

NO. 19(587)/CF/ISS/90
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Monitoring & Enforcement Division)

**ORDER TO ISSUE NOTICE UNDER SECTION 472 OF THE COMPANIES
ORDINANCE, 1984 IN THE MATTER OF PAK LAND CEMENT LTD.,**

A complaint was received from Karachi Stock Exchange (KSE) on 13-09-1999 intimating that about 8 million shares, in case of M/s. Pak Land Cement Ltd., are not being transferred by the company in the names of banafide buyers of these shares. It was further stated that the Honourable High Court of Sindh vide its short order dated 14-12-1998 and detailed order dated 6-3-1999 had ordered the company to transfer these shares but even then transfer of shares has not been effected in books of the company. It was further stated that an extra ordinary general meeting of the company has been proposed to be held on 24th September, 1999 in which election of directors will take place. The KSE prayed that they delay in effecting the transfer of shares was intentional and malafide on the part of the management of the company with the purpose of depriving substantial shareholders of their legitimate right to vote in the said election or directors on 24-09-1999.

2. Comments of the company on the complaint of the KSE were called Mr. Shamim Mushtaq Siddiqui, directors of the company, vide his letter dated 14-09-1999, explained that after the Hon'ble High Court of Sindh ordered on 6-3-1999 to effect transfer of there shares, the company proceeded to implement the orders of the Court and advised the

complainants to provide necessary documentary evidence to establish their banafide before shares could be transferred in their names. He further stated that the company actively pursued the matter but in the mean time, one of the owners of shares, filed an appeal in the Hon'ble High Court of Sindh on which the Hon'ble High Court of Sindh granted interim injunction which restrained the company from transferring these shares.

3. The copy of order of Hon'ble High Court of Sindh presented by M/s. Pak Land Cement Ltd., in this regard, indicates that the order granting Interim Injunction was passed by the Hon'ble High Court of Sindh on 20-08-1999. The company in its letter has not explained in detail, as to what steps were taken by it during the period from 6-3-1999 to 20-8-1999 to implement the order of Hon'ble High Court of Sindh dated 6-3-1999 and what were the constraints during this period which prevented the company from transferring the shares within the time prescribed by Section 74(1) of the Companies Ordinance, 1984. At this stage I am not aware of the circumstances which even in the presence of order of Hon'ble High Court of Sindh dated 6-3-1999 compelled the company to once again ask the claimants to justify their banafide. Section 76(2) ibid, explains the general spirit of law for smooth transfer of shares and says that transfer of shares may be effected even if transfer deed is lost, destroyed or mutilated and for this company may demand from the claimant indemnity if it think fit. The intention of law precisely is that there should be no hindrance in transferring the shares in the names of banafide holders. Section 78 ibid requires a company to send notice of refusal within 30 days indicting the reasons

of such refusal and violation of these provisions of law attract penal action against a company. While this issue will be separately dealt with, this order is confined to the matter of allegedly depriving the shareholders of their right to vote in the forthcoming election of directors by delaying transfer of shares.

4. It is a fundamental right of a shareholder to contest election of directors himself or to exercise his right of vote for electing a director of his choice. If election of directors is held on the proposed date i.e. 24th September, 1999, holders of 8 million shares in dispute will be deprived of this right. The injunction granted by the Hon'ble High Court of Sindh is interim and it may be vacated or confirmed in the next hearing. The only purpose of the proposed extra-ordinary general meeting is to hold election of directors. The present directors are retiring on 26-09-1999. The proviso to Section 177 of the Companies Ordinance, 1984 explains that in case of any impediment, present directors may continue even after expiry of their term. This proviso to Section 177 of the Companies Ordinance, 1984 is re-produced as under:-

Provision to Section 177:-

Provided that the directors so retiring shall continue to perform their functions until that the successors are elected:-

Provided further that the directors so continuing to perform their functions shall take immediate steps to hold the election of directors and in case of any

impediment report the circumstances of the case to the registrar within fifteen days of the expiry of the term laid down in section 180.

5. The legal position explained in the above quoted proviso is that where some directors retire on a particular date but their successors are not elected due to any impediment, the retiring directors will continue to perform their duties. There is no compelling requirement of law to necessarily hold elections at this stage in which substantial shareholders may not participate due to dispute. In view of this position, it will be justified if the company is directed to cancel extra-ordinary general meeting scheduled on 24th September, 1999 and defer it till the confirmation or vacation of the interim injunction granted by the Hon'ble High Court of Sindh and hold election of directors thereafter. A notice, accordingly, is being issued to the company under section 472 of the Companies Ordinance, 1984 directing it to cancel the proposed meeting and postpone election of directors scheduled on 24-09-1999 till decision of the Hon'ble High Court on the interim injunction, if injunction is vacated to effect transfer of shares in the name of lawful owners of the shares and then follow afresh the procedure prescribed for holding election of directors. The company will keep the Commission informed about the development on each hearing of the appeal pending in the Hon'ble High Court of Sindh, Karachi.

(M. Zafar - ul - Haq Hijazi)

Commissioner (Enforcement)

Place: Islamabad
Dated: 16-09-1999