



Securities and Exchange Commission of Pakistan  
***Enforcement Department***

Before Ashfaq Ahmed Khan, Director

***ORDER***

*In the matter of*

**M/S CLIMAX ENGINEERING COMPANY LIMITED**

(under clause (b) of sub-section (1) of section 160 of the companies ordinance, 1984)

Number and date of notice	EMD/Enf-II/458/2004-5677-5683 Dated March 03, 2004
Date of hearing	April 13, 2004
Present	Mr. Nawaz Khan, FCA, Authorized Representative Mr. Mazhar Siddiqui, Company Secretary
Date of Order	April 19, 2004

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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 that M/s. Climax Engineering Company Limited (the “Company”) issued a notice on October 06, 2003 for its 45th Annual General Meeting (the “AGM”) which was held on October 31, 2003 for consideration and approval of a special resolution for disposal of surplus land, building, plant and machinery of the Company for repayment of banks’ liabilities as well as to fetch funds for smooth working of the company. The Enforcement Department examined the resolution and considering that the sale of assets 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, sought information about the details of surplus land, building plant and machinery from the Company. The company was also advised to provide a copy of the minutes of the said AGM. In response, Ch. M.A. Qayyum, Chief Executive, through his letter dated February 17, 2004 stated that the Company has neither sold any surplus land, building, plant and machinery nor have earmarked the same. The minutes of 45<sup>th</sup> AGM, however, contained the approval of the shareholders for disposal of surplus land, building, plant and machinery for the repayments of bank liabilities as well as to fetch fresh funds for the smooth working of



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the Company. It was observed that although the proposal in question was approved by the shareholders present in the said meeting yet the shareholders who were not present in the meeting were not aware of this business as no information was sent to them prior to the meeting as required under Section 160 of the Ordinance. Accordingly, the Enforcement Department decided to take up this matter with the Company and its directors/Chief Executive and hence a notice dated March 03, 2004 was issued to the Chief Executive and directors of the Company to show cause as to why fine may not be imposed on them as provided under Clause (a) of Sub-section (8) of Section 160 of the Ordinance for the aforesaid contravention.

3. In response to the show cause notice, the Chief Executive and directors of the Company replied through their letters dated March 16, 2004 and requested to condone the default on the grounds that it was an inadvertent mistake not to publish material facts as a separate statement with the notice of meeting, however, all material facts were disclosed to the members regarding this resolution in the meeting and nobody had any objection on it because it was in the benefit of the company. In order to provide an opportunity of hearing, the case was fixed on April 13, 2003 before the undersigned as powers under Section 160 of the Ordinance have been delegated to me vide Commission's notification No. S.R.O. 162 (1)/2004 dated March 17, 2004. Mr. Nawaz Khan, FCA represented the Chief Executive and directors in the proceeding and was accompanied by Mr. Mazhar Siddiqui, Company Secretary.

4. Mr. Nawaz Khan, while admitting the default requested for condonation of default on the grounds that it was an inadvertent mistake and that the matter was thoroughly discussed in the AGM. It was further stated that as the said land has not been sold to date, it does not have any effect on the interest of the shareholders or creditors or bankers. In this connection, their attention was drawn to company's reply dated February 17, 2004 in which it was stated that the surplus land building, plant and machinery has not yet been earmarked and in that scenario, how is it possible that all material facts were discussed in the meeting about the assets which still have not yet been earmarked. The representative have no reply to this question.



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5. Before dealing the matter, it is relevant to have a look into the provisions of law which deal with issue. The relevant provision of law is contained in Clause (b) of sub-section (1) of Section 160 of the Ordinance. These provisions, to the extent relevant, are reproduced hereunder:-

*Quote:*

*“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 extend of the interest, if any of therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement” (Unquote).*

6. The aforesaid provisions of law are quite clear and unambiguous and make it mandatory for every Company, if a special business is to be considered in a meeting, to annex to the notice of the meeting, a statement of material fact setting out all material facts concerning such business and this mandatory provision can not be ignored even if a matter is thoroughly discussed in the meeting.

7. 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 those facts, which have a bearing on the business to be transacted and which could influence the shareholders while making a decision of approving the proposed business. In the case in hand, there was a proposal for sale of property, plant and machinery whose material facts i.e. the size of the surplus land, the plant and machinery to be sold, their book values, expected proceeds and its utilization was not disclosed to the shareholders for their consideration and approval. These facts would have enabled the shareholders to take a decision to attend the meeting and to vote upon this business. The



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notice of meeting, therefore, did not comply with the provisions of Section 160 of the Ordinance.

8. On bringing these matters to the notice of the Authorized Representative, he took the plea that till todate, the said assets of the company have not been sold and assured that the Company will take fresh approval from the shareholders for sale of surplus assets for which purpose a fresh Extra Ordinary General Meeting (EOGM) shall be convened and all mandatory provisions of the law will be followed.

9. In view of the foregoing, although the default is established and admitted however, keeping in view the assurance of the Authorized Representative that the requirements of law shall be complied with in future, I am inclined to take a lenient view of the default and instead of imposing a maximum penalty of Rs. 50,000/- on all the directors of the Company, I impose a fine of Rs. 20,000/- on the Chief Executive of the Company only. The other directors of the company are reprimanded to be careful in future.

10. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challans to the Commission.

**(Ashfaq Ahmed Khan)**  
**Director (Enf.)**

**Announced:**  
April 19 , 2004  
ISLAMABAD