



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Company Law Division
(Enforcement Department)

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Before Mr. Tariq Bakhtawar, Director Enforcement (Company Law Division)

In the matter of

M/s Muslim Ghee Mills Limited

Under Clause (a) of Sub-Section (3) of Section 196 Read With Section 476
of the Companies Ordinance 1984

Number and date of notice	No. EMD/233/541/2003-6575 dated September 26, 2006
Date	July 03, 2007

ORDER

This order shall dispose of the proceedings initiated against the Chairman, Chief Executive and directors of M/S Muslim Ghee Mills Limited (hereinafter referred to as “the Company”) through show cause notice dated September 26, 2006 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) Land and Building;

2. The Company was incorporated as a public company limited by shares in the year 1992. The shares of the Company are listed on the Karachi and Lahore Stock Exchanges. The paid up capital of the Company is Rs. 26 million divided into 2.6 million ordinary shares of Rs. 10 each. The Company is principally engaged in the production and sale of vegetable ghee. Its mills are located at Adda Qadirabad Multan Road, Sahiwal. The Company has 542 shareholders comprising individuals and joint stock companies and as per its pattern of shareholding annexed to the Directors’ Report in the accounts for the year September 30, 2006, directors, their spouses, relatives and minor children hold 70.33 % of the total shareholding. This indicates that there is considerable public interest in the Company. Board of Directors of the company as per its annual report for the year ended September 30, 2006 comprises the following persons:



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1.	Mr. Imran Malik, Chief Executive
2.	Maj. Gen. (Retd.) Khawaja Rahat Latif, Director
3.	Mr. Faiz-ur-Rehman, Director
4.	Malik Faisal Islam, Director
5.	Mr. Muhammad Sharif, Director
6.	Mr. Jamil Ahmed, Director
7.	Mr. Khizar Hayat, Director

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 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 June, 2006 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, 2006 have qualified their opinion and doubted the ability of the Company to continue as a going concern. The auditors have also highlighted the fact that the Company has sold all of its Property, Plant & Equipment including 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, 2006 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 on the sale of the assets of the Company without the approval of the shareholders.

4. In reply to the Show Cause Notice, the chief executive on behalf of the directors, vide letter dated 9th November, 2006, pleaded that:

- The Company sought shareholders' approval by passing a special resolution on September 30, 2005 in its 16th Annual General Meeting which was also published in the newspapers on 16-12-2005 and all the information was supplied to SECP.
- All the provisions of the Companies Ordinance, 1984 have been fulfilled and nothing is punishable.



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- On July 16, 1996, when the unit of the Company was completely destroyed due to fire and Insurance Company did not pay the claim, litigation started between the Company, insurance company and Company's bankers. During the litigation Crescent Standard Investment Bank Limited obtained a decree against the Company for recovery of Rs. 6.180 Million from special banking court No. 1 Lahore and National Bank of Pakistan obtained decree for the recovery of Rs. 39.00 million from the Lahore High Court.
- On October 14, 2004 SBP committee for resolution of dispute decided that NBP should allow settlement of outstanding liabilities on payment of Rs. 20.555 million determined by M/s Defence Architects (SBP Approved valuer) and the same was also allowed by the Divisional Bench of Honorable Lahore High Court on 22/11/2004. As per agreement National Bank of Pakistan had the option to sell the mortgaged and decreed assets with or without intervention of the court. Under this clause the bank tried to sell the decreed assets of the company to recover its outstanding liabilities. Lakson Tobacco Company Limited offered marketable price of Rs. 17.5 million for the land and building and that was double the bank valued price.
- As per agreement full amount of Rs. 20.555 million has been paid to NBP, Rs. 17.5 million directly to Lakson (the Buyer) and Rs. 2.300 Million by the sale of scrap to Global construction Co. and balance Rs. 0.755 million through directors' loan.
- In addition as per out of court settlement agreement with creditors M/s Crescent Standard Investment Bank Limited has been paid Rs. 2 million through directors loan.

5. The reply was not considered satisfactory, it was checked from the CRO Lahore that the Company never filed any special resolution.

- The notice of AGM referred to by the Company was perused and it was noticed that it did not contain any information about the special resolution claimed by the Company as proposed to be passed therein; rather it contained information about ordinary businesses only.
- The resolution enclosed by the Company was a board resolution and not a resolution approved by the general body of members.



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- Even if we consider the fact that the Company was forced by circumstances, to sell of assets in order to meet creditors obligation, the requirement of complying with Section 196 by passing a special resolution can not be done away with.
- The reply was not appropriate. It was therefore, considered necessary that Company may be specifically asked to submit documentary evidence that it had complied with the requirements of passing special resolution prior to the sale of assets. A letter was then written to the Company with advice to submit the following in support of their claim, within three days of the date of our letter dated October 30, 2006, failing which the case will be decided on its merits.
 - a. Copy of notice of general meeting, in which approval of shareholders for passing the resolution of disposal of assets was sought.
 - b. Contents of the special resolution that was circulated to the members for approval as required by Section 160 and 160 (A) of the Companies Ordinance, 1984.
 - c. Copy of Form-26 duly filed with the concerned Company Registration Office along with proof of filing.
 - d. Minutes of general meeting in which approval was obtained from the shareholders.

6. A reminder was issued for the information on November 20, 2006. No reply or documentary evidence was ever submitted by the Company. This demonstrates that the directors are not interested in defending the proceedings. I, therefore, proceed on the basis of documents and information available on record.

7. Now reverting to the argument that there is no contravention of the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance, as the sale of assets was approved by the shareholders in the Annual General Meeting held on September 30, 2005. In this respect, the notice of the Annual General Meeting held on September 30, 2005 is the relevant document, which needs to be examined. For ease of reference, its contents are reproduced as follows:



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NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the 16th Annual General Meeting of the Muslim Ghee Mills Limited will be held on Friday 30th September, 2005 at 4:00 P.M, at 147-B, Street 11, Cavalry Ground Ext. Lahore Cantt. to transact the following business:

- To confirm the minutes of the last Annual general Meeting.
- To receive and adopt the audited accounts of the Company for the year ended 30th June 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 together with the Directors and Auditors reports thereon.
- To elect seven directors of the Company for a period of three years commencing from October 01, 2005 under Section 178 of the Companies Ordinance, 1984. The retiring directors are Mr. Imran Malik, Maj. Gen. (Retd.) Khawaja Rahat Latif, Mr. Khizar Hayat, Malik Faisal Islam, Mr. Muhammad Sharif, Mr. Jamil Ahmed, and Mr. Faiz-ur-Rehman
- To appoint auditors and to fix their remuneration.
- To transact any other business with the permission of the chair.

Lahore
7 September 2005

BY ORDER OF THE BOARD
Company Secretary

As can be seen from the notice of the meeting reproduced above, there is no mention of any business pertaining to sale of undertaking to be transacted at the aforesaid Annual General Meeting. The notice of the said meeting conveyed to the Commission and the stock exchanges also did not contain any indication that the Company has proposed any such business for consideration of the shareholders as required under the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance. It is to be noted that sale of a sizeable part of the undertaking of the Company was a special business and in order to propose this business, it was obligatory to annex a statement of material facts to the notice of the meeting as required under Clause (b) of Sub-section (1) of Section 160 of the Ordinance, which is reproduced hereunder:

(b) “Where any special business, that is to say business other than consideration of accounts, balance sheet and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement.”



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The notice of the meeting, therefore, is silent about the sale of assets. Moreover, minutes of meeting available on record with the Commission also do not contain any evidence that such a resolution was passed or any such agenda was ever discussed with the shareholders. Further, the Company and its directors have neither submitted any evidence that the aforesaid was complied. I, therefore, do not agree to the argument that the shareholders approval was obtained in accordance with the requirements of law for the sale of sizeable assets. The mandatory requirements are meant to ensure that the shareholders are consulted prior to sale of the undertaking or a sizeable part thereof; therefore, their breach cannot be dealt with lenience.

8. I have examined the record and the relevant provisions of law applicable to this case. For ease of reference, the relevant provision, contained in Clause (a) of Sub-section (3) of Section 196 of the Ordinance are, to the extent relevant, reproduced as under:

Quote

“(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely:

(a) sell, lease or otherwise dispose of the undertaking or a sizeable part thereof, unless the main business of the company comprises of such selling or leasing;”

Unquote

The aforesaid provision restricts the powers of the directors of a public company or of a subsidiary of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of the general meeting, and shareholders have the necessary power in this regard. The prior consent of the shareholders, therefore, is a condition precedent to 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.

9. In view of the above discussion it is quite clear that the Directors / Chief Executive of the Company have not obtained approval of general body of shareholders and have therefore, made themselves liable for punishment under Sub-section (4) of Section 196 of the Ordinance. However, considering the fact that the Company was forced by circumstances, to sell of assets in order to meet



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creditors obligation, I am inclined to take a lenient view of the defaults and instead of imposing maximum penalty on all the directors of the Company, I impose a fine of Rs. 50,000 (Rupees fifty thousand only) on the Chief Executive of the Company only. The other directors of the company are reprimanded to be careful in future.

10. The Chief Executive of the Company, Mr. Imran Malik is hereby directed to deposit the fine aggregating Rs. 50,000 (Rupees Fifty 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, failing which proceedings for recovery of the fine as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

Tariq Bakhtawar
Director Enforcement

Announced
July 03, 2007, Islamabad.