

Before Mr. Tariq Bakhtawar, Director Enforcement

In the matter of

M/s Indus Dyeing and Manufacturing Company Limited

(Order Under Section 74 of the Companies Ordinance, 1984)

No. and date of show cause notice	No. C-1369/EMD/052/2005 dated July 12, 2005
Date of final hearing	August 16, 2005
Present:	Mr. M. Mohsin Ghayur, Executive Director M. Yousuf Adil Saleem & Associates (Pvt) Limited
Date of Order	June 30, 2006

Order

This order shall dispose of the proceedings initiated against M/s Indus Dyeing and Manufacturing Company Limited (the "Company") and its directors including the Chief Executive of the Company under the provisions of Section 74 of the Companies Ordinance, 1984 (the "Ordinance") through show cause notice dated July 12, 2005.

The Company was incorporated on July 23, 1957 under the Ordinance as a public company limited by shares. The shares of the Company are listed on the Karachi Stock Exchange (Guarantee) Limited since the year 1963. The paid up shares capital of the Company is Rs. 119.310 million divided into 11.931 million ordinary shares of Rs. 10 each. The Company is principally engaged in manufacturing and sale of yarn. Its registered office is located at 508, 5th Floor, Beaumont Plaza, Civil Lines Quarters, Karachi. The Company has 1838 shareholders comprising individuals, joint stock companies, public sector institutions, financial institutions etc. as per pattern of shareholding annexed to the Directors' Report on the accounts for the year June 30, 2005. Associated companies, directors and their spouses hold 88.51% of the paid up capital. This indicates that there is considerable public interest in the shares of this Company. The Board of Directors of the Company as per its latest annual report for the year ended June 30, 2005 comprises the following:



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1. Mian Shahzad Ahmed, Chief Executive,
2. Mian Riaz Ahmed, Director,
3. Mian Kashaf Riaz, Director,
4. Mian Mohammad Ahmed, Director,
5. Naveed Ahmed, Director,
6. Imran Ahmed, Director,
7. Irfan Ahmed, Director,
8. Shafqat Masood, Director,
9. Mansoob A. Akhtar, Director (nominee NIT)

2. In order to fully appreciate the issue in hand, it is necessary to mention the relevant background facts of this case. Mrs. Ghazala Siddiqui (hereinafter referred to as the “Complainant”), lodged a complaint with the Commission through her letter dated January 2, 2005. She alleged that the Company has contravened the statutory provisions of the Ordinance in relation to allotment and further dispatch of her right shares. According to the Complainant, she holds 4500 Original Paid Right Allotment Letters issued by M/s. Indus Dyeing & Manufacturing Company Limited (the “Company”) against her existing 9000 shares (hereinafter referred to as the “Shares”) in the company. On November 04, 1992 she deposited the amount against these offer letters in the Habib Bank Limited, Bahadurabad Branch, Karachi but the company never issued the shares in her name despite lapse of 14 years.

3. The aforesaid complaint was forwarded to the Company Secretary vide this Commission’s letter dated February 11, 2005 inviting his attention towards the provisions of Sub-Section (1) of Section 74 of the Ordinance to take appropriate necessary action for the redressal of the grievance of the Complainant on priority basis under intimation to the Commission, emphasizing the fact that in case of any failure in this respect the Commission would be constrained to initiate action as provided by law. The Company Secretary through his letters dated February 21, March 9 and June 25, 2005 repeatedly made the following submissions:

- As per the record the subject right shares had already been issued to the complainant and she had also sold the said shares in the market.
- The Complainant has taken up the matter with the Company after lapse of 14 years.
- The record being very old cannot be located by the Company. Perhaps at some point of time she had submitted an undertaking that original right allotment letters were lost by her.



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The reply was not satisfactory and despite repeated requests no documentary evidence in support of these assertions was submitted. Further, the Company failed to explain the position as to why and in what circumstances company had issued right shares (if any) without Original Right Paid Allotment Letters from the shareholder . It was, therefore, decided to initiate legal proceedings under the Ordinance against the Company and its directors.

4. A Show Cause Notice, under the aforesaid provisions of the Ordinance was then served on the Company and all its directors including the Chief Executive on July 12, 2005 calling upon them to show cause and to explain as to why penalty may not be imposed on them for contravention of the mandatory provision of Sub-section (1) of Section 74 of the Ordinance.

5. Simultaneously, the case was fixed for hearing on August 16, 2005, on which date, Mr. M. Mohsin Ghayur, Chief Executive of M. Yousuf Adil Saleem and Associates (Pvt) Limited appeared on behalf of the Company and its directors and contested the case by making following written submissions:

- The Company had issued 45 right letters of 100 shares each, in favour of the Complainant for subscription during July 1992 for 4,500 shares of Rs. 5 each.
- The Complainant subscribed the said right letters, against which 4,500 right shares were issued and right share certificates were also delivered.
- A copy of complainant's account as per members' register shows that the Complainant had sold her 4,500 right shares as per detail below:

Date	Sold to	Certificate No.		Distinctive No.		No. of Shares
03-07-1998	H. Asghar Ali	172635	172644	25191320	25192319	1,000
22-04-2000	Bashir Ahmed	172645	172679	25192320	25195819	3,500

- The addresses of above buyers are as under:
Mr. Hassan Asghar Ali 14/1, 29th Street, Phase V-Ext, DHA Karachi
Mr. Bashir Ahmed 608, Ghulamabad No. 1, Faisalabad
- The present balance of the Complainant is 1875 shares of Rs. 5 each representing bonus shares. If she does not have the same in her possession duplicate share certificates may be issued after completing the legal formalities.



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- As per section 230(6) of the Ordinance every Company is required to preserve its accounts (which includes all sums of money received, including share capital subscribed, as per Section 230(1) (a) of the Ordinance), for a period of ten years. Companies are not legally bound to preserve these details for more than ten years.
- As per Rule 6 (1) and (2) of the Balloters, Transfer agents and Underwriters Rules, 2001 the requirements of preserving books is 5 years only.
- The Complainant filed her claim for share certificates which were already delivered to her, after more than twelve years, at which stage the Company had already lost the supporting documents. She received dividends on her full balance, including the right shares up to the time she kept those shares in her account, and after April 2000 when she sold those shares she received dividend on the reduced number of shares. How is it that she did not notice the reduction in her earnings at that time?

6. The Company further submitted written representations through their consultant vide letters dated August 23, 2005 in response to the Show Cause Notice. Wherein, it was stated that the Complainant had made payment for 4500 right allotment shares at Rs. 5 each in the bank and right shares were delivered to her which she had sold subsequently. However, company or consultant failed to produce any documentary evidence in support of their arguments and rather made an unsubstantiated statement that the shares were sold by the Complainant to Mr. H. Asghar Ali and Mr. Basher Ahmed. The consultant also agreed to the Complainants existing shareholding to the extent of the balance 1875 shares and offered that if those shares were not in the Complainant's possession, duplicate shares certificates can be issued after completion of the statutory requirements/ formalities. Further more, repeated emphasis was laid on the fact that the record related to a period prior to 14 years. Paradoxically, the consultant in his letter dated August 23, 2005 also stated that on their recommendation the management has offered to arrange refund of the amount deposited by the shareholder in the bank against the payment of right shares at Rs. 5/- each, but management is reluctant to issue shares certificates.



7. Before proceeding to decide this case, I consider it necessary to advert to the provisions of the Ordinance, which have *prima facie* been violated by the Company. Sub-section (1) of Section 74 provides that

“Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture stock, and within forty-five days after the application for the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, and unless sent by post or delivered to the person entitled thereto, within that period, shall give notice of this fact to the shareholders or debenture-holders, as the case may be, immediately thereafter in the manner prescribed, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

Provided that the company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central depository, register such transfer in the name of the central depository.]

Explanation-- *The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.”*

The provision of Sub-section (2) of Section 74 of the Ordinance provides per day fine in case of delay in transfer of shares by a company. The provisions of Section 77 of the Ordinance provides that the directors of a company shall not refuse to transfer any fully paid shares unless the transfer deed is, for any reason, defective or invalid.

8. It has been verified that, the Complainant is in possession of 4500 Original Paid Right Allotment Letters issued by M/s. Indus Dyeing and Manufacturing Company Limited (the “Company”) against her 9000 shares (hereinafter referred to as the “Shares”) held in the company and she had deposited the amount against these offer letters in the Habib Bank Limited, Bahadurabad Branch, Karachi on November 04, 1992. She is also in possession of Original paid Right Allotment Letters which are required to be surrendered against the receipt of the shares certificates. On the other hand, the Company has failed to prove dispatch of shares duly supported with any documentary evidence in the form of record of Receipt i.e. receipt by hand/ on production of authority letter/ affidavit or through any other service in its favor. As regards the time period to which the subject record relates, it has been noticed that the first, the Balloters, Transfer agents and Underwriters Rules, 2001 are not relevant in the subject case and secondly the record pertaining to the so called sale of shares to Mr. H. Asghar Ali and Mr. Basher Ahmed relates to the years 1998 and 2000 respectively, and hence the Company was legally bound to preserve it and should have presented the same in its support, which it has failed to do despite considerable time allowed by the Commission. It is also felt that a lawful right of the shareholder cannot be barred by any time limitation.



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9. In view of facts discussed above, I am of the view that the Company has not been able to present any cogent argument in support of its failure to dispatch of these Shares to the Complainant; being their lawful owner. Therefore, the provisions of Sub-section (1) of Section 74 of the Ordinance have prima facie been violated. The delay in transfer of Shares attracts the penal provisions contained in Sub-section (2) of Section 74 of the Ordinance, which provides fine of Rs. 100 for every day during which default continues. The directors, including the Chief Executive are hereby held liable under the aforesaid penal provision for which I, instead of per day fine, impose a token fine of Rs. 10,000 (Rupees ten thousand only) on each of the following Directors and Chief Executive.

1.	Mian Shahzad Ahmed, Chief Executive
2.	Mian Riaz Ahmed, Director
3.	Mian Kashaf Riaz, Director
4.	Mian Mohammad Ahmed, Director
5.	Mr. Naveed Ahmed, Director
6.	Mr. Imran Ahmed, Director
7.	Mr. Irfan Ahmed, Director,
8.	Mr. Shafqat Masood, Director

10. The Directors and the Chief Executive, Mian Shahzad Ahmed, are directed to deposit the fine amounting to Rs. 10,000 each, aggregating to Rs. 80,000 (Rupees Eighty thousand only) in the designated bank account of Securities and Exchange Commission of Pakistan, maintained with Habib Bank Limited within 30 days of the date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are being imposed on the directors and the Chief Executive in their respective personal capacity; therefore, they are required to pay the said amount from their personal resources.



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Further, the Chief Executive and all the directors are directed to reasonably compensate the Complainant forthwith and submit compliance report to this effect to the Commission within 30 days of the receipt of this order. This direction is being given under Section 473 of the Ordinance non-compliance of which shall render the directors of the Company liable for punishment under Section 495 of the Ordinance.

TARIQ BAKHTAWAR
Director Enforcement