellate bench on technical grounds and subject show cause notice is issued on the following grounds:

- a) Ministry of Industries and Production (Ministry) vide its letter dated April 04, 2016 informed the Commission that AHAN has been paying huge remuneration and other monetary benefits to Ms. Shireen Arshad Khan, Chairperson AHAN.
- b) The said payment of aforesaid remuneration and other benefits is:
  - (i) In contravention of the restrictions imposed by the memorandum (MOA) and articles of association (AOA) of AHAN;
  - (ii) In violation of the conditions of licence imposed in pursuance of Rule 6 of the Rules and relevant provisions of the Ordinance;
- c) The aforesaid violations reported by Ministry attract penal action provided under Rule 35 of the Rules read with Section 506 (2) of the Ordinance.

4. In addition to giving opportunity to submit response in writing, an opportunity of hearing was given to all respondents on August 05, 2016. Sardar Ahmad Nawaz Sukhera informed through his letter dated July 26, 2016 that he was not a Director in the period relevant to the subject show cause notice. The show cause notice was withdrawn with respect to Sardar Ahmad Nawaz Sukhera only. For purpose of this Order, he shall not be considered as respondent hereafter.



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5. Mr. Muhammad Ashraf Tiwana, authorized representative of Chairperson and three directors (Ms. Naheed Masood, Mr. Sohail Lashari & Ms. Arayna Khan) approached the Commission with the request that the proceedings of the matter be assigned to some other officer keeping in view principles of natural justice and maintaining impartiality in the proceedings. The reason for the request was in lieu of the fact that the CCD Order -2016 has been set aside by the appellate Bench and the subject show cause notice is issued by same authorised officer. The Commission in its meeting held on August 26, 2016 delegated its powers, under Rule 6 read with Rule 35 of the Rules and Section 506 (2) of the Ordinance, to Executive Director (CSD), the undersigned.

6. Further, Mr. Tiwana, representing 4 respondents (stated above), filed a petition in Islamabad High Court against the subject show cause notice stated to be issued by Director CCD on grounds of maintainability and question of resjudicata. The honorable court through its order dated August 04, 2016 (Court Order) dismissed the petition with direction to the Commission to decide the subject show cause notice in accordance with law and factual observation including the issue of maintainability of subject show cause notice.

7. The written responses to subject show cause notice submitted by respondents are summarized below:

a) Mr. Naveed Iqbal Sheikh, CEO AHAN:

- He assumed charge on December 01, 2015 and thereafter Joint Secretary of Ministry drew attention about his letter dated April 01, 2014 regarding the issue of unjustified facilities used by the Chairperson.
- The issue was discussed in 13<sup>th</sup> meeting of Board held on February 16, 2016 (1<sup>st</sup> session) and remained undecided and then approved in BOD meeting held on March 22, 2016 (2<sup>nd</sup> session).
- Members of the board in the 2<sup>nd</sup> session of 13<sup>th</sup> AHAN BOD meeting held on March 22, 2016 approved all expenses incurred on the travel of the Chairperson for furthering the objectives of the Company and as mandated by the Board.
- Article 42 (V) of MOA of AHAN states that the CEO is bound to implement directions/instructions of BOD. The above decision of Board was bound to be followed by him in capacity of the CEO. The subject show cause notice relates to decision of the Board and hence he cannot be held liable for the consequences if any.



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- After receiving subject show cause notice he has stopped all expenses/facilities of the Chairperson. The subject SCN was also circulated amongst the BOD members (email enclosed).
- CEO enclosed his letter addressed to Chairperson dated January 08, 2016 highlighting audit observation for year 2012 & 2013 specifically regarding unjustified running and maintenance expenses of vehicle (Toyota Double Cabin) in possession of the Chairperson, reservation of Ministry letter dated 2014, communicating that vehicle usage by the Chairperson impedes visits by staff in Baluchistan (vehicle originally bought for visit to Baluchistan areas), additional rent charges on vehicles by staff during visits due to absence of vehicle and requested handing over said vehicle for compliance of audit.
- Provided the above letter of Ministry to CEO, audit observation and minutes of 13<sup>th</sup> Board meeting.
- Later after hearing on September 27, 2016, CEO also provided 1<sup>st</sup>-13<sup>th</sup> BOD minutes, audited financial statements for year 2014 and 2015 and copy of minutes of annual general meeting 2016, two separate audit observations for year 2014-2015 (audit by D.G. Commercial Audit & Evaluation) regarding unjustified payment against personal/private expenses of chairperson & irregular purchases from Handicraft Association of Pakistan (HAP) and payment made to HAP of Rs. 2.040 million owing to conflict of interest as the Chairperson of AHAN and CEO HAP are the same.

b) Ms. Shirin Arshad Khan, Mr. Ms.Naheed Masood, Mr. Sohail Lashari & Ms. Arayna Khan:

Mr. Muhammad Ashraf Tiwana (authorized representative of the 4 respondents above) through letter dated August 25, 2016 and September 21, 2016 sought complaint of Ministry, details and breakup of expenses/facilities alleged to be unjustifiably used by the Chairperson, stated that Ministry and all respondents be present on hearing to cross examine allegations.

The authorized representative through letter dated September 26, 2016 submitted on date of hearing i.e. on September 27, 2016 stated the following (summarized):

- i. The Appellate Bench has set aside the CCD Order -2016 thus the matter has been concluded. The subject matter of second show cause notice, the allegations and accused persons are the same as that of the first show cause notice decided by subject Appellate Bench Order 2016. Only Shireen Arshad Khan i.e. the Chairperson (the only one who was penalized) filed an



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appeal against the said Order while the remaining directors did not challenge the order of reprimand therefore the subject show cause notice has attained finality to the extent of remaining directors. Once action of reprimand has been taken against the respondents, no further action be initiated on the same facts and charges.

- ii. Issuance of second show cause notice to same persons is in violation of Article 13 of the constitution of the Islamic Republic of Pakistan. Reference is drawn from word offence including all types of penalties (1998 PLD CS 199, 2016 PTD 483, 1989 SCMR 1224).
- iii. Second show cause notice has been hit by principles of res judicata drawing reference from specific case laws (reference of res judicata has been drawn from case laws: PLD 1987 SC 145, 1993 CLC 2476, 1988 CLC 2164, 2002 CLC 1996). Since the CCD Order -2016 was set aside by the Appellate Bench after hearing the parties on merits and recording all their arguments, the matter of the subject show cause notice stands finally decided. The subject show cause notice is therefore illegal.
- iv. The decision of appellate bench was final and cannot be reopened by the department. Had the matter been remanded back to the department for de novo proceedings only then would it be legally competent to take up the same matter again.
- v. The show case notice was based on complaint of Ministry. The complaint was forwarded by Ministry but cannot be considered to be filled by Ministry unless approved by competent authority within the Ministry as per the Rules of Business.
- vi. Denied that the Chairperson is receiving remuneration for her services and is in violation of Rule 6(4) (ii) of the Companies (General Provisions and Forms) Rules 1985. She is reimbursed expenses incurred on official duties and travel for official purposes.
- vii. Chairman prior to Ms. Shireen were provided facilities/ reimbursement of expenses on official travel approved by Board. The facilities/ reimbursement have also been approved by the Board within specified limits. Therefore, occasionally she had to spend money from her personal resources. In addition, she has been provided with docility of 2 official cars along with fuel and driver salary and reimbursement of mobile phone bills.
- viii. Activity report of expenses incurred by Chairperson was presented to the Board and it was unanimously concluded as already stated in (vi) and (vii) above. The Board ratified and approved all expenses and also decided to issue her letter of appreciation.



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- ix. Management had maliciously provided false information to Ministry about expenses and warning letter to manager finance was issued (copy provided). The Commission did not seek proof from AHAN regarding evidence of payments nor conducted an inquiry. The complaint therefore is liable to be rejected as a valid ground.
- x. Facilities and benefits were mentioned in the complaint of Ministry while subject show cause notice alleges that complaint of Ministry was received regarding remuneration to Chairperson. As for items of supplied finished & unfinished goods, the said goods were provided by HAP under arrangement with AHAN and not by the Chairperson.
- xi. The prohibition in Rule 6 of the Rules is for members and the Chairperson is not member of AHAN rather appointed by Federal government as an independent director. Keeping in view of definition of member as per the Ordinance and articles of association of AHAN, The Chairperson does not fall under the said definitions. Therefore, the prohibition in Rule 6 of the Rules does not apply to her.
- xii. The CCD Order-2016 mentioned that the Chairperson was not getting remuneration and is only receiving certain facilities. These facilities do not fall under the purview of Rule 6 of the Rules. None of the facilities or reimbursement of expenses fall under the category of remuneration.
- xiii. The prohibition is itself ultra virus of the law, Section 42 of the Ordinance provides that the prohibition meant for non-profit companies which is that the payment of any dividend to its members is not allowed. No where does it prohibit payment of remuneration for services provided by members especially as directors. The Federal Government (Commission through delegated powers) have unlawfully expanded scope of prohibition in the said Section.
- xiv. Prohibition is in violation of Section 191 of the Ordinance. There is no distinction between directors of not for profit and ordinary companies.
- xv. The conditions of licence for not for profit companies under Section 42 of the Ordinance could only be specified either at the time of grant of licence or through regulations by Commission. Since these conditions cannot be specified by Federal Government or through rules, that too under Section 506 of the Ordinance. Hence penalty clause contained under Section 506 of the Ordinance would not apply for contravention of the conditions of licence. Hence imposition of penalty would be ultra-virus and without lawful authority.



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c) Mr. Alamgir Chaudhry

- He is no longer on Board of AHAN. Being of nominee director on behalf of government he does not even think of being part of any proceedings in contravention of conditions of licence, Ordinance or any rules made thereunder.
- Board only approved reimbursement of expenses incurred by Chairperson of AHAN. Board also reviewed activities of AHAN and decided to send copies of said report to Secretary of Ministry as honorable Minister. Based on the achievement, appreciation letter was issued.
- Keeping in view mandate given by Public Sector Rules and Section 196 of the Ordinance, board validly ratified the expenses incurred by Chairperson in furtherance of objects of AHAN.
- Reiterated the assertions that despite ambit of Section 196 of the Ordinance and Rule 19 of the Public Sector Rules permitting remuneration, the Board only approved reimbursement of expenses and not payment of remuneration.
- Definition of members as per Ordinance in comparison to Rule 6 is referred. Conclusion drawn that no conditions of licence or provision of Rules have been violated. He has also appraised his successor about the issue with request to examine the matter more objectively.

d) Ms. Maria Butt

- Authorized representative Mr. Shahzad Ahmad Durrani submitted that Ms. Maria Butt is innocent and the subject show cause notice has been issued owing to some misunderstanding. Her induction in company was honorary and anticipatory and had no active role in AHAN. She is not beneficiary of alleged offense/remuneration and has no connection however she is facing humiliation.

e) Ms. Hina Tayyaba

- She as an ex-officio member of the Board of AHAN worked on honorary basis and no remuneration or benefits otherwise were drawn by the members of the board or their family members.
- No remuneration/ emoluments was allowed by Chairperson except in discourse of official duties and that too within ceiling approved by Board in its 9<sup>th</sup> meeting held on March 20, 2014.
- Generally, the minutes were circulated amongst all members of Board and after the stipulated time, administration starts implementing the decision. The observations/ reservation of Ministry



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were neither shown at time of meeting not within prescribed period for reviewing minutes of meeting. As for participation in Board meeting, reference was made to minutes of 9<sup>th</sup> Board meeting (para 3 of page 3, para 3 of page 5 and para 2 of page 7 of said minutes).

- The responsibility of Board is policy making while that of CEO is managing day to day affairs. Thus CEO and staff of AHAN are most relevant to respond to implementation of Board that included expenditures not in accordance with the relevant rules.

f) Mr. Zarrar Haider Khan

- Through his letter dated August 15, 2016 and October 17, 2016 stated that he has only attended one meeting of Board of AHAN i.e. 13<sup>th</sup> Board meeting held on March 22, 2016 where the agenda did not include the matter of perks & privileges of Chairperson nor was it discussed.
- Draft minutes were received later that included agenda 14 as approval of Board for remuneration/perks for Chairperson.
- He had disassociated himself from the above through letter dated April 07, 2016 (provided) hence cannot be held liable under the subject show cause notice.

g) Mr. Khalid Mehmood Chadda

- Mr. Khalid stated through his letter dated October 08, 2016 that he, while being CEO of PIDC, had sent his observation to Ministry of Production and AHAN. The letter to AHAN dated April 14, 2014 was provided that was signed by Manager for PIDC. The letter refers to 9<sup>th</sup> Board meeting, draws attention to the Public Sector Companies (Corporate Governance) Rules 2013 and to strictly consider the monetary benefits in accordance with articles of Association and aforesaid Rules.

h) Ms. Tasneem Zahir Shah

- As Board member intention to allow usage of car and Rs. 24000 per week was to facilitate Chairperson AHAN in promoting and developing organization.
- Due to her residence in Peshawar, she is unaware of her activities and expenditure and the matter discussed in 13<sup>th</sup> Board meeting was an eye opener.
- The Chairperson should be caught out the amount taken in name of better performance.





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- Ms. Farheen Azhar, authorized representative of Ms. Tasneem submitted same reply on November 30, 2016.

## 8. Opportunity of Hearing

Hearing opportunity to respondents was provided on August 05, 2016, September 27, 2016, October 21, 2016 and November 23, 2016. Following respondent appeared in person while other respondent communicated that they do not wish to appear or avail hearing opportunity and their written response to subject show cause notice be considered suffice for concluding the proceedings:

- On September 27, 2016, Mr. Ashraf Tiwana, Ms. Shireen and Mr. Naveed appeared for hearing. Mr. Tiwana reiterated his written submissions. Ms. Shireen, present in person, stressed that she has not taken any remuneration only reimbursement of expenses was claimed and sometimes she personally paid for the expenses which are beyond the ceiling approved by Board. Moreover, she submitted that her sole purpose for such visits, using the facilities (car/ reimbursement of expenses) was furtherance of objective of AHAN. She also stated that she is ready to return the facilities as she has not derived any personal gain. She however was unclear about the audit observations highlighting unjustified use of facilities/ expenses.
- Mr. Naveed, CEO AHAN appeared for hearing on September 27, 2016 and reiterated his written submissions. He however drew attention to audit observation regarding use of vehicle and additional expenses and non-holding of regular board meeting to deliberate matter affecting financial statements. He also pointed out that Chairperson being oblivious of the affairs of the Company has no knowledge of audit observations and delay in finalizing annual financial statements for years 2014 - 2016. He also stated that the annual general meeting held on August 23, 2016 approved the financial statements for year 2014 and 2015.
- Mr. Alamgir appeared along with his authorized representative for hearing on October 21, 2016 and reiterated their written stance. He also stated that it is the role of auditor to confirm expenses and Board only ratified the expenses for furtherance of objectives of AHAN. Mr. Shaheen reiterated the definition of member in Ordinance, no bar in Ordinance regarding remuneration while the subject show cause notice is about violating conditions of licence.



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- Mr. Shahzad Durrani, authorized representative of Ms. Maria Butt requested adjournment for hearing till September 27, 2016. He appeared on hearing on October 21, 2016 seeking further time to submit written response and opportunity of hearing. On next hearing scheduled on November 23, 2016 Mr. Shahzad reiterated his written submissions on behalf of her Ms. Maria. On query, he informed that Ms. Maria attended only one meeting i.e. on February 10, 2014 which is also her date of appointment. Also stated that in social sector benefits of activities are seen after audit and not preempted at time of approval. The board exercises joint responsibility and collective wisdom and cannot be held liable individually for any decision.

9. I have gone through the requirements of law, explanation provided by the Company and facts placed before me by the Department. In the order of incidence of events, I have observed the following:

- i. Foremost, the honorable court has directed to address the maintainability of subject show cause notice while concluding the matter. I am of the view that CCD Order-2016 was set aside by Appellate Bench however the matter was not concluded. The CCD Order 2016 was set aside on grounds of improper service of notice i.e. a mere irregularity on part of the Department. Further, in order to operate res judicata the case must be decided on merits. Any case disposed of on technical grounds or preliminary stage, such decision will not attract the principles of res judicata. Therefore, the case was initiated through subject show cause notice, after removing discrepancy in procedure. Moreover, para. 8 of the Order passed by the Appellate Bench clearly states that-

*“Before going into the merits of the case.....”*

This implies that the Bench did not hear the appeal on merit and the CCD Order -2016 was set aside on grounds of procedural flaw that is improper service of notice. It cannot be held that the Appeal was heard and decided on merit. Its contents cannot be considered final since the Bench did not go into the merits. In every way, it is clear that the matter was not decided nor concluded. Hence the subject show cause notice is maintainable

- ii. The subject show cause notice is issued on grounds that the Chairperson was drawing remuneration or otherwise in violation of conditions of licence under Rule 6 of the Rules. AHAN is a company registered as non-profit company under Section 42 of the Ordinance. The aforesaid Section only prohibits payment of dividend to members.



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- iii. Further, the conditions of Rule 6 (4) (ii) of the Rules apply to members. Ms. Shireen was appointed by Federal government. Therefore, she does not fall under the definition of member as provided under Section 2 and Section 187 of the Ordinance.
- iv. In addition, licence to companies registered under Section 42 of the Ordinance may be granted on conditions and subject to regulations prescribed by Commission. The subject show cause notice has however invoked penal clause through Rules and under Section 506 of the Ordinance.
- v. AHAN is also required to follow the Public Sector Companies (Corporate Governance) Rules, 2013 ("Public Sector Rules"). The said Rules allow directors to draw remuneration subject to certain condition. However, the said Rules clearly bifurcate the role of Chairman and CEO and also state that the Chairman shall not be involved in day to day activities of the Company. The said Rules are more relevant to the subject case, it is however noted that the subject show cause notice did not invoke the aforesaid Rules.
- vi. The minutes of 9<sup>th</sup> Meeting of Board of AHAN dated February 25, 2014 reflects that Ms. Shireen Arshad Khan was unanimously elected as Chairperson AHAN. Further agenda 7 of minutes of said meeting reflect that expenses with limits /ceiling and facilities were shared with Board. Out of two vehicles, Toyota double cabin was exclusively for visit to cluster. The minutes of said meeting were confirmed as adopted by Board in its 10<sup>th</sup> Board meeting held on October 29, 2014. The Board in the said meeting resolved to adopt and implement Public Sector Rules in full letter in spirit.
- vii. The Board in its meeting held on October 29, 2014 (agenda 13 of minutes) empowered Chairperson and CEO to represent AHAN at different platforms that includes issues in nature of operational activities. Further, minutes of the same meeting reflect indulgence of Chairperson in day to day affairs and being lauded for the same (agenda item 14 & 15 of minutes of the said meeting). This is in violation of Rule 4 of Public Sector Rules that requires segregation of duties and responsibilities.
- viii. CEO had drawn attention of the Chairperson through his letter dated January 08, 2016 regarding unjustified use of facility/car and additional expenses owing to the said usage along with supporting



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audit observations however the Chairperson did not ratify nor submitted any evidence that could justify the use of additional car. It was also noted that during the hearing the Chairperson could not justify use of additional vehicle or audit observations.

- ix. Minutes of the 13<sup>th</sup> Board meeting held on February 16, 2016 and on March 22, 2016, submitted by CEO, do not include reference to discussion of Board in February meeting or separate minutes thereof or reference of differential notes by Directors relating to proceedings of Board meeting held on February 2016. The said meetings are center of conflict between the Ministry and AHAN as they relate to ratification and approval of benefits/ facilities to the Chairperson. Inappropriate recording of minutes and not recording dissenting note is in violation of Rule 6 of the Public Sector Rules.
- x. The ministry through its letter dated February 17, 2016 had sought details of monetary benefits, perks/ privileges and other facilities by the Chairperson since date of appointment on pretext that no privileges or monetized benefits are allowed to Chairman of Board as per Public Sector Rules. Mr. Naseem Farooq, Manager AHAN through his letter had informed the Ministry, details of all the monetary benefits/ facilities, stating that the said facilities were approved by Board in their 10<sup>th</sup> Board meeting. Thereafter the Ministry through its letter dated March 02, 2016, addressed to all directors, drew attention to said letter of manager AHAN and towards the Public Sector Rules.
- xi. Rule 4 of the Public Sector Rules specifically separates office of Chief Executive and Chairman of Board, places governance and policy making responsibility on Board led by Chairman and explicitly prohibits indulgence of Chairman in day to day operations of the Company. Further, Board is entrusted to ensure compliance with principles of probity and propriety, especially with respect to funds, assets and claiming of expenses as per Rule 5 (5) (a) Public Sector Rules. The minutes of 13<sup>th</sup> Board meeting held on March 22, 2016 (Agenda item 14) reflect that Board approved that management should be held accountable for funds, preparation and achievement of activities of AHAN. Further, in the same meeting, Board acknowledged giving mandate to the Chairperson to carry out activities which are operational in nature and also ratified and approved each and every expenditure, after reviewing the detailed report of activities of the Chairperson i.e. visits to clusters/meetings/ exhibitions etc., being paid to her on the ground that the said expenses were paid for furtherance of objectives of AHAN. It is important to note that despite stating that preparation,



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execution and monitoring of operational activities and funds/budget is management's objectives i.e. the CEO, yet the Chairperson was lauded for directly indulging in performing these operational activities and all expenses/funds used on these activities were ratified and approved by Board in violation of aforesaid Public Sector Rule.

- xii. As for matter of payment of remuneration or otherwise by Chairman, the most pertinent is audit observations i.e. audit observation for year 2012-2014 and two separate audit observations (by D.G. Commercial Audit & Evaluation) for year 2014-2015 regarding:
- unjustified allotment and irregular expenses incurred on vehicle Toyota Double cabin (reserved for cluster visits) for personal use by the chairperson; and
  - Highlighting conflict of interest and irregular purchases from HAP and payment made to HAP of Rs. 2,040 million as the Chairperson AHAN and the CEO HAP are the same.

Neither the directors including the Chairperson addressed the issue in board meetings, the annual general meeting held on August 23, 2016 nor the Chief Executive officer drew the attention of the Board towards the said audit observations, audit report for years 2014 and 2015 or towards letter of CEO to the Chairperson dated January 08, 2016 on the issue of previous audit observation. The submissions of the board members of AHAN did not include any reference to the fact that they performed their prime responsibility of reviewing and approving financial statements that included discussion on audit observations as a significant matter.

- xiii. The Chairperson of AHAN also holds similar position in HAP. The matter of conflict of interest of the Chairperson in purchasing goods and payment thereof to HAP was not addressed by Board. The Chairperson also failed to disclose such interest to the Board. Indulgence of professional or personal conflict of interest is tantamount to be misconduct with consequences of removal of director in terms of Rule 5 (1) (a) and (f) of the Public Sector Rules.
- xiv. The respondents in their oral and written submissions have repeatedly asserted that as Board members they did not intent to perform any function or give approval of expenses/ benefits for deriving any personal benefit/ gain or had no knowledge of underlying law or company's state of



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affairs. It is viewed that seeking refuge in mere intent or lacking knowledge of affairs of the Company and relevant laws is an unacceptable excuse to obviate respondents of their fiduciary duties. As regards to establishing intent, it is imperative to note that it has been held by superior courts that breach of fiduciary duty is considered willful. In case of City Equitable Fire Insurance Co. Ltd, Re, 1925 Ch 407, it was held that a default, in case of breach of duty, will be considered 'willful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent. Director are, in effect, liable to a higher level of responsibility specifically in context of not for profit organization. This includes overseeing the policy affecting appropriate functioning of the company in pursuance of its objectives, ensuring accountability, transparency and overseeing adequacy of control systems.

10. It is therefore viewed that owing to legal impediments, the proceedings in consequences of subject show cause notice cannot be concluded. It is imperative to note that during course of the hearing and analysis of the information and record submitted before me it appears that the affairs of the company are not being managed in a prudent and lawful manner. I, therefore, recommend that the concerned department should review and examine the document and information placed on record and deliberate upon to authorize a detailed probe of the affairs of the AHAN and its Board members in detail regarding management of affairs of the Company and evident violations of Public Sector Rules.

**Abid Hussain**  
Executive Director  
Corporate Supervision Department

**Announced:**  
December 27, 2016