



Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division

[Islamabad]

Before Rashid Sadiq, Executive Director

In the matter of:

M/S Quality Steel Works Limited

[UNDER CLAUSE (B) OF SUB-SECTION (1) OF SECTION 160 OF THE COMPANIES ORDINANCE, 1984]

Number and date of notice	EMD/233/429/2002-565-572 Dated July 24, 2002
Dates of hearing	August 19, 2002
Present	Mr. Farooq Akhtar, Advocate (Authorized Representative)
Date of Order	June 30, 2003

This is a case of violation of Clause (b) of Sub-section (1) of Section 160 of the Companies Ordinance, 1984 (the “Ordinance”), which requires that a statement of material facts shall be annexed to the notice of general meeting where any special business is to be transacted.

2. The relevant facts for the disposal of this case are very simple. M/s. Quality Steel Works Limited (the “Company”) issued a notice on July 08, 2002 for its 46th Annual General Meeting (the “AGM”) to be held on July 30, 2002. The Enforcement and Monitoring Division of the Securities and Exchange Commission of Pakistan (the “Commission”) noticed that the disposal of immovable property not required for the undertaking of the Company was proposed to be considered at the AGM. The objective of this was stated to be the settlement of banks dues and other liabilities from the sale proceeds of immovable property. The agenda also indicated clearly that an “Ordinary Resolution” was proposed to be passed for transacting this business.



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Considering that the sale of property was a “Special Business” and not an ordinary one in terms of Clause (b) of sub-section (1) of Section 160 of the ordinance and that a statement of material facts was required to be annexed to the aforesaid notice of AGM for this business, the Enforcement and Monitoring Division sought a clarification from the Company for not annexing the statement of material facts in response to which Dr. Muhammad Azam Chaudhry, acting on behalf of the Company, stated through his letter dated July 22, 2002 that the Company was not going to transact any “Special Business” at its 46th AGM. He further stated that the matter will be discussed and an “Ordinary Resolution” will be passed, therefore, statement of material facts was not needed. It was also contended that in the 44th AGM of the Company, the shareholders had approved the disposal of property not required for the main business of the Company. Therefore, statement of material facts was not required to be annexed to the notice of the AGM. On perusal of the minutes and agenda of the 44th AGM, it was transpired that disposal of the property was not on the agenda of the notice of 44th AGM. The minutes of 44th AGM, however, included the approval of the shareholders to the sale of properties. This proposal came up during the course of the 44th AGM and was approved by the shareholders present in the said meeting. Obviously, the other shareholders who were not present in the meeting were not aware of this business as no notice or information was sent to them prior to the meeting. The resolution passed in the 44th AGM, therefore, was not in accordance with the provisions of Clause (b) of sub-section (1) of Section 160 of the Ordinance.

3. As the Company has not annexed an explanatory statement to the notice of AGM as required under Clause (b) of Sub-section (1) of Section 160 of the Ordinance, therefore, the notice of meeting, *prima facie*, was defective and



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suffered from legal infirmities. In the circumstances, the Enforcement and Monitoring Division of the Commission decided to take up this matter with the Company and its directors/Chief Executive.

4. Consequently, a notice dated July 24, 2002 was issued to the Chief Executive and directors of the Company to show cause as to why fine may not be imposed as provided under Clause (a) of Sub-section (8) of Sub-section 160 of the Ordinance.

5. In response to the show cause notice, Dr. Azam Chaudhry, advocate through his letter dated August 01, 2002 informed that the notice was received on July 27, 2002 which was the due date for the reply of the notice. He, therefore, requested for 15 days time for the said reply. The reply to the show cause notice was received through letter dated August 15, 2002. In order to provide an opportunity of hearing, the case was fixed on August 19, 2002. Mr. Farooq Akhtar, advocate represented the Chief Executive and directors in these proceedings.

6. In the written submissions as well as at the time of hearing of this case, the Learned Counsel for the Company has contended that the Company has not transacted any "Special Business" in its 46th AGM. He further submitted that the notice of meeting clearly stated that an ordinary resolution would be passed. On this basis, the Learned Counsel concluded that a statement of material facts was not required to be annexed to the notice of the meeting, which included in the proposed agenda the consideration of the sale of property.



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7. As stated above, the main thrust of the Learned Counsel is that since the sale of property was not “Special Business”, therefore, statement of material facts was not required to be annexed with the notice of AGM. It, therefore, has to be seen if this assertion of the learned Counsel for the Company carries any force. In this connection, the notice of the meeting is the relevant document, which needs to be examined. For ease of reference, its contents are reproduced hereunder:

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the 46th Annual General Meeting of the members of the Company will be held on Tuesday the 30th July, 2002 at 10.00 a.m. at the Registered Office of the Company at D-22, S.I.T.E., at Karachi to transact the following business:

1. To receive, consider and adopt the audited accounts of the company for the year ended June 30th 2002 together with the Directors’ and Auditors’ Report thereon.
2. To endorse the appointment of M/s Rao & Company, Chartered Accountants as auditors of the company for the year ending 30th June 2001, made by the board of directors.
3. To consider and authorize the board of directors to sell immovable property not required for the undertaking of the company in order to settle banks dues and other liabilities, by passing ordinary resolution.
4. To transact any other business of the Company with the permission of the chair.

BY ORDER OF THE BOARD
SHAKIL RAZA
Company Secretary

Karachi : 6th July, 2002

8. The provisions of law which deal with issue also needs to be looked into. This is contained in Clause (b) of sub-section (1) of Section 160 of the Ordinance. These provisions, to the extent relevant, are reproduced hereunder:

“Where any special business, that is to say business other than consideration of the accounts, balance sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of the remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting, a statement setting out all material facts concerning such business, including, in particular, the nature and the extent of the interest, if any of therein of every director, whether directly or indirectly.....”



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9. The aforesaid provisions of law are quite clear and unambiguous and envisaged two kinds of business, which could be transacted at the general meetings that is to say, ordinary business and special business. Special business has been defined as business other than the following business:

- (i) consideration of accounts, balance sheet and reports of directors and auditors;
- (ii) the declaration of a dividend;
- (iii) the appointment and fixation of remuneration of auditor;
- (iv) the election or appointment of directors;

The aforesaid business being of routine nature is, therefore, considered as ordinary business and all business other than the above four items is special business for which annexation of a statement of material facts is a statutory necessity. In view of the above discussion, the sale of property is a special business. The argument of the Learned Counsel that it is an ordinary business cannot be entertained being against the provisions of law and is, therefore, not sustainable.

10. The objective of the annexation of statement of material facts is that all members of the Company must know as to what was the exact nature of the business to be transacted at the meeting so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively. Material facts are the facts, which have a bearing on the business to be transacted and which could influence the shareholders while making a decision of approving the business proposed or not. In the case in hand, there is a proposal for sale of property and its material facts such as reasons for disposal, the nature of assets, their book value, expected proceeds and their utilization, how and by whom the value of the property was assessed, the interest of



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directors in the disposal, how the disposal of property would be beneficial to the company and its shareholders etc., etc., were required to be intimated to the shareholders through a statement to be attached with the notice of the meeting. These facts would have enabled the shareholders to take a decision to attend the meeting and how to vote upon this business. The notice of meeting, therefore, did not comply with the provisions of Section 160 as it failed to give the aforesaid information to the members to enable them to take an informed decision to attend the meeting and to vote on the resolution tabled therein. The objective of this section is to secure that all facts that have a bearing in the question on which the shareholders have to form their judgment are brought to the notice of the shareholders so that they can make a conscious decision.

11. When the aforesaid provisions were brought to the notice of the Learned Counsel, he stated that this business was also considered in the 44th AGM and unanimously approved by the shareholders in that meeting and it was merely for the purpose of transparency that the management of the Company intended to bring this to the notice of the shareholders. His attention was also drawn to the fact that notice of the 44th AGM did not contain any agenda regarding disposal of property and in its absence a resolution for disposal of property could not have been passed. Faced with this situation, he argued that the property under reference was not sizeable part of the undertakings of the Company and the Board of Directors of the Company was not required to take any authorization from the shareholders for its sale as per Clause (a) of Sub-section (3) of Section 196 of the Ordinance. When he was asked that in order to determine as to what is sizeable, it was all the more necessary to have the details of the property intended to be sold and if in the opinion of the management this was not sizeable as to why the resolution was being proposed



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to the shareholders, he could not give an appropriate response. The directors of a company, which is listed on stock exchanges and have substantial public interest should not be mere spectators as to what is going on in a Company but should make tangible efforts to ensure that all the actions of the company are in accordance with the provisions of law.

12. In view of the foregoing, the undersigned is convinced that an action against the directors of the Company is necessary as material facts and vital information was concealed from the shareholders and the resolution regarding the sale of the immovable property was passed in both the 44th and 46th AGM without fulfilling the requirements of Clause (b) of Sub-section (1) of Section 160 of the Ordinance. As the Learned Counsel has also not been able to give any justifiable excuse for the said violation, therefore, I consider it a deliberate act on the part of directors of the Company who were under legal obligation to perform their duties, in accordance with the provisions of the Ordinance.

13. For the forgoing, I impose a fine of Rs 10,000/- (Rupees ten thousand only) on each of the following directors of the Company who are hereby directed to deposit the fine in the bank account of the Commission within 30 days of the receipt of this Order and submit a copy of the receipted challan to the Commission:

	<i>AMOUNT</i>
	<i>Rupees</i>
i. <i>Mr. Mr. Muhammad Ziauddin</i>	<i>10,000</i>
ii. <i>Mr. Irshad Ahmed</i>	<i>10,000</i>
iii. <i>Mr. Saeed Khan</i>	<i>10,000</i>
iv. <i>Mr. Muhammad Farooq</i>	<i>10,000</i>
v. <i>Ms. Mustaq Ahmed</i>	<i>10,000</i>
vi. <i>Mr. Ahsan Ahmed</i>	<i>10,000</i>



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vii. *Mr. Muhammad Ismail*

10,000

Rashid Sadiq

Executive Director (Enforcement & Monitoring)

Announced
June 30, 2003
Islamabad.