



Corporate Supervision Department
Company Law Division

Before Mr. Abid Hussain –Executive Director

In the matter of

Gelcaps (Pakistan) Limited

Number and date of notice: No. CSD/ARN/485/2017- 3491-97 dated April 26, 2017

Date of hearing: August 22, 2017 and February 7, 2018

Present: Mr. Mansoor Khan, Company Secretary
(Authorized Representative)

ORDER

UNDER SECTION 218 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the directors including Chief Executive of Gelcaps Pakistan Limited (*the "Company"*), through show cause notice dated April 26, 2017 (*the "SCN"*) under the provisions of Section 218 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the annual audited accounts of the Company for the year ended June 30, 2016 revealed that the remuneration of the Chief Executive Officer (*the "CEO"*) of the Company increased from nil in 2015 to Rs.5.839 million in 2016. The directors' report annexed to the accounts did not include the abstract required under Section 218 of the Ordinance. The Company failed to circulate abstract relating to increase in CEO's remuneration to the members, within twenty-one days as required by sub-section (2) of section 218 of the Ordinance. The directors of the Company have, *prima facie*, contravened the provisions of section 218 of the Ordinance, and a SCN was issued to the directors of the Company (*the "Respondents"*) for contravention of provisions of applicable law.

3. Hearing in the matter was fixed for August 22, 2017. Mr. Mansoor Khan, Company Secretary appeared on behalf of the respondents as authorized representative. He stated that the information regarding CEO's remuneration could not be attached to director's report due to an oversight, however; the information was duly circulated amongst the shareholders on July 6, 2015 and the copy of said circular was provided. Another hearing in the matter was re-fixed for February 7, 2018 wherein Mr. Mansoor Khan appeared and admitted the default and requested



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that a lenient view may please be taken on the oversight resulting in default of said provision of law and he reassured that the act was not deliberate on part of the respondents.

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

Sub-section (1) of Section 218 of the Companies Ordinance, 1984 (the "Ordinance") provides;

"(1) Where a company—

(a) appoints, or enters into a contract for the appointment of, a chief executive, managing agent, whole-time director or secretary of the company, in which appointment or contract any director of the company is in any way, whether directly or indirectly, concerned or interested;

or

(b) varies any such contract already in existence;

the company shall make out and attach to the report referred to in section 236 an abstract of the terms of the appointment or contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such appointment or contract or variation."

Sub-section (2) of Section 218 of the Companies Ordinance, 1984 (the "Ordinance") provides;

"Where a company appoints or enters into a contract for the appointment of a chief executive of the company, or varies any such contract already in existence, the company shall send an abstract of the terms of the appointment or contract or variation to every member of the company within twenty-one days from the date of the appointment or of entering into the contract or varying of the contract, as the case may be, and if any other director of the company is concerned or interested in the appointment or contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the appointment of contract or variation shall also be sent to every member of the company with the abstract."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 218 have been delegated to the Executive Director (Corporate Supervision Department).



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5. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, representations submitted by the respondents in response to the contents of the SCN during hearing. The provisions of law are clear and explicit in this matter. One of the objectives of the aforesaid provision of the law is to provide an opportunity to the stakeholders including the shareholders to be elaborately and timely informed regarding their Company being entering into or varying any such existing contract for the appointment of a Chief Executive through attaching an abstract of the terms of the appointment or variation to the Directors Report or through a notification received within twenty-one days from the date of entering such contract of appointment or varying of the contract, as the case may be.

6. It had been observed that the information was not attached to the director's report as envisaged in the law. The Company has admitted the default in the compliance of the requirements of applicable provisions of the law. However, I have observed that the information was circulated through an abstract to the shareholders. The respondents have given assurance of future compliance of the provisions of relevant laws. In view of this, I, instead of imposing penalty on the Chief Executive and the directors of the Company hereby warn them to observe the compliance of law in letter and spirit in future.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
February 26, 2018
Islamabad

