



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Lub Gas Limited

Number and date of notice: EMD/242/L/342/12-1683 dated May 18, 2014
Date of hearing: November 17, 2015
Present: Mr. Rashid Sadiq - Authorized Representative

ORDER

**UNDER SECTION 226 READ WITH SECTION 229 AND SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including the Chief Executive (the “respondents”) of Sefam (Private) Limited (the “Company”):

1. Mr. Iqbal Z. Ahmed
2. Qazi Humayun Fareed
3. Mr. Fasih Uddin Ahmed
4. Mr. Razi Uddin Ahmed
5. Mr. Rizwan Fareed

These proceedings were initiated through show cause notice (“SCN”) dated May 18, 2014 under the provisions of section 226 read with section 229 and section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that on examination of the annual audited accounts of the Company for the year ended June 30, 2010, 2011 and 2012 (“Accounts”) and Company’s letter dated February 4, 2014, it was revealed that the Company received securities from agency holders as agency security and cylinder security which are interest free and refundable within 90 days on termination of dealership and return of cylinder by the agency holders

3. During the year the Company received securities amounting to Rs. 291.333 million (2011; Rs. 282.788 million and 2010; Rs. 274.514 million). For deposit these securities the Company is not maintaining a special account with the scheduled bank, prima facie, in contravention of Section 226 of the Ordinance. Consequently, the SCN was issued to the respondents requiring them to show cause in writing as to why penal action may not be taken against them in terms of section 229 of the Ordinance.

4. The respondents replied vide letter dated June 13, 2014 and submitted as follows;



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- LPG distribution agreement submitted to the Commission specifically contain the provision with regard to the usage of the security deposit. The deposits were received in the bank account and were utilized in accordance with the contract in writing.
- The Company has utilized these deposits in accordance with the contract in writing, therefore, there is no contravention of Section 226 of the Ordinance by the Company.
- With regard to money received against cylinder deposits, the same are in the nature of advance payment for goods to be deliver to the distributors. The advances are utilized only for purchase of cylinders which are subsequently deliver to the distributor.

5. In order to provide opportunity of personal hearing; the case was fixed before the undersigned on November 17, 2015. Mr. Rashid Sadiq, Authorized Representative on behalf of respondents appeared and submitted that security deposit account was opened with Habib Metropolitan Bank Limited by the Company on September 2, 2014. In a recent judgment of the honorable Appellate Bench dated November 18, 2015 in the matter of security deposit received by M/s Warid Telecom (Private) Limited from its distributors, franchises, and postpaid customers, it has been held that the security deposits were in the nature of an advance, therefore, the appeal was accepted. The Company has received and utilized the deposits in accordance with the contracts in writing and a bank account for security deposits has been opened by the Company. The Authorized Representative vide letter dated November 27, 2014 submitted auditors certificate and bank certificate regarding opening of security deposit account.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Section 226 of the Ordinance, inter alia, provides that *no company, and no officer or agent of a company, shall receive or utilise any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank:*

Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing.

Section 229 of the Ordinance provides that *whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a*



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fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention.

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

7. Having gone through the facts of the case, provisions of the law and submissions of the respondents and Authorized Representative, I concur with the submission of the representative with regard to money received against cylinder deposits, that the same are in the nature of advance payment for goods to be deliver to the distributors. The Company was, however, in violation of the provision of Section 226 of the Ordinance as it had failed to deposit securities received from agency holders in a special account with the scheduled bank. However keeping in view the subsequently compliance of Section 226 of the Ordinance by the Company by opening security deposit account, I hereby conclude the case with a warning to the respondents to be careful in future regarding compliance with applicable legal provisions.

Amina Aziz
Director
Corporate Supervision Department

Announced:
December 18, 2015
Islamabad