



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Before Mr. Ashfaq Ahmed Khan, Director (Enforcement)

in the matter of

Ahmed Spinning Mills Limited

No. and date of show cause notice:	EMD/233/75/2002 26 th September, 2005
Date of final hearing	13 th December, 2005
Present:	Mr. Arshad M. Tayebaly, Partner, Mohsin Tayebaly & Co., on behalf of directors of the Company.

***ORDER UNDER CLAUSE (a) OF SUB-SECTION (3) OF SECTION 196 READ WITH
SECTION 476 OF THE COMPANIES ORDINANCE, 1984***

This order shall dispose of the proceedings initiated against the Chairman, Chief Executive and directors of M/S Ahmed Spinning Mills Limited (hereinafter referred to as “the Company”) through show cause notice dated September 26, 2005 for selling the following undertakings of the Company in contravention of the provisions of Clause (a) of Sub-section (3) of Section 196 of the Companies Ordinance, 1984 (the “Ordinance”):

- i) All of Property, Plant and Equipment ;
- ii) Leasing out Land and Building;
- iii) Long term investment in United Sugar Mills Limited- an associated company;



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

2. The aforesaid provision restricts the powers of the directors of a public company or of a subsidiary company of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of the general meeting. The objective of this provision is that the directors must consult the shareholders when an undertaking or a sizeable part thereof is intended to be sold. The prior consent of the shareholders, therefore, is a condition precedent for selling or disposing of the undertaking or a sizeable part thereof. This has been given special significance by providing that default of this provision would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

3. In order to decide this matter, a brief narration of the background facts leading to the issue of Show Cause Notice is necessary. The Enforcement and Monitoring Department of the Securities and Exchange Commission of Pakistan (the "Commission") conducted an examination of the Company's annual accounts for the year ended 30th September, 2004 and subsequent two quarterly accounts for the period ended 31st December, 2004 and 31st March, 2005 respectively together with director's reports submitted to the Commission under Sub-section (5) of Section 233 of the Ordinance and it was observed that the Company has sold all of its long-term assets as mentioned above. The auditors in their report for the year ended 30th September, 2004 have given an adverse opinion and doubted the ability of the Company to continue as a going concern. The auditors also highlighted the fact that the Company has sold all of its Property, Plant & Equipment except freehold land and building. As the Company, prima facie, did not comply with the requirements of law while selling these assets, a Show Cause Notice dated 26th September, 2005 was issued to the Chairman, Chief Executive and other directors of the Company to show cause in writing as to why penal action under Sub-section (4) of Section 196 of the Ordinance may not be taken against them for violation of the mandatory requirements of the Ordinance and as to why directive may not be given for reimbursement of loss caused to the Company on the sale/ lease of the following assets and undertakings of the Company without the approval of the shareholders :-



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

- i. Selling of all assets i.e. property, plant and equipment except land and building;
- ii. Leasing out of Company's land and building; and
- iii. Selling long term investment of the Company i.e. 673,268 shares of United Sugar Mills Limited, an associated company, at Rs.16 per share against minimum market price of Rs.30.40 per share during the period February 01, 2005 to March 31, 2005

4. In reply to the Show Cause Notice, M/s Mohsin Tayebaly & Co., legal counsels of the directors, vide letter dated 19th October, 2005, pleaded that plant & equipment, over the years, due to suspended operations, had practically become scrap which was ultimately sold by the Company based on a Board of Directors approval dated 1st December, 2004 for a price of Rs.1.00 million substantially as scrap which was best price possible at the relevant time. It was further stated that although the value being shown in the books for the plant & equipment was Rs.4.144 million which did not take into account the depreciation effect for several years and real book value would have been nil after taking into account full accounting for depreciation. It was further stated that the sale of plant and machinery was duly disclosed in the accounts of the Company for the period ended 31st December, 2004, 31st March, 2005 and 30th June, 2005. The plant and equipment was considered and sold as scrap therefore it would not be considered as sizable part of undertaking of the Company for the purposes of Section 196 (3) of the Ordinance. It was further stated that no loss was caused to the shareholders on account of sale of plant and equipment. As regards sale of investment of the Company in the shares of United Sugar Mills Limited, it was stated that the investment was made 22 years ago. The shares of this company were not freely trade able and a very small number of shares were available as a float in the market and therefore these shares were not disposable or realizable at the prevailing market price quoted from time to time. Therefore any market price being referred by the Commission in the Show Cause Notice is not a real price. The Company sold these shares in terms of an agreement dated 10th November, 2004. The shares were sold at a price of Rs.16 per share whereas market



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

price on the date of sale was Rs.12 only and as such directors were able to fetch premium of Rs.4 to Rs.5 per share over the prevailing market price at the relevant time. In the agreement a time period of six months was agreed for making payment and the transaction was duly completed within the period stipulated in the said agreement. As regards lease of land and building, it was stated that the directors for and on behalf of the Company entered into a short lease of eleven months with the lessee with a view to generate some revenue for the Company and its shareholders. Since the Company had no plant and equipment and still in process of working out the feasibility and possibility of setting up a new business unit and arranging investors for the same, it seemed a good opportunity to the directors to generate some revenue through use of the land and building on a temporary basis. The transaction is not considered a disposal, sale or lease of the undertaking but a temporary rental arrangement to mitigate the losses of the company to protect the interest of the Company and its shareholders. The directors therefore submitted that they have not violated any provisions of the Ordinance or have not caused any loss by their actions which were bonafide actions. The directors also requested an opportunity of hearing to make additional submissions.

5. The reply was not considered satisfactory and the case was fixed for hearing on 6th December, 2005. The directors of the Company however requested for an adjournment through their counsel namely Mr. Arshad M. Tayebaly of Mohsin Tayebaly and Company, Advocates and Legal Consultants. The adjournment request was agreed and the case was fixed for hearing on 13th December, 2005. On the date of hearing Mr. Arshad Tayebaly, Partner appeared for hearing on behalf of the directors of the Company and repeated the same arguments as were furnished by him through his written submissions. He insisted that sale of plant and equipment and investment did not constitute a sizable part of the undertaking in terms of Section 196 (3) (a) of the Ordinance without giving any specific reason. His attention was, therefore, drawn towards the Directors Report dated 4th January, 2005, on the accounts for the period ended 30th September, 2004, in which it was clearly stated that **“Subsequent to the year end Company has sold all its property, plant and equipment except free hold land and building at Rs.1 million”**. The Plant and Equipment was carried at Rs.4.144 million and was an



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

undertaking /a sizeable part of the overall undertaking of the Company being more than 76% of the fixed assets and 28% of the total assets of the Company as at 30th September, 2004. Its sale, therefore, required consent of the general meeting of the Company as required under Clause (a) of Sub-section (3) of Section 196 of the Ordinance. His attention was further drawn to the Cash flow statement for the period ended March 31, 2005, in which it was disclosed that the Company has sold all its Long Term Investments comprising 673,268 shares of United Sugar Mills Limited at Rs.16/- per share. The shares of United Sugar Mills Limited have been on the books of the Company for over 22 years and amounted to 61% of its total assets as per audited accounts of the Company for the year ended 30th September, 2004 which definitely constituted a sizeable part of the undertaking in terms of the provisions of Section 196 (3) of the Ordinance.

6. Mr. Arshad Tayebaly, in the hearing, informed that these shares were sold for the purpose of generating some revenue for the Company in view of the fact that operations have been suspended since 1984. It was further submitted that the shares were sold under an agreement to M/s Clearshore Ltd. on 10th November, 2004. The agreement indicates that a purchase price of Rs.10,772,288 (Rupees ten million seven hundred seventy two thousand two hundred eighty eight only) was to be paid by the purchasers to the sellers within a period of six months from the date of the agreement i.e. on or before 9th May, 2005. He stated that the market price of shares of United Sugar Mills Limited on the date of agreement was Rs. 12/- only and, therefore, the directors were able to fetch a premium of Rs. 4 to 5/- per share over the then prevailing market price. He however, admitted that the market price of shares at the time of receiving payment went up to Rs. 105 per share and within next six months upto Rs. 333/- per share.

7. The arguments submitted by the Counsel on behalf of the directors have been considered and in view of the above, the following are the major issues which require determination:

- i. Whether the sale of investment in plant and equipment and sale of investment constitute a sizable part of the undertaking?



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

- ii. Whether the sale of shares is appropriate by a listed Company on the basis of an agreement for which payment of shares is to be received on a later date?
 - iii. Whether the sale of plant and equipment and sale of investment was made in a transparent manner?
 - iv. Whether the agreement to sell investment meets the requirements of selling of investment by a listed company?
 - v. Whether there were apparent justified needs to sell investment for some immediate requirement of the Company?
 - vi. Whether provisions of Listed Companies (Substantial Acquisition of Voting Shares and Take-Over) Ordinance, 2002 were applicable in this case as the sale of investment constitute more than 22% of the total shareholding of the company?
 - vii. Whether the lease of assets was made in accordance with the requirements of law?
 - viii. Whether there was vested interest of the directors in the sale of Investment?
 - ix. Whether the directors have caused any loss to the Company and the shareholders in the sale of undertakings ?
8. All of the above issues are discussed one by one hereunder:-
- i) Whether the sale of plant and equipment and sale of investment constitute a sizable part of the undertaking ?**

Section 196 (3) of the Ordinance, requires that directors of a public company shall not sell, lease or otherwise dispose of the undertakings or a sizeable part thereof except with the consent of the general meeting. The Company sold all its long term assets i.e. property, plant and equipment except free hold land and building in the quarter ended December 31, 2004 and long term investment in United Sugar Mills Limited in the quarter ended March 31, 2005 without complying with the requirements of Section 196 (3) of the Ordinance. On taking up the matter with the Company, the Counsel of the directors of the company took the plea that it does not constitute a sizeable part of the undertaking without elaborating how it does not constitute a sizeable part.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Infact book value of the plant and equipment as on 30th September,2004 stood at Rs.4.144 million, total fixed assets, Rs. 5.497 million and total assets Rs. 14.860 million. Thus value of plant and machinery constitute 76% and 28% of the fixed assets and total assets of the Company respectively. Further paid up capital of the Company is Rs. 4 million and sale of plant and equipment stood at 104% of the paid up capital of the Company. The Investment in shares which was made 22 years ago in the case of an associated company stood at Rs. 9.089 million as on 30th September, 2004, which constitutes 61% of the total assets as per audited accounts for the year ended 30th September, 2004. All these facts indicate that machinery and equipment and investments constitute a sizeable part of the undertakings and required approval of the shareholders. The object of requirements of Section 196(3) of the Ordinance is that the directors must consult the shareholders when an undertaking or a sizeable part thereof is intended to be sold. The prior consent of the shareholders therefore is a condition precedent for selling or disposing of the undertaking or a sizeable part thereof. This has been given special significance by providing that default of this provision would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such actions. The shareholders, therefore, must be provided full facts about the sale of undertaking or a sizeable part thereof for their consideration and approval.

In view of the above, the plea taken by the Counsel of the directors that plant and equipment and investment do not constitute a sizeable part of the undertaking of the Company is not correct. The sale of plant and equipment and Investment definitely constitutes sizeable part of the undertaking of the Company and directors should have taken consent of the shareholders in terms of Section 196 (3) of the Ordinance.

ii) Whether the sale of Investment in shares is appropriate by a listed company on the basis of an agreement for which payment is to be made on a later date?

The directors of the company sold its investment of 673,268 ordinary shares of Rs. 10/- each of United Sugar Mills Limited worth Rs.9.089 million as on 30th September, 2004. This investment was made 22 years ago and it constitutes 22.4% of the share capital of the associated



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

company. It was observed from the quarterly accounts of the Company for the period ended 30th March, 2005, that this investment was sold for Rs. 10.772 million i.e. @ Rs. 16/- per share against the market price of Rs. 30.40 per share causing huge loss to the Company and its shareholders.

The matter was taken up with the Company. The director's Counsel stated that these shares were sold to M/s. Clearshore Limited through an agreement dated November 10, 2004. The agreement indicates that the price of shares sold was to be received within six months of the agreement i.e. by May 09, 2005. It was stated that the market price of the shares on the date of agreement was Rs. 12/- only and as such directors were able to fetch a premium of Rs. 4/- to 5/- per share over the then prevailing market price. He however, admitted that the market price at the time of receipt of sale money was considerably high and stood at Rs. 105 per share which was further increased to Rs. 333/- per share during a short span of six months. The agreement with M/s. Clearshore of UK has been perused and it contains the following important clauses:-

- a) The token money shall be in the shape of Prize Bonds. The token/Security deposit will be returned to the Purchasers at the time of final payment. Till such time if any Prize is won through these Prize Bonds, the seller will be entitled to keep 2% of the Prize money in case of first prize, 5% in case of 2nd Prize and 10% in case of 3rd Prize and pass the rest on purchaser.
- b) Total amount of purchase price will be paid within a period of six months from the date of agreement i.e., on or before May 09, 2005.

It may be mentioned here that Investment in shares is always sold at a stock market on the prevailing prices. However, in case where shares are sold through Private arrangement, the transaction has to be reported to the Stock Exchange(s) immediately for information of all shareholders. The Company did not report this transaction to the Stock Exchange which raise doubt about its execution. The price of the shares rose to Rs. 105 at the time of final payment



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

and further rose to Rs. 333/- on 21st October, 2005 when the directors of the United Sugar Mills Ltd. agreed to sell 2.250 million shares to JDW Sugar Mills Limited. It is to point out here that there are six common directors namely Sheikh Abdul Wahid, Sheikh M. Saeed, Sheikh Abdul Rauf, Mrs. Qaiser Begum, Mrs. Nasreen Wahid and Mrs. Abida Saeed on the board of directors of both the companies. It appears that the directors of the Company through this sale have caused a loss of approx. Rs. 213.4 million to the shareholders of the Company.

It may be pointed out here that the legal Counsel at the time of hearing was advised to furnish complete details about M/s. Clearshore Limited a U.K based Company, i.e. its status, the names of its sponsors/directors and latest balance sheet of the Company. The Company in its reply has indicated that this transaction was executed through a British National Mr. Shahid Hussain and did not provide other relevant details. It is apprehended that M/s. Clearshore Ltd. UK is a related party through whom transaction about sale of investment has been undertaken in a non-transparent manner and contrary to the requirements of the Ordinance and listing regulations of the Stock Exchanges.

iii) Whether the sale of plant and equipment and investment was made in a transparent manner?

The Company sold its plant and machinery and investment without complying with the requirement of law. Had the Company gone to shareholders through an EOGM, it should have placed details of plant and equipment and investment before the shareholders. In such situation, the directors should have disclosed to the shareholders about the nature of machinery, its carrying value, the expected market value and mode of disposal i.e. tender, negotiations and the reasons and justifications of the proposed sale indicating the interest of directors in the proposed transaction. As regards investment, the shareholders could have advised them to sell on cash basis and on the stock market. The Company however, sold these assets in a non-transparent manner and without complying with the requirements of the Ordinance.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

iv) Whether sale of investment made through an agreement meets the requirements of selling investment by a listed company?

The Investment of the Company constituted 22.4% shareholding in the associated company namely United Sugar Mills Limited. Normally such a sizable block is sold at a premium. The directors through an agreement, without complying with the requirements of law and without going to the shareholders, sold it at Rs. 16/- per share which was much below then the market price of the said shares at the time of receipt of payment. The directors should have taken approval from shareholders and then should have sold the investment in a transparent manner. The directors, by selling investment through agreement have caused huge loss to the shareholders of the Company.

v) Whether there were apparent justified needs to sell investment for some immediate needs of the Company?

The shareholding of the Company was sold through an agreement for which payment was to be received within six months. Apparently there appear no immediate needs as consideration was to be received after six months. The Counsel in response to Show Cause Notice has stated that the investment was sold to generate some revenue and to mitigate losses of the Company. However, after six months, when the consideration was received substantial part of it was again invested for long term in Habib Growth Certificates of Bank Al-Habib Limited.

From the above it appears that there was no apparent need to sell these shares at a much lower price because when consideration was received the price rose from Rs. 16 to Rs. 115.20 per share and within next six months it further rose to Rs. 333/- per share in October, 2005. The pattern of shareholding of the United Sugar Mills Limited indicate that there are six common directors on the board of directors of both the companies. These common directors were holding 16.5 shares in the share capital of United Sugar Mills Limited who decided to sell the shareholding held by Ahmed Spinning Mills at a throughway price of Rs. 16/- per share, in an unlawful and non-transparent manner, are now just after six months are selling their own shareholding at an exorbitant price of Rs. 333/- per share.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

- vi) Whether provisions of Companies (Substantial Acquisition of Share Capital) Ordinance, 2002 were applicable in this case as the sale of investment constitutes more than 22% of the total shareholding of the Company?**

As per the requirements of take over law, acquisition of 10% or above shareholding in a company is to be reported to the Company and the relevant Stock Exchange. In this case more than 22% shareholding was sold/purchased through an agreement and the sale was not reported to the Stock Exchange which raise serious doubt about the genuineness of the transaction.

- vii) Whether the lease of assets was made in accordance with the requirements of law.**

As per the provision of Section 196 (3) of the Ordinance the sale or lease of assets is required to be approved by the shareholders of the Company. Further in term of Section 160 (1) (b) of the Ordinance material information about the transaction is required to be brought to the notice of the shareholders for their consideration and approval. The Company did not follow the legal requirements. Director plea that they entered into transaction for a short lease of 11 months with lessee which was for a temporary basis is not tenable. The law is very clear and unambiguous. The Company by not taking shareholders approval has breached the mandatory provisions of the Ordinance.

- viii) Whether there was vested interest of the directors in the sale of investment.**

The six directors of both the Companies are common. The pattern of shareholding of United Sugar Mills Limited indicate that M/s. Ahmed Spinning Mills Limited was holding 22.4% share whereas six common directors were holding 16.50% shares of United Sugar Mills Ltd. The Company's shareholding was sold by these directors in an unlawful and unauthorized manner without complying with the requirements of law in a non-transparent manner at Rs. 16/- per share whereas now the same directors are selling their shareholding at Rs. 333/- per share causing a huge loss to the minority shareholders of M/s. Ahmed Spinning Mills Limited. The circumstances of the case show that the vested interest of directors is imminent.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

ix) Whether the directors have caused any loss to the Company and the shareholders in the sale of assets?

Plant and equipment valuing Rs. 4.144 million was sold at a loss of Rs. 2.9 million. Further, directors of the Company did not follow the requirements of law by not taking permission from the shareholders. Moreover sale do not appear to be transparent as assets have not been sold through tender. The investment of the Company has been sold in a non-transparent and unlawful manner and was sold through an agreement and the transaction was not reported to the Stock Exchange as per listing requirements. Moreover Investment was sold at Rs. 16/- per share whereas market value at the time of receipt of payment was Rs. 105/- per share and just after six months its value was increased to Rs. 333/- per share. It appears that huge loss has been caused to the shareholders of the Company by selling these investments by the directors of the Company.

9. In view of the above discussion it is quite clear that the directors of the Company, while selling plant and equipment and investment property of the Company, have contravened the relevant provision of the Ordinance. They have also cause substantial loss to the shareholders of the Company through their unauthorized and illegal action. I, therefore, in exercise of powers delegated to me in regard to the provision of Section 196 (3) (a) of the Ordinance impose a maximum penalty of Rs.100,000/- on each of the directors as under :-

1.	Sh. Abdul Wahid, Chairman	Rs. 100,000/-
2.	Sh. Muhammad Saeed, Chief Executive	Rs. 100,000/-
3.	Mrs. Qaiser Begum, Director	Rs. 100,000/-
4.	Mrs. Nasreen Wahid, Director	Rs. 100,000/-
5.	Mrs. Abida Saeed, Director	Rs. 100,000/-
6.	Mrs. Fouzia Begum, Director	Rs. 100,000/-
7.	Sh. Abdul Rauf, Director	<u>Rs. 100,000/-</u>
	Total:	<u>Rs. 700,000/-</u>



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

10. The directors, Chief Executive and Chairman of the Company are directed to deposit the fine aggregating Rs. 700,000/- (Rupees Seven hundred thousand) only in the designated bank account of the Commission within 30 days of the announcement of the Order and furnish receipted Challan to the Commission. It may be noted that the above penalties have been imposed on the directors in their personal capacity and, therefore, they have to pay the fine from their personal resources.

11. As the directors of the Company have caused substantial loss to the shareholders of the Company by selling Company's investment at a substantial loss through their unauthorized and unlawful action, I advise my office to investigate the aforesaid transaction thoroughly and determine the loss caused to the minority shareholders and to suggest suitable action to be taken through a separate order against the directors, Chairman, Chief Executive and other responsible officers of the Company.

(Ashfaq Ahmed Khan)
Director (Enforcement)

Announced
December 22, 2005.
Islamabad.