



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

Before the Executive Director (Securities Market Division)

In the matter of
Recovery of Tenderable Gain under Section 224(2) of the Companies Ordinance, 1984
from Mr. Sulaiman Ahmed Saeed Al-Hoqani, a Director of Worldcall Telecom Limited

Personal Hearing Fixed For :

- (i) August 20, 2009
- (ii) October 01, 2009
- (iii) October 15, 2009
- (iv) November 03, 2009

Present at hearing:

Representing the Respondent:

No One Appeared

Order

This order will dispose of the proceedings initiated under Section 224(2) of the Companies Ordinance, 1984 (the "**Ordinance**") by the Securities and Exchange Commission of Pakistan (the "**Commission**") through Show Cause Notice No. SM/BO/Co. 222/13(395)05 dated 06/08/2009 (the "**Notice**") against Mr. Sulaiman Ahmed Saeed Al-Hoqani (the "**Respondent**"), a Director of Worldcall Telecom Limited (the "**Issuer Company**").

2 Brief facts of the case are that:-

- a) Returns of beneficial ownership filed by the Respondent with this office from 01/10/2007 to 13/05/2008 show that he has made the following purchase and sale transactions as a Director of the Issuer Company within the period of less than six months:-

| Serial No. | Date | Nature of Transaction | No. of Shares | Rate per Share (Rs.) |
|------------|-----------|-----------------------|---------------|----------------------|
| 1 | 21/6/2006 | Purchase | 50,000 | 8.60 |
| 2 | 26/6/2006 | Purchase | 5,000,000 | 10.00 |
| 3 | 28/6/2006 | Purchase | 50,000 | 8.63 |



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|-----|------------|----------|-------------|-------|
| 4 | 04/7/2006 | Purchase | 50,000 | 9.14 |
| 5 | 02/10/2006 | Sale | 975,000 | 12.01 |
| 6 | 06/10/2006 | Sale | 250,000 | 12.25 |
| 7 | 10/11/2006 | Purchase | 590,000 | 9.94 |
| 8 | 20/11/2006 | Purchase | 228,500 | 9.99 |
| 9 | 21/11/2006 | Purchase | 374,000 | 10.01 |
| 10 | 22/11/2006 | Purchase | 150,000 | 9.89 |
| 11 | 04/12/2006 | Sale | 413,500 | 10.74 |
| 12 | 05/12/2006 | Sale | 961,500 | 10.94 |
| 13 | 19/12/2006 | Purchase | 879,000 | 9.39 |
| 14 | 21/12/2006 | Purchase | 85,500 | 10.00 |
| 15 | 22/12/2006 | Purchase | 27,000 | 10.00 |
| 16 | 27/12/2006 | Purchase | 1,622,000 | 10.03 |
| 17 | 10/01/2007 | Purchase | 602,000 | 9.99 |
| 18 | 11/01/2007 | Purchase | 174,500 | 10.01 |
| 19 | 12/01/2007 | Purchase | 427,000 | 9.89 |
| 20 | 19/3/2007 | Sale | 900,000 | 11.40 |
| 21 | 18/5/2007 | Sale | 500,000 | 16.54 |
| 22 | 29/5/2007 | Sale | 500,000 | 18.03 |
| 23 | 04/6/2007 | Sale | 500,000 | 17.09 |
| 24 | 07/6/2007 | Sale | 250,000 | 16.94 |
| 25 | 12/06/2007 | Sale | 250,000 | 17.45 |
| 26 | 14/6/2007 | Sale | 300,000 | 17.52 |
| 27 | 15/6/2007 | Sale | 200,000 | 16.95 |
| 28 | 28/6/2007 | Sale | 100,000 | 17.53 |
| *29 | 18/07/2007 | Sale | 551,500 | 19.22 |
| *30 | 18/07/2007 | Sale | 1,000,000 | 20.30 |
| *31 | 23/07/2007 | Sale | 150,000 | 20.72 |
| *32 | 07/4/2008 | Sale | 5,000,000 | 17.50 |
| *33 | 08/4/2008 | Sale | 15,000,000 | 17.50 |
| *34 | 10/4/2008 | Sale | 71,500,000 | 17.31 |
| *35 | 02/5/2008 | Sale | 196,000,000 | 25.00 |

* Sale Transactions (from serial No. 29 to 35) have not been taken for calculation of under reference amount of tenderable gain, as no corresponding purchase transaction was available.

- b) On account of the aforementioned transactions, the Respondent made gain of Rs. 24,621,355/- (Rupees twenty-four million six hundred twenty-one thousand three hundred and fifty-five only), computed in the manner prescribed in Rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (the "Rules").

3. Section 224 of the Ordinance provides that where *inter alia* a Director of listed equity securities makes any gain by purchase and sale, or the sale and purchase, of any such security



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within a period of less than six months, such person is required to make a report and tender the amount of such gain to the company and simultaneously send an intimation to that effect to the Registrar of Companies and the Commission. The said Section further provides that where such person fails or neglects to tender or the company fails to recover, any such gain within a period of six months after its accrual, or within sixty days of a demand thereof, whichever is later, such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

4. Since neither the matter of accrual of the aforesaid gain was reported by the Respondent in Part-D of the prescribed returns of beneficial ownership filed by him with this Commission for the aforementioned transactions, nor its tendering or recovery was divulged to the Commission, as provided in Section 224(2) of the Ordinance, therefore, the Respondent was intimated vide this office letter dated 25/03/2009 that as provided in Section 224 of the Ordinance, the amount of the aforementioned gain has now vested in favour of the Commission. Moreover, the Respondent was advised to furnish his reply, if his view-point is different from that of the Commission, within 15 days of the said letter. But, after seeking extension in time twice, the matter was responded on 15/05/2009 by Syed Abid Raza (the "Representative"). The issues raised by the Representative were examined in the light of provisions of Section 224 of the Ordinance and Rule 16 of the Rules and the legal position was clarified to the Representative vide this office letter dated 26/05/2009. In brief, the Representative was informed that:-

- I. views given in his aforementioned letter do not have any merit.
- II. in order to discharge the liability accrued under Section 224 of the Ordinance, Mr. Hoqani is required to tender the amount of gain of Rs. 24,621,355/- in favour of the Commission.
- III. in case Mr. Hoqani's view point is still different from that of the Commission, he may explain his position alongwith the supporting documents, if any, within 15 days of the issue of said letter.



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5. But, the matter was not responded within the given time limit. The Representative sought extension for filing of reply three times and eventually, the Respondent responded the matter on 24/07/2009, wherein *inter alia* he stated that:-

"In last few months I did face hardships and difficulties due to non professionalism approach of some entities through whom I operate and even my own company in Pakistan. My relationship is based on trust and I expect they will operate within my broad parameters of investments securing me not only against various risks but also within regulatory framework.

My firm belief in regulators both SECP and SBP had motivated me to grow and expand my exposure in Pakistan and still I believe the regulators will provide all safety & security to my investments.

The laws are laws and rules are rules and we need to follow and abide by them. I do not wish or want to breach the law but a distinction needs to be made between long term investor and speculator. This particular distinction will add to growth and development of Capital Market in Pakistan.

Tenderable gain towards speculator should be rigorously and rigidly implemented, whereas for investors who are holding shares for years and years and incurring opportunity cost in the holding should not be treated at par with speculators. Payouts in the form of cash or bonus dividend provide opportunity to long term investor or offset their opportunity cost.

The transaction summary reported will not equate me as speculator given the turnover in this period. Almost all the purchase reflected in the report are around Rs. 10/-, this would suggest that I had not tried to influence the price or focused to avail capital gain of 5 to 10% or 50 paise to Rs. 1.00 per share.

I would be delighted to visit SECP next month to meet the regulators to advocate my plea on the tenderable gain".

6. The plea of the Respondent was examined in the light of provisions of Section 224 of the Ordinance and Rule 16 of the Rules and was considered to be untenable. Thus, Notice under Section 224(2) of the Ordinance was served upon the Respondent on 06/08/2009 for providing him an opportunity of personal hearing on 20/08/2009. In response to the Notice the Respondent sent written submissions vide letter dated 19/08/2009 and requested for adjournment of the



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personal hearing, which was accepted and hearing was re-fixed for 01/10/2009. But, the Respondent again expressed his inability vide letter dated 29/09/2009 to appear on the said date. Thus, the matter was again re-fixed for 15/10/2009 with the caution that *"it is third and last opportunity of personal hearing and in case of non appearance in the hearing on the aforementioned date and time, the matter would be decided ex-parte, on the basis of documents available in the record"*. But despite the said caution he again requested vide letter dated 14/10/2009 for adjournment with the promise that *"I will certainly make myself available within two to three weeks time"*. Thus, taking a lenient view, the said request for adjournment of hearing was also accepted and the matter was re-fixed for 03/11/2009, with the intimation that no further request for deferment of personal hearing in the matter would be accepted and in case of non appearance in the hearing the matter would be decided *ex-parte*, on the basis of documents available in the record. However, Syed Abid Raza intimated vide letter dated 02/11/2009 that a few days back the Respondent has had met a car accident and is presently in trauma and requested for another date of hearing.

7. In order to accept or reject the above-mentioned request for adjournment of hearing fixed for 03/11/2009, I have gone through the available record and observed that four opportunities of personal hearing have already been given in the matter, but the same could not be materialized due to persistent requests of Respondent for its deferment. The record reveals that primarily the matter of accrual of tenderable gain and its recovery was taken up with the Respondent through letter dated 25/03/2009, which was responded on 15/05/2009 after seeking extension in time twice. Similarly, the letter dated 26/05/2009 was replied by the Respondent on 24/07/2009 subsequent to seeking extension for filing of reply three times. The record further signifies that personal hearing in the matter was initially fixed for 20/08/2009, which on the request of the Respondent was adjourned. Subsequently the case was fixed for hearing for 01/10/2009, 15/10/2009 and 03/11/2009, but each time the Respondent requested for its adjournment. It has also been observed that the under reference request for adjournment of hearing has been made by Syed Abid Raza, who has neither produced any authority to represent the Respondent in the



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proceedings initiated under Notice dated 06/08/2009 nor any medical certificate has been produced to substantiate the claim of the accident. Hence, I am of the view that sufficient opportunities of personal hearing have already been provided in the matter, which were not availed by the Respondent due to one or the other reasons, resultantly the present request for providing another opportunity of hearing is rejected and the matter is disposed on the basis of material available in the record together with written submissions received from Syed Abid Raza on 15/05/2009 (prior to issuance of the Notice), as well as from the Respondent on 24/07/2009 and 19/08/2009. The contentions advanced in the written submissions are summarized as under:-

Submission's received from Syed Abid Raza

- a) *It is observed that the series of transactions detailed in the document dated 25th March' 2009 do not contain the substantial quantity of bonus shares received by Mr. Hoqani, which is recorded as 44,062,006 in the month of October 2006. The sales that have originated from May 2007 onwards are against the bonus shares. However, a few sales pertaining to Serial No.5,6 and 11,12 of your document are of concern and even surprising.*
- b) *Even a close look at the profile of transactions recorded from 21.6.06 (Serial # 1) to 02.05.08 (serial # 35) illustrates that first there is continuous activity of purchases and then continuous activity of sales. These four trades which had emerged in the period of purchase activity are disturbing for Mr. Hoqani but as they belong to him so against them he is obliged to tender the amount of gain to the commission if otherwise commission takes a more lenient & considerate view.*

Submission's received from the Respondent

- c) *Given my purchasing power I never tried to influence price through volume/turnovers to make petty capital gain. My profile of investment even mentioned in your document also make it very obvious that if I buy, I buy, when I sell, I sell.*
- d) *Tenderable gain towards speculator should be rigorously and rigidly implemented, whereas for investors who are holding shares for years and years and incurring opportunity cost in the holding should not be treated at par with speculators. The transaction summary reported will not equate me as speculator given the turnover in this period.*



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8. Having considered and examined the arguments presented in written submissions, my findings in the light of prevailing Laws and Rules on the subject matter are as under:-

- a) Concerning the contention that *the series of transactions detailed in the document dated 25th March' 2009 do not contain the substantial quantity of bonus shares* it is stated that the gain has been calculated in the light of manner prescribed in Rule 16 of the Companies General Provisions and Forms) Rules 1985 (the "Rules"). Since the Rule 16(2) of the Rules exempts receipt of bonus shares from constituting of purchase transaction, therefore, the under reference bonus shares have not been taken as purchase transactions for the purpose of calculation of the tenderable gain. However, the Rule does not exempt the sale (made after the receipt of bonus shares) from the application of provisions of Section 224 of the Ordinance, because subsequent to receipt the bonus shares become *pari passu* with previously issued shares with regards to market price and payouts. More specifically, the Rule clearly states that the securities are fungible; therefore, sale transactions made after receipt of bonus shares do not enjoy exemption from the application of provision of Section 224 (1) of the Ordinance. Thus, the under reference contention does not have any merit.
- b) With regard to contention that the Respondent *is obliged to tender the amount of gain to the commission for four trades which had emerged in the period of purchase activity* it is stated that plain reading of Section 224(1) of the Ordinance in conjunction with Rule 16(1) of the Rules signifies that amount of tenderable gain would be calculated with reference to every individual transaction made within the period of less than six months by reference to the difference between the purchase price and the sale price. Thus the law provides that all transactions made within a period of less than six months would be taken into account while, the amount of gain would be calculated in the light of parameters set in Rule 16 of the Rules. Hence the plea that the Respondent is obliged to tender the amount of gain accrued on only those four transactions which emerged in the period of purchase activity is not tenable.
- c) In connection with the contention that *given my purchasing power I never tried to influence price through volume/turnovers to make pretty capital gain* it is pointed out that influencing of market price through trading may tantamount to market manipulation, which is an offence and is dealt separately under Securities and Exchange Ordinance, 1969. Resultantly, the proceedings initiated under Section 224(2) of the Ordinance do not have any correlation with the offence of market abusing/manipulation. Thus, it is clarified that the under reference proceedings have not been initiated on the basis of any market-abuse-activity of the Respondent.



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d) With regard to plea that *tenderable gain towards speculator should be rigorously and rigidly implemented whereas for investors who are holding shares for years and years* it is pointed out that provisions of Section 224 of the Ordinance are applicable on those specified persons, who are required to file their returns of beneficial ownership under Section 222 of the Ordinance. Similarly provisions of sub-section (2) of the Section 224 *ibid* are attracted as and when any of the said specified persons including director makes any gain on purchase and sale or sale and purchase within a period of less than six months. Thus, the said Section of the Ordinance speaks about making of transactions rather than motive of the transactions. In the instant case, the returns of beneficial ownership filed by the Respondent under Section 222 of the Ordinance as a Director of the Issuer clearly propose that he has made the under reference gain on account of transactions made within a period of less than six months. Hence, plea of the Respondent do not have any substance.

9. In view of the foregoing, I am of the considered opinion that the aforementioned contentions presented in written submissions do not have any merit and substance. Hence, the Respondent is, hereby, directed to tender Rs. 24,621,355/- (Rupees twenty-four million six hundred twenty-one thousand three hundred and fifty-five only) to the Securities and Exchange Commission of Pakistan as provided in section 224(2) of the Companies Ordinance, 1984, through a demand draft in favour of the Commission, within thirty days of the issue of this order.


(Akil Saeed)
Executive Director (SM)

Islamabad.
Announced on 17/11/09