



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of
KASB Securities Limited

Number and date of notice: No. CSD/ARN/500/2016- 1081-1089 dated October 3, 2016

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 KASB Securities Limited (*the "Company"*), through show cause notice ("*SCN*") dated November 10, 2016 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 Company appointed Mr. Shahid Ali as new Chief Executive of the Company in June 2015, however the Company failed to send an abstract of the terms of the appointment or contract to every member of the company within twenty-one days from the date of the appointment or of entering into the contract. The Company, when enquired regarding the compliance of provisions of Section 218 (2) of the Ordinance, submitted that the aforesaid disclosure was omitted because the Company was experiencing extra ordinary circumstances i.e. imposition of moratorium on Company's operations, change of directors, management and company secretary.

The directors of the Company have, *prima facie*, contravened the provisions of sub-section (2) of section 218 of the Ordinance, and a SCN was issued to the directors of the Company for contravention of provisions of applicable law.

3. The Company replied to the contents of the SCN vide its letter dated October 17, 2016, and submitted that;

- a. The disclosure requirements contained in Section 218(2) of the Ordinance could not be fulfilled as the event relates to a period where the Company was facing extraordinary circumstances where the moratorium had just been lifted and the operations had just been resumed. Moreover, the entire Board had been reshuffled and had just taken charge, to an extent that the Company Secretary (who is normally responsible to ensure compliance with all disclosure requirements) also resigned on 19th of June,

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2016. Yet amongst the chaos and reshuffling, the management tried its best to ensure strict adherence to all the applicable statutory and regulatory requirements. Additionally, the new management had its hands full in resolving various issues being faced by the Company, such as impairment due to investments in subsidiaries and related party transactions.

- b. Consequently, despite its best efforts to ensure compliance of all regulatory and statutory provisions, the Company somehow missed the disclosure requirement as given in Section 218(2) of the Ordinance. However, it is to be noted that there was no ill-intention by the Company in not making the requisite disclosure nor was there any deliberate concealment of information or the resulting omission. In fact, when the Honorable Commission inquired about this pertinent disclosure vide its letter dated 5th May, 2016, the Company honestly explained its position and did not even attempt to cover up or conceal this in-advert and honest and genuine mistake, which position is being reiterated in this response to the Notice.
- c. It is hereby requested that the Honorable Commission kindly considers the fact that the Company was genuinely facing a situation of forced majeure when this in-advert error took place, and also the fact that there was no ill-intent on the part of the Company at any point in time and never did the Company make any attempt to conceal this mistake. Moreover, the Company has always striven (and will continue to strive) hard to ensure compliance with all regulatory and statutory requirements and the directions of the Honorable Commission. In fact, disclosure under Section 218(2) was duly made when Mr. Irfan Nadeem was appointed the CEO of the Company in January 2015 and also when Mr. Anwer A. Sheikh was appointed as the CEO on April 2016, thus establishing the fact that this mistaken omission was just a one-off event due to an extreme situation which companies normally do not face.
- d. Based on the preceding factual position, the Company respectfully submits that the single instance of genuine mistake of non-compliance with the disclosure requirements as contained in Section 218(2) may be condoned and the case be closed. The Company and its Senior Management and directors pledge their full co-operation with the Commission and assure you that all applicable laws, rules, regulations, circulars, directives, etc. will be fully abided by.



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

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 259 have been delegated to the Director (Corporate Supervision Department).

It is important to highlight here that the Ordinance has been repealed while promulgating Companies Ordinance, 2016 ("Ordinance 2016"). However, provisions of Section 509(1)(f) of the Ordinance 2016 clearly provides that pending proceedings shall be concluded as provided in the Ordinance.

"509. Repeal and savings.— (1) The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIIIA consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIIIA along with all related or connected provisions of the repealed Ordinance shall be applicable *mutatis mutandis* to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:

Provided that repeal of the repealed Ordinance shall not-

- (f) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed".



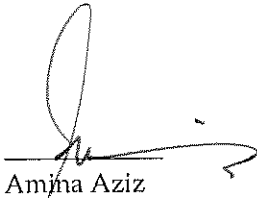
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5. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, representations submitted by the respondents in response to the contents of the SCN during hearing. The provisions of law are clear and explicit 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.

The information was not provided to the shareholders as envisaged in the law. The default is established, however as the Company has admitted that the compliance to the requirements of applicable provisions of the law have unintentionally been skipped and assured future compliance of the provisions of relevant laws, 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.



Amjina Aziz
Director (Corporate Supervision Department)

Announced:
December 14, 2016
Islamabad