



**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)**

Before Executive Director (Securities Market Division)

Order

Under Section 224(2) of the Companies Ordinance, 1984

In the matter of

**Mr. Ghulam Muhammad Malkani Chief Executive Officer JS Global Capital Limited
(Formerly Jahangir Siddiqui Capital Markets Limited)**

Date of Hearing:

20/04/2007

Present:

- i. Mr. Ghulam Muhammad Malkani
- ii. Mr. Kamran Ansari CFO & Company Secretary
JS Global Capital Limited

Assisting the Executive Director (SM)

- i) Mr. Imran Inayat Butt, Director (SM)
- ii) Mr. Muhammad Farooq, Joint Director (BO)

This order will dispose off 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 (the "Notice") dated 06/9/2006 against Mr. Ghulam Muhammad Malkani (the "Respondent") Chief Executive Officer of JS Global Capital Limited.

2. Brief facts of the case are that the Respondent filed returns of beneficial ownership under Section 222 of the Ordinance as Chief Executive Officer of JS Global Capital Limited formerly Jahangir Siddiqui Capital Markets Limited (The "Issuer"). From the examination of the said

returns of beneficial ownership it was observed that the Respondent and his spouse have made transactions in the shares of Issuer within the period of six months. The details of the said transactions are given below;-

Date of Transaction	Nature of Transaction	No. of Shares	Rate per Share (Rs.)
04.02.2005	Purchase	3,500	52.50
07.02.2005	Sale	1,500	81.08
23.02.2005	Purchase	2,000	72.72
25.02.2005	Sale	4,000	68.63
31.03.2005	Purchase	49,500	64.47
06.04.2005	Purchase	3,500	56.92
21.04.2005	Sale	24,000	59.36
01.06.2005	Purchase	12,500	51.54
03.06.2005	Purchase	3,000	49.53
14.06.2005	Purchase	1,500	49.75
27.06.2005	Purchase	2,000	49.30
27.07.2005	Purchase	6,000	59.98
20.10.2005	Purchase	1,500	71.63

The aforesaid purchase and sale transactions resulted in gain of Rs. 263,985/- (rupees two hundred sixty three thousand nine hundred eighty five only) to the Respondent, 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 Chief Executive of a listed equity security makes any gain by purchase and sale, or the sale and purchase, of any such security 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. Similarly, Section 224(3) of the Ordinance provides that beneficial ownership of securities of any person shall be deemed to include the securities beneficially owned, held, or

controlled by him or **his spouse** or by any of his dependent lineal ascendants or descendants not being himself or herself a person who is required to furnish a return under Section 222 *ibid*.

4. Since neither the Respondent being a beneficial owner tendered the gain to the Issuer nor the Issuer recovered it from the Respondent as provided in Section 224(2) of the Ordinance, therefore, the Respondent was intimated vide letter dated 17/05/2006 that the above-mentioned amount of gain now has vested in favour of the Commission as provided in Section 224(2) of the Ordinance. The Respondent stated vide letter dated 31/05/2006 that he has suffered loss of Rs. 55,690/- rather than making any gain. The Respondent was intimated on 09/06/2006 that the method of calculation applied by him for determination of profit/loss has no substance in the light of Rule 16 of the Rules and was again advised to tender the said amount of gain in favour of the Commission. Thereafter, the matter was responded by Bawaney & Partners (the “Counsel”) on behalf of the Respondent. The Counsel stated that their client is not liable to pay the amount of gain demanded by the Commission on the following grounds:-

- i. The Beneficial Owner has actually suffered loss rather than making any gain.*
- ii. In order to determine tenderable gain, transactions made between 04/02/2005 to 21/04/2005 should be considered instead of considering the transactions made from 04/02/2005 to 20/10/2005. As it seems irrational, illogical and most unreasonable that the purchase price of a share at Rs. 52.50 prevailing on 04/02/2005 is linked with purchase price of Rs. 49.30 prevailing on 27/06/2005.*
- iii. Rule 16 of the Rules (on the basis of which the gain has been computed) is opposed to the principles of justice, equity, fairness and is in violation of Section 224 of the Ordinance.*

5. Since, the arguments presented by the Counsel for non-accrual of the gain were not considered to be tenable, therefore Notice under Section 224(2) of the Ordinance was served upon the Respondent on 06/09/2006 for providing him an opportunity of personal hearing on 20/09/2006, which was adjourned. In the meantime, the Respondent filed an appeal before the

Appellate Bench of the Commission against the Notice dated 06/09/2006. The Appellate Bench Registry informed vide letter dated 25/07/2006 to the Respondent that his appeal is not maintainable, as no order has yet been passed in the matter. The hearing was re-fixed on 10/10/2006, but neither the Respondent nor any of his representative attended the said hearing. The next date of hearing was fixed on 21/11/2007 which was adjourned and re-fixed on 27/12/2006. The Respondent requested to hold the hearing in Karachi instead of Islamabad, which was accepted and hearing was fixed on 20/04/2007. On date of hearing, the Respondent and Mr. Kamran Ansari, CFO & Company Secretary of the Issuer appeared before the undersigned. During the course of hearing, the Respondent stated that he is not required to tender the amount of said gain to the Commission on the following grounds:-

- a. *The spirit of the Section 224 of the Ordinance is to deprive the beneficial owners from the amount of gain, accrued on transactions made on the basis of inside information. While, transactions executed by him are not based on any inside-information.*
- b. *The words “sale and purchase” appear in Section 224 of the Ordinance are contradictory with Regulations for Short Selling as apparently under reference Section of the Ordinance permits the short selling.*
- c. *Rule 16 of the Rules is ambiguous, opposed to the principles of justice, equity and fairness.*

6. Having considered and examined the arguments presented by the Respondent and his Counsel in writing as well as verbally during the course of hearing, my findings in the light of prevailing Laws and Rules on the subject are as under;-

- a) Section 224 of the Ordinance entails only one condition for accrual of tenderable gain, which is that the gain must be accrued on transactions made within the period of less than six months. While, the matter of transactions made on the basis of inside information is a separate issue and is dealt with under Section 15 of the Securities and Exchange Ordinance, 1969. In the instant case, the proceedings for recovery of gain have been

initiated under Section 224(2) of the Ordinance instead of invoking Section 15 of Securities & Exchange Ordinance, 1969. Hence plea of the Respondent has no substance.

- b) The words “sale and purchase” appearing in Section 224 of the Ordinance are totally misconceived by the Respondent. This Section is neither contradictory with Regulations for Short Selling nor it permits the beneficial owners of listed companies to indulge in short selling of securities. It is pointed out that Section 223 of the Ordinance clearly prohibits the “Short Selling” by certain persons including a Director/ Chief Executive of a listed company. It may be noted that here the words “sale & purchase” (appear in Section 224 of the Ordinance) clarify the sequence of transactions rather than allowing short selling. In fact plain reading of the Section signifies that purchase transaction followed by sale or sale transaction followed by purchase does not make difference for applicability of provisions of the Section in question. Thus arguments presented by the Respondent are out of context and hence rendered as irrelevant.
- c) The Section 224 of the Ordinance stipulates that the gain must be tendered either to the issuer company or to the Commission as the case may be, but it does not provide the methodology for calculation of amount of gain. The method for calculation of amount of tenderable gain has been provided in Rule 16 of the Rules. It is pointed out that in terms of Section 506 of the Ordinance, the Federal Government is empowered to make rules to carry out the purpose of the ordinance. Hence Rule 16 of the Rules carries out one of the purpose of the Ordinance by providing the manner in which the amount of the gain is to be calculated in terms of Section 224. The said Rule is reproduced hereunder:-

16. Computation of amount to be tendered to a listed company by certain beneficial owners under section 224.---

(1) Any gain made from the purchase and sale, or sale and purchase, of a listed security within a period of less than six months, which is required to be reported to the Commission and the registrar, and to be tendered to the company under section 224 shall be computed in the following manner, namely:-

a) the purchase at lowest rates shall be matched against the sales at

highest rates prevailing within the six months, and the recoverable amount calculated with respect to every individual transaction by reference to the difference between the purchase price and the sale price of any purchase and sale, or sale and purchase disregarding any other transactions, that is to say, the lowest in rate and highest out rate of the purchases and sales or the sales and purchases shall be matched; and

b) the purchases and sales shall be matched as aforesaid so long as the securities involved in the purchase and sale are of the same class and of the same listed company and for this purpose the shares shall be deemed as fungibles.

[(2) For the purpose of sub-rule(1), distribution of bonus shares and allotment of right shares by a listed company to an existing shareholder either on the basis of his entitlement or on account of purchase of right allotment letters from market shall not constitute a purchase .]

(3) Any loss arising out of any transaction in a listed security shall not be set-off against the gain arising out of such security computed in the manner aforesaid:

Provided that the amount of brokerage, stamp duty and other expenditure actually paid or incurred in making the gain may be deducted by the person by whom it is to be reported or tendered subject to production of such documentary evidence in support of the payment having been made or expenditure having been incurred as may be acceptable to the company.

It is abundantly evident that whenever shares of the same class are transacted within the period of six months by a beneficial owner of a listed company, the amount of tenderable gain would be calculated in the light of method given in Rule 16 of the Rules. Since, the Respondent has transacted the securities of same class of the Issuer, therefore, the matter

requires the applicability of the provisions of Section 224(2) of the Ordinance and Rule 16 of the Rules in their true spirit and strength. Thus I am of the considered view that Respondent's plea that the Rule 16 of the Rules is inconsistent with the provisions of Section 2224 of the Ordinance has no substance.

7. Having heard the Respondent and going through written submission submitted by Counsel of the Respondent and after considering the relevant provisions of the prevailing Laws and Rules on the subject matter, I am of the considered opinion that the arguments presented by the Respondent and his Counsel do not have any merit and substance. The Respondent is, therefore, directed under Section 224(2) of the Ordinance to deposit the amount of gain Rs. 263,985/- (rupees two hundred sixty three thousand nine hundred eighty five only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited or pay through a demand draft issued in favour of the Commission, within 30 days of the issue of this Order.

(Imtiaz Haider)
Executive Director (SM)

Islamabad.
Announced on May 30, 2007