

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Monitoring & Enforcement Division)
State Life Building, 7-Blue Area,
Islamabad

NO. 19(426)/CF/ISS/82

Dated 22nd July, 1999

ORDER UNDER SECTION 263 OF THE
COMPANIES ORDINANCE, 1984 IN CASE OF
M/S EXIDE PAKISTAN LIMITED

An application was received in the Commission on July 7, 1999, under section 263 of the Companies Ordinance, 1984 from the following shareholders of M/s. Exide Pakistan Limited:-

1. Mr. Aqeel A. Karim Dhedhi,
2. Mr. Iqbal S/o. Haji Ismail,
3. Mr. Abdul Rauf,
4. Mr. Ghulam Qadir,
5. Mr. M. Iqbal S/o. A. Karim,
6. Mr. Faisal Bengali,
7. MR. Rafiq Tumbi,
8. Mr. Mohammad Yasin,

2. The applicants who hold more than 10% of the total shareholding of the company and who are ready to bear the cost of investigation have prayed that affairs of the company should be investigated to determine the conduct of the management of the company particularly in regard to the proceedings of the Annual General Meeting held on June 16, 1999 including the election of directors. In the said meeting election of board of directors was held and it was contended by the applicants that the election was manipulated by the management of the company as some of the proxies were unreasonably rejected and a reasonable number of votes were Stopped to be casted in favour of Mr. Rafiq Tumbi. It was contended that had there been no manipulation, the result of the election of directors would have been different and the said Mr. Rafiq Tumbi would have been elected to the board of directors of the company.

3. In this matter Mr. Rafiq Tumbi, one of the applicant in his letter dated 16th July, 1999 (the same day when the AGM was held) addressed to the company's secretary with a copy to this Commission complained that a deliberate attempt has been made by the company to deprive him to be elected to the board directors of the company. He stated that he filed total 583,260 proxies more than 48 hours before the AGM held on June 16, 1999, but at the time of election of directors he was told that out of 5,83,260 proxies filed by him, 27,246 proxies were declared invalid. Resultantly he lost election by 5000 votes. He alleged that rejection of proxies was malafide and these were rejected only to deprive him of the opportunity to be elected to the board of the company. He blamed the Secretary of the company for collusion with the sponsors in the matter. He further alleged that Bankers Equity Limited which had issued proxies in favour of sponsors/management was also present in the meeting through attorney hence, the proxies of BEL stood invalid and the sponsors wrongly/illegally utilized the proxy of Bankers Equity Limited in their favour. Mr. Tumbi through his letter claimed that in view of the circumstances, the election stand null and void. He further stated that he raised these points in the meeting and also got his view points minuted and the said letter was in confirmation thereof.

4. The company on June 17, 1999, while enclosing a copy of the reply sent to Mr. Tumbi on June 17, 1999, in response to his letter dated June 16, 1999 informed the Commission that the company has already sent its reply to the complainant and in case the Commission intends to call any further clarification it is, ready to do so. The company's Secretary in its reply to Mr. Tumbi pleaded that the elections were held in a fair and transparent manner and further stated that M/s.A.F. Ferguson & Co., Chartered Accountants acted as independent scrutineers in the overall election process. The company's secretary further pleaded that in the course of performing their professional duty, M/s. A.F. Ferguson & Co., examined and verified all proxies in order to determine their validity for purposes

of voting and as a result of such examination, M/s. A.F. Ferguson & Co., declared a number of proxy forms as invalid and the votes represented thereby could not be included for the purpose of the election of directors. The company also enclosed a copy of letter dated June 16, 1999 of M/s. A.F. Ferguson & Co., which sets out the tabulation of election results and nothing else. The Company's Secretary forcefully rebutted the charge that an attempt was made to deprive Mr. Tumbi to be elected on the Board of Directors of the company. Regarding presence of attorney of BEL., the Company's Secretary contended that the company was not aware of any person present at the meeting bearing the power of attorney from BEL and that the BEL has not raised any objection about the election of directors. Needless to point out that the Commission also received a letter dated June 16, 1999, from Karachi Stock Exchange with which letters of Mr. Faisal Bengali and Mr. Rafiq Tumbi were enclosed and in which it was requested that the Commission should carry out investigation in the matter as the minority shareholders had claimed that the proxies were wrongly rejected at the time of election. The KSE further pointed out that the company has been creating hindrances right from the beginning of submission of nomination papers by the minority shareholders. The KSE also suggested to help the Commission if the job of investigation is assigned to them.

5. The Commission vide its letter dated June 25, 1999 directed the company to furnish minutes of the AGM held on 16th June, 1999 and the report of A.F. Ferguson & Co., who according to the Company's Secretary had examined and verified the proxies as scrutineers and declared proxies invalid. In the meanwhile, KSE wrote a letter to the Chief Executive of the company on June 24, 1999, a copy of which was again endorsed to this Commission, in which, it was pointed out that M/s. A.F. Ferguson & Co., Chartered Accountants in their letter dated 22.06.1999 have clarified to them that they have not acted as independent scrutineers and that proxies were neither verified by them nor they issued attendance slips to the proxy holders and this work was done by the management of company. This letter of A.F.

Ferguson & Co., further stated that Company's Secretary did show to firm's staff certain proxies forms which had been rejected by them as signatures on these forms did not appear to be matching with signatures of Signature Cards maintained by the company. The KSE again requested the Commission to investigate the matter. It was stated that Mr. Rafiq Tumbi lost the election by only 5,000 votes, whereas 27,246 proxies were rejected.

6. As stated earlier, the company was requested on June 25, 1999, to furnish copy of the minutes of the AGM held on 16-6-1999 and the report of M/s. A.F. Ferguson & Co., on the election process. The Chief Executive of the company informed the Commission that they were collecting information in this regard but did not indicate the date by which information would be submitted. It was considered to be delaying tactics as the company was in the position to furnish the documents called for immediately. Accordingly the company was directed to furnish the requisite documents within 3 days through Fax letter dated 2nd July, 1999. The company furnished a copy of minutes and three letters from A.F. Ferguson & Co., out of which one was dated June 22, 1999 which was addressed to Stock Exchange. The examination of the minutes and Ferguson's letters revealed that:

- (i) Mr. Tumbi in his letter dated June 11, 1999 claimed that he raised the issue of manipulation of the election in the meeting and his view point was recorded by the company whereas the minutes furnished by the company are almost silent on the issue.
- (ii) The minutes furnished by the company are also silent about role of M/s. A.F. Ferguson & Co., Chartered Accountants as scrutineers who allegedly supervised the whole process of election and declared the proxies invalid. The minutes reveals that A.F. Ferguson & Co., only compiled/tabulated results of election.

(iii) The letter of M/s. A.F. Ferguson & Co., dated June 22, 1999 addressed to KSE negates the impression given by the Company's Secretary in this letter dated 17th July, 1999 that M/s. A.F. Ferguson & Co., scrutinized proxies and declared them invalid.

7. The letter dated 24th June, 1990 received from M/s. A.F. Ferguson & Co., provided by the company explains the of role of scrutineers and nearly reiterates the position as stated in Ferguson's earlier letter dated 22nd June, 1999 with the addition that the Company's Secretary did show to Ferguson's Staff proxies forms expressing their concern about validity of signature on the forms and Ferguson's staff did share Secretary's concern in this regard. This letter did not confirm that opinion of the representatives of M/s. A.F. Ferguson & Co., was solicited before declaring proxies invalid and such staff ever participated in decision making in this regard. In fact in earlier letter M/s. A.F. Ferguson & Co., has categorically stated that these forms were shown to them after rejection.

8. While the matter was being examined by the Commission primarily on request of KSE, an application was received from 8 shares holders of the company under section 263 of the Companies Ordinance, 1984 claiming that they hold more than ten percent shares of the company and requested the Commission to investigate into the affairs of the company particularly the proceedings of the said AGM and the process of the election and the conduct of sponsors/management and Secretary etc. The applicants further wanted to deposit by way of demand draft of Rs. 25,000/- towards cost of Investigation but this demand draft was returned to the applicants till decision in the matter.

9. In view of the conflicting material already on record and in order to assess the factual position and to safeguard the interests of the minority shareholders, there is a prima facie case for investigation into the

election process and the proceedings of meeting in question. The company has already certified that the complaining shareholders carry 10.03% shares in the company and the intention of law is that if more than ten percent shareholders of a company apply that the affairs of the company should be investigated, it should be got done as unlike section 265 of the Companies Ordinance, 1984, section 263 ibid does not provide for a show cause notice or opportunity of hearing before ordering an investigation.

10. I accordingly in exercise of powers conferred on me under Section 263 of the Companies Ordinance, 1984 hereby appoint M/s. Sidat Hyder Qamar Maqbool & Co., Chartered Accountants, Progressive Plaza, 6th Floor, Room No. 601-603, Beaumont Road, Karachi - 75530, to investigate into the proceeding of the AGM held on 16.06.1999 with particular reference to the election process itself and to report whether the proxies were rightfully rejected or not. The inspector will also report about the corporate practice and the legal position regarding rejection of proxies which were deposited much before the time of meeting and intimation regarding rejection of proxies were not communicated to shareholders till the time of election. Inspector will also investigate whether minutes of the meeting were properly recorded as Mr. Tumbi claims that he got his view point minuted whereas the minutes of the meeting furnished by the company to the Commission are silent on the issue. The inspector will also investigate the conduct of the sponsors/management and Company's Secretary (who wrongly claimed that M/s. A.F. Ferguson rejected the proxies) and whether the Company's Secretary acted in collusion with the sponsors to deprive the small investor of their representation on the Board. The Inspector will also investigate the role of M/s. A.F. Ferguson & Co., and will state as to whether any responsibility can be shifted to them by the management. The Inspector will submit his report within 10 days, from receipt of the orders and will be paid a fee of Rs. 30,000/- (Thirty thousand) only.

11. The following applicants are hereby directed to deposit the amount of Rs.30,000/- towards the cost of investigation within 7 days of the order of the investigation:-

1. Mr. Aqeel A. Karim Dhedhi,
2. Mr. Iqbal S/o. Haji Ismail,
3. Mr. Abdul Rauf,
4. Mr. Ghulam Qadir,
5. Mr. M. Iqbal S/o. A. Karim,
6. Mr. Faisal Bengali,
7. MR. Rafiq Tumbi,
8. Mr. Mohammad Yasin,

(M. Zafar - ul - Haq Hijazi)
Commissioner (Enforcement)

Place: Islamabad
Dated: 22-07-1999