



Mr. Abid Hussain – Executive Director

In the matter of

HK Securities (Private) Limited

Number and date of notice: CSD/ARN/337/2016 dated August 03, 2016
Date of hearing: January 04, 2017
Present: Mr. Mumtaz Hussain Shah, CEO

ORDER

UNDER SECTION 95 READ WITH SECTION 476 OF COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings against Mr. Mumtaz Hussain Shah, Chief Executive Officer and Mr. Bilal Aurangzeb Noor, Director (the “respondents”) of HK Securities (Private) Limited (the “Company”). The proceedings against the respondents were initiated by the Corporate Supervision Department (“CSD”) of the Commission through show cause notice (the “SCN”) dated August 03, 2016 under section 95 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. Service Fabric Limited (“SFL”) holds 95.5% shares of the Company thereby SFL becomes the holding company in terms of Section 3 of the Ordinance. The facts of the case, briefly stated, transpired from onsite inspection of books of accounts, records and other documents of the Company carried out in terms of inspection order of the Commission vide letters dated May 05, May 12 and May 13, 2016. During the inspection, perusal of list of shareholders and beneficial owners of SFL as of May 12, 2016 revealed that the Company held 1,307,441 and 97,047 shares of SFL under folio numbers 6924-29 and 005858, respectively. Whereas, shares transfer register of the Company updated till May 05, 2016 shows purchase of 1,343,441 shares of SFL by the Company on January 28, 2016 and further purchase of 97,047 shares of SFL on April 13, 2016. This implied that the Company had purchased and beneficially owned shares of its holding company i.e. SFL, *prima facie*, in contravention of Section 95 of the Ordinance.

3. A show cause notice was issued to the respondents on August 03, 2016. The said show cause notice was sent to registered office however the same was returned being undelivered. The said show cause was sent to head office on August 15, 2016 however the same was again undelivered. Further, the said show cause notice was emailed on their official email address. After telephonic confirmation of address, the said show cause notice was once again sent on October 20, 2016 through special



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messenger. The same was returned on pretext that the office has shifted to new place and new venue is not informed. The said show cause was thus sent to residential address of respondents on October 24, 2016 as per the record of this office. However, the addresses were found to be incorrect and the said show cause was again returned undelivered. Consequently, the show cause notice was sent to another address of the office on November 07, 2016. In response to the SCN, Mr. Mumtaz Hussain stated that the shares of SFL have been disposed off after becoming aware of the contravention of Section 95 of the Ordinance. He also assured compliance of law in future.

4. A hearing in the matter was held on January 04, 2017 wherein Mr. Mumtaz Hussain appeared in person representing himself and Mr. Bilal Noor. He reiterated his written submission, admitted default and assured future compliance.

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

Section 3 of the Ordinance provides as under:

Meaning of "subsidiary" and "holding company".- (1) For purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if—

- a) that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent of its directors; or*
- b) the first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary.....*

(2) For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

Sub-section (1) of section 95 of the Ordinance provides as under:

(1) No company shall have power to buy its own shares or the shares of its holding company:

Provided that a subsidiary shall not be barred—

(a) from acting as a trustee unless its holding company is beneficially interested under the trust; and

(b) from dealing in shares of its holding company in the ordinary course of its business, where such subsidiary carries on a bona fide business of brokerage:



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Provided further that a subsidiary dealing in shares of its holding company in the ordinary course of its brokerage business, shall not exercise the voting rights attached to such shares.

Sub-section (3) of section 95 of the Ordinance provides as under:

If a company acts in contravention of sub-section (1) or sub-section (2), the company and every officer of the company who is knowingly and willfully in default shall be liable to a fine which may extend to ten thousand rupees if the default relates to a listed company and to two thousand rupees if the default relates to any other company.

6. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 95 of the Ordinance based on inspection Order of Director (Corporate Supervision Department) vest with Executive Directors (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance and the arguments put forth by the respondents and have observed that the relationship of a holding company and a subsidiary company between SFL and the Company, in terms of Section 3 of the Ordinance, is clearly established and respondents have not challenged the same. Moreover, the Company had purchased and beneficially owned shares of its holding company, i.e. SFL, in contravention of Section 95 of the Ordinance. The respondents have admitted the aforesaid default. The respondents have stated that the subject shares are disposed off. Nevertheless, this does not obviate the Company and its directors from negligence in compliance with applicable law.

8. Directors of all companies are required to have proper knowledge of applicable statute and be cognizant of their fiduciary duties to diligently perform their responsibilities under the Ordinance and in the best interest of the shareholders. Mere admittance or rectification of default does not absolve the directors from fulfilling their statutory obligations and making decisions in lieu of the trust posed by the shareholders. If directors fail to ensure compliance with the explicit mandatory provisions of the Ordinance it renders them liable for a willful default, as ignorance of law is no excuse. The specific requirements of section 95 (1) of the Ordinance are clear and explicit and, therefore, the respondents being directors of the Company were required to ensure due compliance.



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9. For the foregoing reasons, I am of the view that the provisions of sub-section (1) of Section 95 of the Ordinance have been violated and duly admitted by the respondents. However, taking cognizance of rectification of default and assurance for future compliance, I impose a minimum penalty of Rs. 1,000 each on the respondents.

10. The aforementioned directors are hereby directed to deposit aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan (SECP) with MCB Bank Limited within thirty days from the receipt of this order and to furnish receipt vouchers to the Commission, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of movable and immovable property. The aforesaid penalties are being imposed on directors in personal capacity and therefore are required to be paid from personal resources of the directors.

Abid Hussain
Executive Director (CSD)

Announced:
March 20, 2017
Islamabad