

Securities & Exchange Commission of Pakistan  
*Enforcement & Monitoring Division*  
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad

***Before Rashid Sadiq, Executive Director***

*In the matter of*  
**M/S Prudential Investment Bank Limited**

Number and date of notice	EMD/Co.233/27/2002-397-404 July 17, 2002
Date of hearing	August 19, 2002
Present	Mr. Tariq Khokhar, advocate along with Mr. Aslam Arain advocate Mr. Tahir Hasan, Chief Executive Mr. Shahid Rehman, Director Mr. Obaidullah Siddiqui, Director  Mr. Asad Iqbal Siddiqui, advocate for the complainant who was also present personally.

## **ORDER**

This order will dispose of the proceedings initiated against M/s. Prudential Investment Bank Limited (the “Company”) its Chief Executive namely, Mr. Tahir Hassan and directors namely Messrs Muhamamd Nasimuddin Mirza, Shahid Rehman, Rashidullah Yacoob, M. Obaidullah Siddiqui, Muhammad Yakoob Admaney and Muhammad Tahir Siddiqui under show cause notice dated July 17, 2002 issued to them on the complaint of Mr. Naveed A. Wahid for an order directing the Company to remove his name from the Board of Directors from a particular date i.e., June 20, 2001 on the ground that he has resigned by a notice in writing to the Company but the Company has not reported this change to the Registrar as required under Sub-section (2) of Section 205 of the Companies Ordinance, 1984 (the “Ordinance”).

2. For proper appreciation of the aforesaid matter, a brief account of the facts leading up to the issue of show cause notice is necessary. Mr. Naveed A. Wahid was elected as director of the Company on August 02, 1999 for a term of three years as per return filed by the Company in the Form “29” dated August 12, 1999. Through letter dated April 17, 2002, he informed this Commission that he had resigned from the directorship of the Company due to personal reasons vide his resignation letter dated March 26, 2001 and after not having received any response from the Company, he sent another letter dated June 20, 2001 reiterating his resignation from the directorship of the Company. He further claimed that the Board of Directors of the Company had accepted his resignation in its meeting held on September 11, 2001 and appointed Mr. Muhammad Ahsan as a director of the Company for the remainder of his term. His sole grievance is that in spite of his resignation, which was subsequently accepted by the Board of Directors, his name was still appearing in the financial reports comprising annual and interim accounts issued by the Company subsequent to his resignation. He also placed on record copies of his letters written to the Company requesting removal of his name from the Board of Directors consequent to his resignation and its acceptance by the Board. Considering that the action of the Company to describe his name as director of the Company was against the provisions of the Ordinance, he approached this Commission for removal of his name from the Board of Directors of the Company and notification by the Company of this change to the Registrar in accordance with the provisions of the Ordinance.

3. The aforesaid complaint was forwarded to the company for comments in response to which, the Chief Executive of the Company through his letter dated May 06, 2002 contended that the resignation of Mr. Naveed A. Wahid was accepted by the Board of Directors conditionally because National Accountability Bureau (the “NAB”) was investigating the affairs of the Company viz-a-viz Mr. Rashidullah Yacoob, ex-Chairman of the Company. It was also argued that the Commission has filed a complaint in the Court of Session under Sub-section (6) read with Sub-section (7) of Section 230 of the Ordinance. Moreover, the Commission has filed a winding up petition against the Company under Section 309 of the Companies Ordinance, 1984.

His contention was that till such time that Mr. Naveed A. Wahid is not relieved from the charges by the Court, the Company could not relieve him from the directorship of the Company. Subsequently, through its letter dated June 13, 2002, the Company has further raised similar issues and has taken the position that Mr. Naveed A. Wahid would continue to be a director till such time the cases against him would be decided by the Courts. It was also informed that this matter would be put up before the Board of Directors of the Company in the next meeting. The decision of such a meeting was, however, not conveyed to the Commission and the Company continued to describe his name as its director in the financial reports issued by it from time to time subsequent to the resignation of Mr. Naveed A. Wahid.

4. As the Company has not reported the resignation of Mr. Naveed A. Wahid even after a lapse of more than a year and the Company continued to describe him as a director of the Company, as admitted in the financial reports and also in the various correspondence of the Company, therefore, it appeared to the Commission that the Company has *prima facie* made a default in complying with the provision of Sub-section (2) of Section 205 of the Ordinance, which warranted action under Sub-clause (5) of the aforesaid Section. Besides, the continuous representation of the name of Mr. Naveed A Wahid by the Company in its financial reports as a director of the Company was *prima facie*, appeared to be false statements and also warranted an action under Section 492 of the Ordinance.

5. It was in the above circumstances that the Enforcement and Monitoring Division of the Commission has decided to probe this matter for taking appropriate action, if any required under the provisions of the Ordinance. Consequently, a notice dated July 17, 2002 was issued to the Company and its Chief Executive and directors to show cause as to why fine may not be imposed for contravention of the provisions of Sub-section (2) of Section 205 of the Ordinance and why a complaint may not be filed in the Court of Session under Section 492 of the Ordinance for making incorrect statement in the financial reports and describing Mr. Naveed A. Wahid as a director of the Company.

6. In response to the aforesaid show cause notice, Mr. Tahir Hassan, Chief Executive of the Company responded through his letter dated August 06, 2002 stating that Mr. Rashidullah Yacoob, director of the Company had transferred shares of the value of Rs. 1 million from his own holding to Mr. Naveed A. Wahid without receiving any payment from him. It was further alleged that after his induction as a director of the Company, *benami* loans were approved in the Board meetings for the benefits of Mr. Rashidullah Yacoob, for which the Company has filed suits in the Banking Court and criminal action was also being contemplated. Concessionary loans were also sanctioned to the group companies of Mr. Rashidullah Yacoob during his incumbency, which caused substantial loss to the Company. It was also stated that NAB had initiated investigation and Mr. Naveed A. Wahid being a front man of Mr. Rashidullah Yacoob to whom he had transferred a large chunk of shares free of cost from his holding for his wrong doing. In view of the aforesaid circumstances, his stance was that he was involved in serious irregularities and, therefore, written acceptance of the resignation was not conveyed to him. Accordingly, there was no need to send any intimation to Registrar on Form “29” in terms of Sub-section (2) of Section 205 of the Ordinance. It also stated that earlier some of the other directors had also submitted their resignations, which were accepted by the Board of Directors, but they too were still continuing as directors of the company on the similar grounds. In order to provide an opportunity of personal hearing, the case was fixed for hearing on August 07, 2002, which was adjourned and re-fixed on August 19, 2002. On the date of hearing, Mr. Tariq Khokhar, advocate along with Mr. Muhamamd Aslam Arain, advocate, Mr. Tahir Hassan, the Chief Executive, Mr. Shahid Rehman and Mr. Obaidullah Siddiqui, directors appeared before me and argued the case. The Learned Counsel Mr. Tariq Khokhar also represented Mr. Muhamamd Yakoob Admaney, Mr. Rashidullah Yacoob, Mr. Naseemuddin Mirza and Mr. Muhammad Tahir Siddiqui. Mr. Asad Iqbal Siddiqui, advocate represented the complainant who was also present personally.

7. At the time of hearing, the Learned Counsel for the respondent has submitted that the Articles of Association of the Company do not specify any procedure for the resignation of directors, nor does it specify any such circumstances which could

necessitate the acceptance of the resignation by the Board of Directors. He also contended that the resignation dated March 26, 2001 and June 20, 2001 were merely notice of resignation, which could be revoked. He also informed that after his letter dated March 26, 2001, Mr. Naveed A. Wahid attended the subsequent meetings of the Board of Directors held in May and June and also received expenses for attending these meetings from the Company. He also submitted that no legal consequences could flow from the resignation unless it was unconditionally and unequivocally accepted. Accordingly, he concluded that Mr. Naveed A. Wahid would continue to be a director of the Company and no return was required to be filed under Sub-section (2) of Section 205 of the Ordinance.

8. Mr. Asad Iqbal Siddiqui, the Learned Counsel for the complainant, on the other hand, argued that the resignation becomes effective from the date it is tendered and director ceases to be a director on the said date. He submitted that Mr. Naveed A. Wahid resigned from the Board of Directors of the Company on March 26, 2001. Subsequently, he attended two meetings of the Board of directors only to secure acceptance of his resignation. Thereafter, he did not attend any meeting. He finally resigned on June 20, 2001. His resignation was placed before the Board of Directors on September 11, 2001 and was unconditionally accepted by the Board of Directors. He placed on record the minutes of the said meeting and a subsequent letter dated September 12, 2002 written by the Company under the signature of its two directors to the effect that the resignation of Mr. Naveed A. Wahid has been accepted by the Board and Mr. Muhammad Ahsan was appointed as director of the Company in his place for his remaining term of office. He asserted that there was no justification to describe his name as a director when the Board of Directors has accepted his resignation and also filled in the casual vacancy. He also placed reliance on Sub-section (2) of Section 188 of the Ordinance to point out that the office of a director shall be vacated on any of the grounds specified in Sub-section (1) and also upon additional grounds, if any mentioned in the Articles of Association of the Company. He submitted that in this particular case Article 62 (a) (iii) of the Articles of Association of the Company provided that the office of a director shall be vacated if he resigns from his office by a notice in writing to the Company. As the provisions of vacation of office having been

added to the grounds specified under Sub-section (1) of the aforesaid Section, therefore, it stands on the same footings as any one of the other grounds mentioned in Sub-section (1) of Section 188 of the Ordinance. Accordingly, he concluded that the office of directorship of Mr. Naveed A. Wahid was vacated on the submission of his resignation letter to the Company. Therefore, he ceased to be a director of the Company from that date. He pleaded that his name should be removed from the Board of Directors and the Company be directed to file notification of the change in accordance with the provisions of Sub-Section (2) Section 205 of the Ordinance besides taking appropriate action warranted under the law.

9. Rebutting the argument of the Learned Counsel for the complainant that the office of Mr. Naveed A . Wahid was vacated on the date he tendered resignation in terms of Article 62 (1) (viii), the Learned Counsel for the respondents submitted that the said Article only envisaged one of the several situations for vacation of office and did not specify any procedure for the resignation of a director. He prayed that application was liable to be dismissed and the show cause notice be withdrawn and the complainant be made liable to action under Section 492 of the Ordinance for giving wrong facts in his application to the Commission.

10. I have carefully considered the arguments of the Learned Counsels for the complainant and respondents. Since the main issue of contention in this case is resignation of a director and the responsibility of the company to notify the same to the Registrar, therefore, I will confine this Order to the determination of the question as to when the resignation tendered by Mr. Naveed A. Wahid would take effect and the violation, if any committed by the Company and its directors and Chief Executives by not filing the requisite return under sub-section (2) of section 205 of the Ordinance.

11. In order to decide the aforesaid question, the law on the subject has to be examined. The provision of Sub-section (1) of Section 180 provides that a director can resign from his office earlier than the term for which he was elected as a director of a Company. The ordinary and plain meaning of this provision is that a director has a right to resign before the completion of his term of office and he cannot be forced to continue as a director of the company against his wish. Section 184, requires that no

person should be appointed or even nominated as director of a company unless he has given “his consent” in writing to such appointment or nomination and that consent has been filed by the Company with the Registrar before such appointment or nomination. It, therefore, follows that “the consent of the person and its filing with the Registrar” is a pre-requisite for appointment or nomination of a person as a directors of a company. I am of the view that once such consent is withdrawn, the persons ceases to be a director of the company when intention to resign is clear and unambiguous. Accordingly, on resignation, a casual vacancy is created under Sub-section (2) of Section 180 of the Ordinance, which needs to be filled in by the directors in accordance with the provisions of the said section. Directorship of a company, therefore, cannot be thrust upon any person. It is one’s choice to become a director or not. Unless any person chooses to become a director, he cannot be appointed/elected as a director of any company. It is to be noted that Section 189 stipulates imposition of penalties on unqualified persons or any person who having vacated his office of director describes or represents himself or acts as a director of the Company or allows or causes himself to be described as such.

12. Mr. Naveed A. Wahid tendered his resignation first on March 26, 2001. The contents of his letter are as follows:

“I write to advise that due to personal reasons, I hereby tender my resignation from the Directorship of Prudential Investment Bank Limited with immediate effect.

A copy of my resignation letter is being endorsed to State Bank of Pakistan

Naveed A. Wahid”

The contents of the subsequent letter dated June 20, 2001 are also reproduced as follows:

“Kindly refer to my resignation letter dated March 26, 2001. Todate, I have not received any confirmation from your side regarding acceptance of my

resignation. I, therefore, once again request you to accept my resignation and send the confirmation as early as possible.

Kindly note that if confirmation of acceptance is not received from your office within seven days from the date of this letter, the undersigned will treat the resignation as accepted.

Naveed A. Wahid”

The minutes of the Board meeting held on September 11, 2002, as pointed out by the Learned Counsel for the complainant, are also relevant and are, to the extent relevant, reproduced as follows:

“The Board of Directors decided to accepted the resignation of Mr. Naveed A. Wahid Director, in his place, Mr. Mohammad Ahsan was co-opted as Director for the remaining period.”

The letter dated September 12, 2001, as pointed out by the Learned Counsel for the complainant, is also relevant. Through this letter, it was informed to the Commission that a meeting of the Board of Director was held on September 11, 2001. The relevant excerpts from the said letter are reproduced as under:

“Induction of a Director namely Mr. Mohammad Ahsan, who has been co-opted in lieu of resignation of Mr. Naveed A. Wahid, Director whose resignation has been accepted.”

The aforesaid documents make it sufficiently clear that the resignation of Mr. Naveed A. Wahid was unconditional and unambiguous. Moreover, the minutes of the Board meeting, as quoted above, clearly indicates the unconditional acceptance of the resignation by the Board of Directors of the Company.

13. Although any person who is appointed or nominated as a director is required to give his consent before his appointment or nomination under Sub-section (1) of Section 184 of the Ordinance, there is no provision in the Ordinance, which requires a

director to communicate his resignation from the directorship to the Registrar. In its absence, as very rightly pointed out by the Learned Counsel for the complainant, the Articles of Association of the Company needs to be referred to see if they contain any such provision. I have, therefore, perused the Articles of Association of the Company, which contain provision regarding resignation of a director. The said provision is contained in Article 62 of Association of the Company. For ease of reference, the said provision is, to the extent relevant, reproduced hereunder:

“ (a) OFFICE OF THE DIRECTORS-HOW VACATED: The office of a director shall be vacated:

viii) if he resigns his office by notice in writing to the Company,”

14. In view of the aforesaid discussion, I am of the considered view that the resignation of Mr. Naveed A Wahid was effective from the date it was intended and submitted to the Company. The contents of the letters dated March 26, 2001 and June 20, 2001 of the complainant, the copy of the minutes of the Board of Directors of the Company held on September 11, 2001 and the letter dated September 12, 2001 sufficiently demonstrate that the resignation of Mr. Naveed A. Wahid was accepted by the Board of Directors of the Company. On the top of it, the Article 62 (a) (iii) as reproduced herein above clearly spell out that the office of a director shall be vacated by a notice in writing to the Company. I have, therefore, no doubt in my mind in holding that his office was vacated on June 20, 2001 i.e., the date of his resignation. The view taken by me find support from a number of judgments. These are:

Latchford Premier Cinema, Limited v. Ennion (1931) 2 Ch. 409

State v. Sitaram AIR 1967PATNA 433

T. Murari v. State (1976) 46 Comp cas 613 (Mad)

Abdul Huq v. Katpadi Industries Ltd. AIR 1960 MADRAS 482

15. In the case titled State V. Sitram AIR 1967 PATNA 438, it was held “the director ceases to hold office *ipso facto* upon giving the notice in writing to the company that he had resigned his office. Therefore, even assuming for the sake of argument that the respondent had attended the meetings held after he had served the

notice upon the company, that would not affect the operation of *ipso facto* clause contained in the relevant Articles of Association.” In the case titled Abdul Huq v. Katpadi Industries Ltd. AIR 1960 MADRAS 482, it was held that a director who has submitted his resignation, will deemed to have resigned from the date of his resignation, without prejudice of course, to his liabilities and obligations which had occurred up to that date and which he cannot evade by serving his connection with the Company. Similar views have been taken by the Superior Courts in other cases. It has also be laid down in the case reported as Khan Muhammad Yusuf Khan Khattak v. S.M. Ayub PLD 1973 Supreme Court 160 that if resignation by notice in writing is one of the conditions, which is added to those specified in Sub-section (1) of Section 86 I of the Companies Act, 1913 (analogous to Sub-section (1) of Section 188 of the Ordinance) then it too must stand on the same footing and have the same effect. In view of the cited judgments and the law declared by the Supreme Court, it is well settled that the resignation takes effect immediately and does not require acceptance and the person ceases to be a director of the company from the date indicated in the letter of resignation. In view of the above, there appears to be no merit in the argument of the learned counsel for the respondents that Mr. Naveed A. Wahid would continue as a director of the Company. The pending suits against him or cases being investigated by NAB cannot in any way restrict Mr. Naveed A. Wahid to resign from the directorship of the Company. With regard to the dispute of shares transferred by Mr. Rashidullah Yacoob to the complainant, it appears to be a personal matter between the said directors. As regards to the loss suffered by the Company because of concessionary loans etc, the Company may avail the remedies, if any available to it under the law. I also do not agree to the argument of the Learned Counsel for the respondents that the letters dated March 26, 2001 and June 20, 2001 were merely notices of resignation and not the resignations in itself. It is because of the simple reason that the text of the letters of Mr. Naveed A. Wahid clearly spelled out his resignation from the office of directorship with immediate effect.

16. I would also like to discuss another point raised by the Chief Executive of the Company in his reply to the show cause notice. He stated that the Company has requested to Commission for direction for the release of Mr. Naveed A. Wahid from

the directorship of the Company and as no response was received, therefore, it was presumed that in the interest of the Company, the Commission had decided that the Company should not relieve him from his office. Although, in its letter dated May 06, 2002, the Company had shown its intention to release him if directed by the Commission, subsequently, however, the Company keep asserting that he was still a director till such time the cases against him are decided by the Courts. It was also indicated that this matter would be put up before the Board in the next meeting. It may be mentioned that in view of the clear provisions in the Articles and also acceptance of his resignation by the Company, there was no need to get any direction of the Commission. I, therefore, do not see any reason for surmising that the Commission had decided that Mr. Naveed A. Wahid would continue to be a director of the Company. On the basis of facts and circumstances of the case, it is obvious that the management has deliberately avoided complying with the provisions of the Ordinance and its Articles of Association. The management has acted in a manner contrary to the provisions of law. Even after the service of show cause notice, the Company and its directors have contested this issue and have shown no intention to release him from directorship and file the return required under Sub-section (2) of Section 205 of the Ordinance. Also during the course of hearing, the Learned Counsel for the respondents did not indicate any such intention and forcefully opposed the show caused proceedings. I, therefore, find no merit in the contention of the Chief Executive on this account.

17. As a result of the above discussion, I hold that Mr. Naveed A. Wahid who had submitted his resignation is deemed to have resigned from the office of the directorship on June 20, 2001 ie., from the date it was intended and submitted to the Company. This resignation will not, however, relieve him from any liabilities, if any, which he may have incurred upto the aforesaid date while in office.

18. At this stage, it would be necessary to analyze the provision of Section 205 of the Ordinance. This Section stipulates that every company shall keep a register of its directors and officers containing particulars of these persons as required under clause (a) to (c) of its Sub-section (1). It is the duty of every director and officer under Sub-

section (2) that within a period of ten days of his “appointment” or “any change” he shall furnish to the Company the specified particulars enabling the Company to file with the Registrar a return (Form “29”) prescribed under the Companies (General Provisions and Forms) Rules, 1985 and notification on the prescribed form of any change among the directors and officers or in any of the particulars contained in the register of directors and officers. Such returns are required to be filed by the Company within fourteen days from the date of appointment or change in the directors or officers. The default in complying with the aforesaid provisions attracts penalties. These provisions, therefore, are mandatory in nature and their non-compliance is cognizable under the provisions of sub-section (5) of section 205 of the Ordinance. The objective of these provisions is that the notification of change in directors would enable the persons who inspect the files of the Company Registration Offices to exactly know as to who are the directors and officers of the Company at that relevant point in time. The listing regulations also require a listed company to promptly notify the Exchange of any changes in the Board of directors by death, removal or resignation. The resignation of Mr. Naveed A. Wahid constituted a change among the directors within the meaning of Sub-section (2) of Section 205 of the Ordinance and a notification of which on the prescribed (Form “29”) must have been filed by the company within fourteen days as required under Sub-section (3) of Section 205 of the Ordinance. The omission of the Company in this regard constitutes violation of the aforesaid mandatory provision. The reason given by the Company and its directors and Chief Executive are not sustainable as discussed in the preceding paragraphs and the delay in filing of return attracts penalty under Sub-section (5) of Section 205 of the Ordinance.

19. For the forgoing, I impose a fine of Rs. 500/- each on the Company and every director of the Company including its Chief Executive. However, taking a lenient view a further fine amounting to Rs. 10,250/- on each of the directors including the Chief Executive of the Company calculated @ Rs. 25/- instead of Rs. 50/- per day from July 05, 2001 to August 19, 2002 (for 410 days) is imposed.

20. The continuous representation of Mr. Naveed A. Wahid as director of the Company, after the acceptance of his resignation, warrants an action under Section 492 of the Ordinance, which stipulates that ‘whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, books of account, statement, book or paper, register, other document, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement false or incorrect in any material particulars, knowing it to be false or incorrect or omits any material fact knowing it to be material, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to a fine not exceeding twenty thousand rupees.’ Taking a lenient view of the violation, I am giving an opportunity to the Company and its directors and Chief Executive to fulfill their legal obligation and hereby direct the Company and its director and Chief Executive to file a return within 10 days of the date of this Order under Sub-section (2) of section 205 of the Ordinance for the change among its directors and fill in the casual vacancy in term of Sub-section (2) of Section 180 of the Ordinance. In case of non-compliance, this office will consider initiating proceedings under Section 492 of the Ordinance.

21. The Company, its Chief Executive namely Mr. Tahir Hasan and directors namely Mr. Muhammad Nasimuddin Mirza, Mr. M. Obaidullah Siddiqui, Mr. Shahid Rehman, Mr. Muhammad Yahoob Admaney, Mr. Rashidullah Yacoob, Mr. Muhammad Tahir Siddiqui are hereby directed to deposit the fine amounting to Rs. 75,750/- (Rupees Seventy five thousand seven hundred and fifty only) in the following head of account of the Commission within thirty days of the date of this Order.

Account No.10464-6,  
Habib Bank Limited,  
Habib Bank Plaza,  
I.I. Chundrigar Road,  
Karachi.

***Announced***  
***August 22, 2002***  
**ISLAMABAD.**

***Rashid Sadiq***  
*Executive Director (Enforcement & Monitoring)*