

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Clover Pakistan Limited

Date of Hearing	March 17, 2020, June 09, 2020, August 12, 2020, August 25, 2020, September 04, 2020, September
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Order-Redacted Version

Order dated September 30, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Clover Pakistan Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 24, 2020
2. Name of Company	Clover Pakistan Limited
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. Clover Pakistan Limited.
4. Nature of Offence	In view of alleged violations under Section 153 read with Section 171, Section 175 and Section 479 of the Companies Act, 2017.
5. Action Taken	<p>Key findings of default were reported in the following manner:</p> <p>I have analyzed that the facts of case, relevant provisions of the law and the record placed before me. Based on the aforesaid, following is noted:</p> <p>(i) FEPL is holding company of the Company and MPL. Form 3A dated June 20, 2019 filed by FEPL reflects that Mr. Saleem Butt holding 12,599,990 ordinary shares (89.99%) and Ms. Nazia Malik holding 1,400,000 ordinary shares (10%) were transferred to the Respondent and Ms. Areeba Butt, respectively. Therefore, the Respondent remains the dominant shareholder by holding 89.99% of shareholding and control of FEPL directly. This implies that the Respondent has the right to appoint majority of directors on board of FEPL. Furthermore, the Respondent</p>



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

	<p>also enjoys the exclusive right to appoint majority of directors on board of companies where FEPL holds majority of shareholding or control of FEPL, including MPL. It is noted that the Respondent has acknowledged the fact that he is majority shareholder of FEPL and no justification or evidence was provided by the Respondent to prove the contrary.</p> <p>(ii) With respect of definition of sponsor under Section 2 (1) (i) of the Regulations, the first test is being initial subscriber of a company. It is noted that Memorandum of Association of MPL (named formerly as Classic Image Trading (Pvt) Limited) dated December 04, 2014 was signed by the Respondent, Hunain Habib Fansia and FEPL (through Mr. Nadeem Butt) as initial subscribers of MPL. This is an undisputed fact as Mr. Nadeem Butt has also acknowledged being initial subscriber of MPL. This implies that Mr. Nadeem is sponsor of MPL within the meaning of sub-clause (a) of clause (i) to subsection (1) of Section 2 of the Regulations.</p> <p>(iii) Another criteria for defining sponsor stated under the Regulations is a person who has right to appoint majority of the directors on the board of the company directly or indirectly. As stated in para (i) above, FEPL holds 99.99% shareholding in MPL and the Respondent directly holds 89.99% shareholding in FEPL. This implies that by virtue being majority shareholder of FEPL, Mr. Nadeem Butt has the right to appoint director on board of MPL. The authorized representative of the Respondent had also acknowledged that directors on board of MPL are appointed by FEPL and represent the sponsors of FEPL. Therefore, the Respondent is sponsor of MPL within the meaning of sub-clause (a) of clause (i) to subsection (1) of Section 2 of the Regulations.</p> <p>(iv) Presence of direct and indirect control is another criteria for defining sponsor stated under the Regulations. In view of</p>
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Securities and Exchange Commission of Pakistan
Adjudication Division
Adjudication Department-I

	<p>the shareholding dominance of the Respondent (directly and indirectly) in FEPL and FEPL holding 99.99% shares of MPL as stated in para (i) above, it is evident that the Respondent has control of FEPL as well as has control of MPL. Therefore, the Respondent meets the criteria of sponsor within the meaning of sub-clause (c) of clause (i) to subsection (1) of Section 2 of the Regulations.</p> <p>(v) The Respondent has submitted that he was nominee director of FEPL on board of MPL however resigned before MPL was registered as corporate brokerage house. During the hearing, the Authorized Representative stated that the Respondent resigned two year ago; however, the Authorized Representative has not provided exact date of resignation from board of MPL. Nevertheless, he has acknowledged his presence on board of MPL representing FEPL of which he himself become is majority shareholder directly. MPL was granted license of brokerage on September 25, 2015 while the Respondent was appointed on board of the Company on January 01, 2018. Nonetheless, appointment of the Respondent on board of the Company is in contravention to requirements of Section 153 (k) of the Act whether he continued to serve on board of MPL at that time or otherwise, owing to him being sponsor of MPL.</p> <p>(vi) Although not contested against by Mr Nadeem Butt, it is important to clarify that applicability of term sponsor defined under clause (i) to subsection (1) of Section 2 of the Regulations issued under Securities Act, 2015. Considering term sponsor has not been specifically defined under the Act, however, in terms of sub-section (2) of Section 2 of the Act, the definition provided under the Regulations made under Securities Act, 2015 shall prevail. Subsection (2) of Section 2 of the Act provides,</p> <p><i>“(2) The words and expressions used and not defined in this Act but defined in the Securities Act, 2015 (III of 2015) or the Securities and Exchange Commission of Pakistan Act, 1997(XLII</i></p>
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Securities and Exchange Commission of Pakistan
Adjudication Division
Adjudication Department-I

	<p>of 1997) or the Central Depositories Act, 1997 (XIX of 1997) shall have the meanings respectively assigned to them in those Acts.”</p> <p>2. Considering the aforementioned; I am of the considered view that the Respondent, by virtue of his 89.99% shareholding in Fossil, which is holding almost 100% shareholding of MPL, is acting as sponsor of MPL by having right to appoint majority of directors on board (directly or directly) as well as inherent control over MPL(a corporate brokerage house). In this context, the provisions of Clause (k) of Section 153 of the Act have been attracted and the Respondent is not eligible to be director of the Company. Therefore, the Respondent shall <i>ipso facto</i> cease to hold office as director of the Company in terms of clause (a) to subsection (1) of Section 171 of the Act.</p> <p>3. From the aforementioned discussion and after careful consideration of all the facts of this case, I am also of the view that the Respondent is liable under Section 175 of the Act. Taking cognizance of the submissions of the Respondents and in exercise of the powers conferred under aforesaid provisions of the Act, I hereby impose penalty of Rs 9,500 (Rs. nine thousand five hundred) on the Respondent.</p> <p>Penalty order dated September, 2020 was passed by Executive Director (Adjudication-I).</p>
2. Penalty Imposed	A penalty of Rs. 9,500/- (Nine thousands and five hundred) was imposed on the Company.
3. Current Status of Order	No Appeal has been filed by the respondents

Redacted version issued on October 30, 2020 for placement of website of the Commission.