



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (CSD)

In the matter of

First National Equities Limited

Number and date of notice: CSD/ARN/96/2015-1918-24, dated June 19, 2015
Date of hearings: February 22, 2016
Present: Mr. Ali Aslam Malik, Chief Executive

ORDER

UNDER SECTION 495 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 **First National Equities Limited** (the "Company"):

1. Mr. Ali Aslam Malik, Chief Executive
2. Mr. Shahzad Akbar, Director
3. Mr. Muhammad Iqbal Khan, Director
4. Malik Attiq-ur-Rehman, Director
5. Mr. Saeed Ahmed Bajwa, Director
6. Mr. Rais Ahmad Dar, Director
7. Mr. Amir Shehzad, Director

These proceedings against the respondents were initiated through show cause notice (the "SCN") dated June 19, 2015 under section 495 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that on an application by the Company under the provisions of section 84 of the Ordinance and rule 10 of the Companies (Issue of Capital) Rules, 1996 (the "Rules"), the Commission vide letter dated June 12, 2013 accorded approval to the Company to issue 333.96 million ordinary shares at 70% discounted price of Rs3 per share, as 242% right issue. Through the aforesaid approval, the Commission also relaxed the mandatory requirements of Rule 5 (v) of the Rules, which prescribes that *right issue of a loss making company or a company whose market share price during the preceding six months has remained below par value shall be fully and firmly underwritten*. The aforesaid relaxation from the requirements of rule 5(v) of the Rules was approved based on an undertaking from the directors of the Company whereof they submitted that in case the whole or any part of the right shares offered by the board of directors of the Company is declined or is not subscribed including any portion of directors' right shares, the



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directors shall subscribe or procure subscription for allotment and issue of all such right shares not taken up by the existing shareholders in terms of section 86 (7) of the Ordinance.

2. Pursuant to the aforesaid approval by the Commission, the Company was required to issue right shares within sixty days i.e. till August 11, 2013 in terms of section 84 (1) (d) of the Ordinance. The Company failed to issue the right shares within the prescribed time and instead submitted a revised schedule of issuance of letter of rights based on approval by the Karachi Stock Exchange ("KSE") under the listing regulations. The Company did not seek approval of the Commission under section 84 of the Ordinance for extension in time for issuance of the right shares. The Commission received several complaints from public stating that despite having deposited the subscription amounts within the subscription period ending on November 22, 2013, right shares had not been issued to them. It was further informed that despite lapse of three months after the acceptance date, the requisite shares had not been issued. In view of the inordinate delay on the part of the Company to issue right shares, the Commission after giving a due notice on February 25, 2014 and after considering the Company's response dated April 4, 2014, issued order on April 8, 2014 under section 472 of the Ordinance in terms whereof the respondents were directed to immediately issue shares against the subscription money already received and complete the entire process of issue of right shares, as approved by the shareholders in extraordinary general meeting dated May 15, 2013, within ninety days of the date of the order. As per the Commission's direction under section 472 of the Ordinance, the Company was directed to complete the right issue process by July 7, 2014. However, the Company vide letters dated May 8 and May 9, 2014, indicated its inability to complete the right issue within the prescribed time. The Company did not comply with the directions of the Commission given vide order dated April 8, 2014 and also failed to provide any response or an update in this regard despite several reminders, last having been issued on February 27, 2015. Consequently, the SCN dated June 19, 2015 was issued to the respondents under section 495 of the Ordinance as they, prima facie, failed to comply with the direction issued by the Commission.

3. In response to the SCN, the Company submitted reply dated July 6, 2015. A brief of the reply relevant to the contents of the SCN is given below:

➤ Commission's approval dated June 12, 2013 specifically contained a term that right issue at



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discount shall be governed by the terms and conditions as approved by the shareholders in the aforesaid extraordinary general meeting ("EOGM") held on May 15, 2013.

- The Company, inter alia, resolved in EOGM that its CEO shall be authorized to enter into any agreement with any person regarding issuance of right shares, and also that the directors would be authorized to allot the unsubscribed right shares in any manner as they deem fit by virtue of section 87(6) of the Companies Ordinance, 1984.
- The shares could not be subscribed on time due to circumstances beyond control of the Company and its directors but it was not due to any misdemeanor.
- As has been explained earlier too in letter dated April 4, 2014, the directors had a firm commitment by Bank Alfalah Ltd. to subscribing shares of Rs250 million, however it retracted from the commitment. Therefore, through letter dated April 4, 2014, the underlying facts were disclosed to the Commission and certain permissions were sought. The Commission extended time for subscription until July 7, 2014 vide its order dated April 8, 2014 but there was no response on permissions sought therein.
- Due to these circumstances the Company was compelled to write further letters dated May 8, 2014 and May 9, 2014 in which the Company intimated to the Commission that the directors intend to exercise their powers under section 87(6) of the Ordinance, as per resolutions of the EOGM by allotting/issuing the shares against land and building of the directors/sponsors, amount already received from directors/sponsors, and the amounts payable to investors.
- It was confirmed that requirements of Rule 8 of the Companies (Issue of Capital) Rules, 1996 for allotment of shares against land and building shall be adhered to. It was also explained that by induction of fixed assets and by reduction of loans the Company's Net Asset Valuation and net worth would substantially increase.
- Due to the circumstances including retraction of Bank Alfalah from its commitment, the Company was only left with the above options and Commission's permissions were sought through letters dated May 8 and May 9, 2014. The Commission having considered the proposals, replied vide letter dated May 13, 2014 and advised the Company to resolve the matters under consideration of KSE and Securities Market Division of the Commission to their satisfaction and thereafter the Company may proceed with the rights issue within the already allowed or further extended period subject to the approval of the Commission.
- Apparently, the matter was deliberately kept open by SECP for further deliberations and



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discussions.

- Subsequently the Company received a letter from SECP dated February 27, 2015, at agenda 1 of which SECP commented on the Right Issue as follows:

It has been disclosed in the directors' report that the management making rigorous efforts to complete right issue process however till date the company has not taken any steps in this regard. The Company has also failed to respond reminders issued by this office regarding the aforesaid right issue.

- In reply dated March 18, 2015 to the said letter, the Company replied on the matter of Right Issue as follows:

The company is in the process of negotiating with various creditors/parties comprising mainly financial institutions option to get a swap transactions pertaining to their overdue balances with equity. The company will also approach other parties/individuals to complete the right issue process with whom it had made original arrangements.

- SECP replied through letter dated May 4, 2015 and commented nothing on the said explanation of the Company regarding its endeavors in settling the matter of Right Issue were discussed, thus accepting the same as it was.
- The Company and the directors are still trying their best to work out appropriate mechanism as per the proposals envisaged in the said letters dated May 8, and My 9, 2014, and a lot of progress has already been achieved. Since the Company and the directors believe that they have endeavored in light of the concessions of SECP until now, it is utterly impossible for them to find where they faulted. The contentions regarding violations of any directions/instructions are therefore humbly denied.

In view of the above the respondents denied to have violated any provisions of the law.

4. A hearing in the matter was fixed on September 2, 2015 but the Company requested for adjournment. Hearings were fixed on September 17, 2015 and October 22, 2015. Mr. Naveed Ishaq and Mr. Ijaz Mehmood appeared on the hearing date without power of attorney from respondents to represent them in the subject proceedings. Therefore, the case was fixed for hearing on January 20, 2016 but again request for adjournment was received, based on which the hearing was rescheduled for February 4, 2016. Mr. Ali Aslam Malik, the chief executive ("CEO") of the Company appeared before the undersigned and requested for further adjournment. The hearing was finally held on February 22, 2016 and the CEO appeared before the undersigned on behalf of



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the respondents. The statements made by him with reference to the contents of the SCN are produced below:

- There was a firm commitment from Bank Alfalah for taking up the unsubscribed portion of the right issue to the tune of Rs.250 million, however, it backed out from the commitment. Backing out by Bank Alfalah had a ripple effect and the Company did not involve and pursue the foreign investors to taking up the shares to avoid trapping their funds.
- When asked about not having guarantee / margin from Bank Alfalah and taking legal recourse for the failure of commitment, the CEO responded that the Company did not take any action at that time because a restructuring worth Rs.1 billion was underway through them.
- Out of total right issue of approximately Rs.990 million, the Company is considering issuing right shares against conversion of directors' loan to the extent of Rs.200 million while another Rs.200 will be made available for the right issue through other ways.

5. Based on the above submissions, the undersigned allowed two weeks' time to the CEO for furnishing complete plan and timeline for completion of the process of right issue of shares. Since the requisite information was not submitted, the CEO through letter dated April 1, 2016 was required to furnish complete roadmap and timeline regarding the completion of process of issue of right shares. In response, the company secretary through letter dated April 7, 2016 submitted minutes of the meeting of the BOD of the Company dated April 7, 2016 which, inter alia, contained decision of the BOD regarding the plan for unsubscribed portion of the right issue for completion of the process. Perusal of the minutes of the meeting revealed that in respect of the unsubscribed portion of the right issue the BOD resolved to approve the following plan in respect of unsubscribed portion of the right issue, in context of the hearing held before the Commission in the matter:

Period	Rs. in million	Description
Before June 2016	150.000	By converting existing payable to the director into right share money
Before June 2017	200.000	By transferring shares held in the name of directors to the company name.
Before June 2018	400.000	By transferring property from director name to the Company name
Before June 2019	240.450	From other sources of directors
Total	990.450	--

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It was further stated that if the Commission gives a go ahead, the proposal will be taken to the shareholders for their approval.

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

Sub-section (1) and (2) of section 84 of the Ordinance, inter alia, provide as under:

"(1) Subject to the provisions of this section, it shall be lawful for a company to issue shares in the company at a discount:

Provided that -

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Commission;

(d) the shares to be issued at a discount must be issued within sixty days after the date on which the issue is sanctioned by the Commission or within such extended time as the Commission may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Commission for an order sanctioning the issue; and on such application the Commission may, if, having regard to all the circumstances of the case, it thinks proper so to do, make an order sanctioning the issue on such terms and conditions as it thinks fit."

Rule 5 (v) of the Rules, which prescribes that *right issue of a loss making company or a company whose market share price during the preceding six months has remained below per value shall be fully and firmly underwritten.*

Sub-section (1) of section 472 of the Ordinance provides as under:

"If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Commission may, of its own motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order."



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Sub-section (1) of section 495 of the Ordinance provides as under:

"Where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, Executive Director (Corporate Supervision Department) is authorized to adjudicate cases under section 495 of the Ordinance to impose fine for non-compliance of the orders passed in pursuance of the powers delegated to him by the Commission.

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

- The Commission accorded approval dated June 12, 2013 to the Company to issue 333.96 million ordinary shares as right issue at a discounted price of Rs.3 per share. The Commission also relaxed the mandatory requirement for full and firm underwriting of the right issue, which was to be arranged by the directors of the Company under Rule 5 (v) of the Rules. The relaxation was granted based on an undertaking from the directors of the Company that in case the whole or any part of the right shares offered by the Company is declined or is not subscribed including any portion of directors' right shares, the directors shall subscribe or procure subscription for allotment and issue of all such right shares not taken up by the existing shareholders in terms of section 86 (7) of the Ordinance. The shareholders of the Company in the EOGM had already accorded approval for the same. In terms of clear and explicit provisions of section 84 of the Ordinance the shares to be issued at a discount must be issued within sixty days after the date on which the issue is sanctioned by the Commission or within such extended time as the Commission may



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allow. Therefore, it was mandatory for the directors of the Company to complete the process of right issue latest by August 11, 2013 i.e. within sixty days from the date of sanction by the Commission. In case of any delays they were required to get formal approval from the Commission for extension in time for issuance of right shares. However, the respondents neither sought approval of the Commission under section 84 of the Ordinance for extension in time for issuance of the right shares nor did they complete the process of right issue within the prescribed time.

- The respondents have stated that the shareholders' in the EOGM held on May 15, 2013 authorized the CEO to enter into any agreement with any person regarding issuance of right shares, and also authorized the directors to allot the unsubscribed right shares in any manner as they deem fit by virtue of section 87(6) of the Ordinance. They have pleaded that the Commission's approval included the specific term that right issue at discount shall be governed by the terms and conditions as approved by the shareholders in the aforesaid EOGM. They have further resorted to the plea that the shares could not be subscribed on time due to circumstances beyond control of the Company and its directors, as despite its firm commitment to subscribe to unsubscribed portion of right issue up to Rs.250 million, Bank Alfalah Limited withdrew from the commitment. The respondents have stated that through letter dated April 4, 2014 they disclosed the facts to the Commission and sought certain permissions. The Commission extended time for subscription until July 7, 2014 vide its order dated April 8, 2014, but there was no response on permissions sought therein. The Company has referred to letters dated May 8, 2014 and May 9, 2014 in which the Company intimated to the Commission that the directors intend to exercise their powers under section 87(6) of the Ordinance, as per resolutions of the EOGM by allotting/issuing the shares against land and building of the directors/sponsors, amount already received from directors/sponsors, and the amounts payable to investors. On the first instance, being directors of a listed company the respondents are required to have knowledge of the applicable laws and it is their duty to determine their legal obligations. Being the specific provisions governing issuance of shares at a discount, the requirements prescribed by section 84 of the Ordinance in this regard cannot be overridden by section 86 (7) of the Ordinance or the terms and conditions approved by the shareholders or the



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directors of a company. All the terms and conditions approved by the directors and the Company in a general meeting regarding issuance of shares at discount must be in line with the requirements of these specific provisions and anything contrary to that would be void. Moreover, though in terms of section 86(7), the directors have the powers to allot and issue the unsubscribed portion of the right issue of shares in such manner as they may deem fit, it does not mean that they could violate the requirements of doing so within the prescribed time. Moreover, they have to remain within confines of section 84 of the Ordinance in respect of right issue of shares.

- The waiver of mandatory underwriting of right issue was only subject to the directors' undertaking that they shall subscribe to or arrange subscription for the unsubscribed portion of the right issue. However, the respondents failed to arrange subscription or subscribe to the right issue themselves. Their plea that they were unable to fulfil their commitment due to withdrawal of Bank Alfalah Limited from its firm commitment, is not tenable, because it was the duty of the respondents to arrange subscription or themselves subscribe to the right issue to complete the process within the timeline prescribed by the law. It is also a matter of fact that the directors and particularly the CEO through its relatives hold majority shareholding of the Company and they were knowledgeable of the affairs of the Company while approving the issuance of right shares. They were the ones required to exercise due care and prudence to ensure completion of right issue in terms of requirements of the law. In case, they had got the commitment from Bank Alfalah Limited, it was their responsibility to ensure that appropriate measures are taken including executing legal documentation, obtaining of security and margin etc. to ensure that it cannot withdraw from the firm commitment. However, contrary to that the respondents despite being majority shareholders of the Company, not only declined their portion of the right issue, but also failed to exercise due care to discharge their duties to comply with the law. They subsequently, through various letters floated different proposals in respect of the right issue, however, those proposals were not in line with the approval of the Commission and the facts and circumstances disclosed to the Commission. Therefore, the plea that the respondents were not able to complete the right issue as the Commission did



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not give requisite approvals is untenable. The respondents cannot absolve themselves of their legal obligations in this regard.

- Due to the respondents' continued failure to complete the process of right issue in line with the requirements of the applicable laws and the terms and conditions of the Commission's approval, the Commission served the notice under section 472 of the Ordinance and after considering the response of the respondents issued order dated April 8, 2014. The respondents were directed to immediately issue shares against the subscription money already received and complete the entire process of issue of right shares within ninety days i.e. latest by July 7, 2014. However, the respondents expressed their inability to complete the right issue as per the direction. They did not comply with the directions of the Commission, resulting in initiating of the instant proceedings.
- The respondents have pleaded that apparently the Commission deliberately kept the matter open and have also referred to various correspondence exchange with the Commission wherein it was informed that the company was in the process of negotiating with various parties/individuals to complete the right issue process with whom it had made original arrangements. They have further pleaded that since the Commission did not comment on the said explanation of the Company, thus accepting the same as it was. The respondents have misconceived that offering no comments by the Commission on the aforesaid proposal tantamount to acceptance of the same by the Commission. This misconceived notion to justify the violation of law by the respondents is irresponsible and immature. Regulatory approvals are expressly issued by following a proper regulatory process strictly in accordance with the law. As responsible corporate entities, companies are expected to have due respect for the process of law and avoid conceiving the false notions of regulatory nods by relying on surmises and assumptions.
- The respondents have failed to comply with the legal provisions and discharge their obligations under the law by not completing the process of right issue within the prescribed or extended time. They have also failed to comply with the formal direction of the Commission issued through order dated April 8, 2014 under section 472 of the Ordinance in terms whereof they were, inter alia, directed to complete the entire process



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of issue of right shares within ninety days. Instead of discharging their legal obligations and complying with the Commission's direction, they have now presented a plan spanning over three years to complete the issue of right shares by conversion of directors' loans, transferring directors' shares to the Company, issuance of shares against assets of directors and other undisclosed sources. However, the plan presented by the directors is in colossally deviation of the terms and conditions of Commission's and shareholders' approval. Furthermore, it will not rectify the default committed by the respondent in compliance with the mandatory provisions of the law and directions issued under section 472 of the Ordinance.

8. It is pertinent to make some observations on the legal provisions governing right issue and issue of shares at discount by companies. The requirements of section 84 of the Ordinance relating to issue of shares at discount are mandatory and must be followed in letter and spirit and it must be ensured by the companies. The Ordinance has allowed the companies to issue shares at discount. However, issuance of shares at a discount has been made subject to approval by the Commission and time limit for issuance of shares at discount has also been prescribed by the Ordinance. Moreover, given the inherent risk that right issue of companies that are in losses or have prices of their shares below par value may not be subscribed, the Rules require right issue by such companies to be fully and firmly underwritten, however, this condition can be relaxed by the Commission if it is satisfied that there are alternative arrangement in place to ensure taking up of unsubscribed portion of the right issue. For example, the Commission allows relaxation from mandatory condition of underwriting of loss making companies in case directors of such companies give an undertaking to take up the unsubscribed portion of right issue. In view of the scheme of the law, the issue of shares at discount must be completed within the specified time to ensure the purpose for which the funds are being raised can realistically be achieved. The directors owe fiduciary duties to the Company they serve and being charged with governance of the company and stewardship of its resources; they have a higher level of responsibility and accountability commensurate with the authority vested in them. The respondents have failed to exercise reasonable care and to see that mandatory provisions of law were being violated.



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9. For the foregoing reasons, I am of the view that the respondents have failed to comply with the direction of the Commission given under section 472 of the Ordinance and have made themselves liable for action section 495 (1) of the Ordinance. Therefore, in exercise of the powers conferred by section 495 (1) of the Ordinance, I hereby imposed maximum fine of Rs.350,000 (Rupees three hundred fifty thousand only) on the respondents, as under:

Name of Respondents	Amounts in Rupees
1. Mr. Ali Aslam Malik, CEO	50,000
2. Mr. Shahzad Akbar	50,000
3. Mr. Muhammad Iqbal Khan	50,000
4. Malik Attiq-ur-Rehman	50,000
5. Mr. Saeed Ahmed Bajwa	50,000
6. Mr. Rais Ahmad Dar	50,000
7. Mr. Amir Shehzad	50,000
Total	350,000

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.

The respondents are further directed to make good the continuing default by completing the process of right issue of shares within ninety days from the date of this order, failing which they will be liable for action under section 495 (2) of the Ordinance.

Abid Hussain
Executive Director (CSD)

Announced:

June 09, 2016
Islamabad