

## **DECISION OF THE HIGH COURT IN THE MATTER OF AHMED SPINNING MILLS**

Recently, the Honorable Sindh High Court passed a notable decision in which it upheld the orders of the Commission and the actions taken by it in the case of Ahmed Spinning Mills Limited.

In November 2004, Ahmed Spinning Mills Limited (the “ASML”) which is a listed company, sold shares owned by it in United Sugar Mills Limited at the rate of Rs.16/- per share to Clearshore Limited, a company incorporated in United Kingdom. The management of ASML also owned shares of United Sugar Mills in their own names. These shares along with the shares acquired by Clearshore Limited from ASML were then sold in October 2005 to JDW Sugar Mills Limited at the rate of Rs.333.33 per share. In this manner Clearshore Limited, within a span of less than one year, fetched Rs.333.33 per share which amounts to approximately Rs.213 million, from the sale of shares acquired from ASML. Such a huge price differential in the abovementioned two transactions was detected by the Commission and a thorough investigation was initiated.

This investigation revealed that Clearshore Limited was only used as a conduit by the management of ASML to defraud the shareholders and the real beneficiaries were the management itself. The Commission initiated legal proceedings against the management and Clearshore Limited. The Commissioner Securities Market Division vide his order dated November 13, 2006 held that the sale of shares to Clearshore Limited caused huge loss to the ordinary shareholders of the ASML. It was further held that the management of ASML had violated the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and takeovers) Ordinance, 2002 while acquiring shares of United Sugar Mills in their own names. More importantly, the management of ASML was restrained from receiving Rs.213.43 million from JDW Sugar Mills as proceeds of sale of the shares sold by Clearshore. JDW Sugar Mills was later directed by the Commission to deposit this amount of Rs.213 million with the Commission. The Commissioner held that this amount belongs to the shareholders of ASML and should be given back to them. ASML appealed before the Appellate Bench of the Commission, however the Appellate Bench concurred with the findings of the Commissioner.

ASML and its management then filed an appeal i.e. M.A. 04 of 2007, in the Sindh High Court at Karachi. It was argued on their behalf that the Commission does not have the power to order that the defrauded money of Rs.213 million should be deposited with the Commission or that the money should be given back to the shareholders of ASML. The Divisional Bench of the Honorable Sindh High Court vide its Order dated 12.10.07 was pleased to uphold the decisions of the Commissioner and the Appellate Bench of the Commission. With regard to the powers of the Commission, the Honorable Court has made the following landmark observation:

*It is one of the duties of the Securities & Exchange Commission to ensure adequate protection to the investors by detecting unfair trade practices. In case any unfair trade practice is detected it should take all necessary measures to undo the wrong. This is necessary in order to maintain the confidence of ordinary shareholders of a company who are sitting at distance waiting to reap the fruits of their investments. They not being party to every decision making process of the company repose faith in management which is expected to make sound commercial decisions for the collective benefit of all shareholders. Such faith and trust cannot be allowed to be breached with impunity....”*

The Honorable Court has also noted with appreciation the efforts made by the Commission in detecting the fraudulent scheme devised by the Appellants as follows:

*“The detection of scam by the officers of the Commission in the present case is commendable.”*