



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Javed Omer Vohra & Company Limited

Number and date of notice: CSD/ARN/17/2015-760-64 dated November 7, 2017

Date of hearing: November 29, 2017, December 18, 2017, January 17, 2018,
March 29, 2018 and May 14, 2018

Present: Mr. Ashfaq Tola – FCA Tola Associates Tax & Corporate
Advisor
(Authorized Representative)

ORDER

UNDER SECTION 196 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the directors including the Chief Executive (*the "Respondents"*) of Javed Omer Vohra and Company Limited (*the "Company"*) through Show Cause Notice (*the "SCN"*) dated November 07, 2017 issued under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that review of annual audited financial statements of the Company for the year ended June 30, 2015 (*the "Accounts"*) revealed that:

- a) Note 11 to the accounts – Intangible Assets revealed following movement in the relevant assets:

Amount in Rs.

Asset	2015	2014	2013
NCEL membership card	Nil	750,000	750,000
DA country and golf club membership	Nil	39,200,000	110,600,000
Less: Transferred to Assets Held for Sale:	Nil	(39,950,000)	Nil

- b) Note 16.1 and 16.2 to the accounts revealed following disclosure:

On April 1, 2014, the Company entered into agreement with Summit Bank Limited (*the "SBL"*) whereby Summit Bank Limited agreed to settle the outstanding liability as appearing in Note 5 in following manner:

- (i) The Company shall sell / transfer its rights in respect of 28 Golf Club Platinum Memberships worth Rs.39.2 million in favor of SBL;



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- (ii) The Company shall sell/transfer one of its room bearing office no. 511 situated at 511, KSE, for an amount of Rs.7 million in favor of SBL;
- (iii) The Company shall sell its membership of Pakistan Mercantile Exchange Limited for an amount of Rs.4 million in favor of SBL.

On April 8, 2014, agreement was entered into between Bank Alfalah Limited (the "BAL") and the Company where BAL has agreed on settlement of outstanding amounts as appearing in Notes 6 & 7 in following manner:

- (i) The Company shall sell / transfer rights in respect of 51 Golf Club Platinum Memberships worth Rs.71.4 million in favor of BAL;
- (ii) The Company shall sell/transfer 3 of its rooms bearing number 507, 508, 509 situated at KSE Building for an amount of Rs.21 million in favor of BAL; and
- (iii) The entire sale proceeds of the Gawadar and Nooriabad properties as mentioned shall be deposited with BAL.

3. The Company therefore disposed of the right in respect of 28 Golf Club Platinum Memberships amounting to Rs.39.2 million and 51 Golf Club Platinum Memberships amounting to Rs.71.4 million to settle the outstanding liability with SBL and BAL respectively. The Golf Club Platinum Memberships had a total book value of Rs.110.600 million as on June 30, 2013, which accounted for 56.5% of total assets amounting to Rs.195.786 million as on that date and constituted sizable part of the undertaking of the Company.

4. In this regard, a SCN dated November 7, 2017 was issued under the provisions of Sub-Section (3) of Section 196 of the Ordinance that the Company's board of directors failed to discharge their powers, as no valid authorization was in place from the shareholders for the disposal of aforesaid assets forming a sizeable part of the undertakings and as to why action may not be taken for the aforesaid violations in term of Sub-section (4) of Section 196 of the Ordinance.

5. Subsequent to the issuance of SCN, hearing in the matter was fixed on November 29, 2017, December 18, 2017 and January 17, 2018. It was observed that no one appeared in said hearings. The hearing was thereafter fixed on March 29, 2018. The Company in reply vide its letter dated March 28, 2018 submitted that Mr. Ashfaq Tola, the Authorized Representative was not in city and requested for adjournment. The hearing was then fixed on May 14, 2018.



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6. Mr. Ashfaq Tola, the Authorized Representative on behalf of the Respondents submitted the reply to the SCN vide his letter No. TA/SECP/0045/18 dated May 14, 2018. Brief of his reply is as follows:

- The Company entered into agreement with Summit Bank and Bank Alfalah on April 1, 2014 and April 8, 2014 respectively for settlement of outstanding liability through disposing the Company assets.
- The Company had given notice to the shareholders on October 9, 2015 for conducting annual general meeting on October 31, 2015 to discuss the ordinary business as well as special business to enter into agreement with Summit Bank and Bank Alfalah to sell out company assets for settlement of outstanding liabilities.
- The annual general meeting was held on October 1, 2015 which was first adjourned and later was passed on February 16, 2016 by the shareholders in which shareholders passed all the resolutions including the special resolution to empower the authorized person to conduct transaction or enter into agreement with Summit Bank and Bank Alfalah for settlement of transactions.

The Authorized Representative also provided the copy of minutes of the annual general meeting. He also submitted that since no non-compliance has been made so proceedings may please be dropped. Mr. Ashfaq also attended the hearing held on May 14, 2018. During the hearing proceedings he reiterated the view as submitted through written reply.

7. Before proceeding further, it is necessary to advert to the relevant provisions of Sub-section (3) of section 196 of the Ordinance which provides that the directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely:

- (a) Sell, lease or otherwise dispose of the undertakings or a sizeable part thereof, unless the main business of the company comprises of such selling or leasing, and ...

8. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the Authorized Representative. I have also reviewed the minutes of the 20th annual general meeting of the Company provided by the Authorized Representative. Minutes of meeting

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contain the special business i.e. Item No. 5 wherein the members were informed about the consideration and sale of 4 rooms bearing office no. 507, 508, 509 and 511 situated at then KSE and the National Commodity Exchange Limited Card to settle the outstanding liabilities of SBL and BAL. It was discussed that *the Company has entered into a settlement agreement on with Summit Bank Limited ("SBL") and Bank Alfalah Limited ("BAFL") to settle the outstanding liabilities towards the bank through transfer of various assets of the Company. The liability toward the bank will be settled in full after the transfer of assets".*

9. I have however observed that the resolution passed by the Company does not specifically contain any detail regarding the disposal of 28 Golf Club Platinum Membership to SBL and 51 Golf Club Platinum Memberships to BAL respectively. I am of a considered view that the Company should have explicitly stated the titles of the relevant assets to be disposed in light of the settlement agreements with banks apart from those mentioned i.e. the rooms at KSE and the membership of National Commodity Exchange Limited. The minutes of the relevant general meeting do refer to disposal/transfer of various assets of the Company to settle outstanding liabilities towards the banks however, the Company has failed to give full disclosure of assets to be disposed as per the settlement agreements with banks while passing the special resolution at the general meeting. The Respondents did not fully comply with the provisions of Section 196 (3) of the Ordinance. I hereby, issue a stern warning to the Respondents to ensure compliance with the requirements of law in letter and spirit in future.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
July 02, 2018
Islamabad