



Corporate Supervision Department
Company Law Division

Before Ali Azeem Ikram – Executive Director (CSD)

In the matter of

Pak Leather Crafts Limited

Number and date of notice: CSD/ARN/88/2015-1718-1724 dated May 22, 2015
Date of hearing: November 19, 2015
Present: Mr. Talat Aftab, Advocate, Authorized Representative

ORDER

**UNDER SECTIONS 160, 196 AND 246 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including chief executive (together referred to as the “respondents”) of **Pak Leather Crafts Limited** (the “Company”):

- | | |
|------------------------------|-----------------------------|
| 1. Mr. Muhammad Saleem Ahmed | 5. Mr. Bilal Ahmed |
| 2. Dr. Muhammad Shoaib Ahmed | 6. Mr. Umer Ahmed |
| 3. Mr. Nayyer Ahmed Jalali | 7. Syed Fawad Hussain Rizvi |
| 4. Mr. Azeem Ahmed | |

These proceedings against the respondents were initiated through show cause notice (the “SCN”) dated May 22, 2015 under the provisions of sections 160, 196 and 246 read with section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that an investigation into the affairs of the Company was carried out in terms of Commission’s investigation order dated April 24, 2012 issued under the provisions of section 263 of the Ordinance and the inspectors submitted the investigation report dated March 13, 2015 (the “Report”) to the Commission. In the Report, the inspectors, inter alia, concluded, as under:

- During the year ended June 30, 2011 the Company, without obtaining prior authorization or approval of its shareholders, disposed of its fixed assets comprising land & building located at Plot No. 15, 7A, Korangi Industrial Area, Karachi, for a sale consideration of Rs42.500 million through sale deed dated February 24, 2011. The aforesaid land and



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building disposed of by the Company formed sizable part of its undertaking as it had written down value of Rs12.098 million (cost: Rs29.981 million) that constituted 28.79% of the total written down value of Rs42.028 million of the 'Property, Plant and Equipment' of the Company; and

- During the year ended June 30, 2012, the Company, without prior authorization or approval of its shareholders, disposed of its fixed assets comprising 313 machines that included 285 stitching machines, 11 snap button machines, 3 over lock machines, 2 grinding machines and 12 other machines for a sale consideration of Rs2.965 million. The aforesaid machinery disposed of by the Company having written down value of Rs1.853 million (Cost: Rs5.345 million) constituted sizeable part of its undertaking, because after its disposal the stitching capacity of the Company was reduced from 120,000 jackets per annum to nil resulting in abandonment of a business line.

In respect of the aforesaid disposal of 'land & building' and 'machinery', it appeared that the respondents, prima facie, contravened the provisions of the Ordinance, as stated below:

- Clause (a) of sub-section (3) of section 196 of the Ordinance:** In respect of aforesaid 'land & building' and 'machinery', the respondents, prima facie, violated the provisions of clause (a) of sub-section (3) of section 196 of the Ordinance by disposing of those assets constituting sizable part of the undertaking without obtaining sanction or authorization of the shareholders in a general meeting.
- Clause (a) of sub-section (1) of section 160 of the Ordinance:** In respect of aforesaid disposals of 'land & building' and 'machinery', the Company subsequently, obtained *post facto* approvals from its shareholders as 'any other business' in the annual general meetings ("AGMs") held on October 31, 2011 and October 31, 2012, respectively. However, the business of disposal of assets was not included in the notices of respective AGMs under the statement of business to be transacted at the AGMs, prima facie, in violation of the provisions of section 160(1) (a) of the Ordinance.



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- (iii) **SRO 1227/2005 dated December 12, 2005 issued under section 246 of the Ordinance:** In respect of post facto approvals of the shareholders obtained in the AGMs of the Company held on October 31, 2011 and October 31, 2012 for disposal of 'land & building' and 'machinery' of the Company, the respondents, prima facie, contravened the requirement of the Commission's notification SRO 1227/2005 dated December 12, 2005 issued in exercise of the powers conferred by section 246(1) of the Ordinance by not including a statement containing minimum disclosures as prescribed in the said notification.

Consequently, the SCN was issued to the respondents whereof they were called upon to show cause, in writing, as to why fines may not be imposed on them for the aforesaid alleged violations of the Ordinance.

3. In response to the SCN, the respondents submitted their reply dated June 20, 2015. A brief of the reply with reference to the contents of the SCN is as under:

- (i) **Violation of section 196(3)(a):** The Company had sold out land & building situated at Plot No. 15, Sector 7- A, Korangi Industrial Area, Karachi for Rs42.500 million on February 24, 2011. The Company had obtained loan from Habib Bank Limited against mortgage of the aforesaid land & building for exports, which were declining since the year 2009. The land & building was disposed of to clear the bank loan. As the AGM of the company was to be held on October 31, 2011, the Company had called upon its major shareholders who visited the Company on February 20, 2011 and after detailed discussion they approved the sale of land, building & machinery etc. in order to repay the bank's loan. *(The attendance & approval letter of the major shareholders of the company is attached herewith vide page No. 1 to 2.)* The land & building was sold out to Pelle Classic on urgent basis for Rs42.500 million, which was paid out by the purchaser to HBL. This matter is quite clear and should be accepted by the Commission, as done by the company.

The Company had sold out 313 machines during the year ended June 30, 2012. Due to decline in exports the Company had also decided to sell the machinery etc. of the Company which were mortgaged with Al-Baraka Bank. The Company had already



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discussed the matter with its major shareholders on February 20, 2011 and they had approved selling off the mortgaged machinery. During the year 2011- 2012, the machinery was sold out for Rs2.965 million.

- (ii) **Violation of section 160 & 246 of the Ordinance:** The Company did not violate any clause of the Ordinance. As pointed out earlier prior approval of major shareholders of the company was obtained on February 20, 2011 that was necessary for repayment of the bank loans. Moreover, the directors & shareholders of the company had approved sales of land, building & machineries etc. in their AGMs held on October 31, 2011 and October 31, 2012.

Based on the above submission, the respondent stated that they had taken actions correctly; therefore, the proceedings may be dropped.

4. The case was fixed for hearings on October 29, 2015 and November 10, 2015, however, each time the respondents requested for adjournments. Final opportunity of hearing was provided to the respondent on November 19, 2015 before the undersigned and it was clearly communicated that in case the respondents fail to appear in person or through their authorized representative, the Commission will proceed to pass an ex-parte order. The hearing in the matter was held on November 19, 2015 before the undersigned and four of the respondents namely Mr. Azeem Ahmed, Mr. Nayyer Ahmed Jalali, Mr. Umer Ahmed and Syed Fawad Hussain Rizvi, were represented by Mr. Talat Aftab, Advocate, who had earlier submitted power of attorney signed by them. The other three respondents namely Mr. Muhammad Saleem Ahmed, Dr. Muhammad Shoaib Ahmed and Mr. Bilal Ahmed have remained unrepresented because power of attorney was not signed by them. The respondents mainly reiterated their earlier stance as per written reply and reiterated that since the Company had obtained prior approval from the major shareholders, the proceedings should be dropped. However, when the attention of the representative was invited to the specific provisions of sections 196, section 160 and SRO 1227(I)/2005 issued in pursuance of section 246 of the Ordinance, he agreed that the requirement were not complied with by the Company in respect of transaction for sale of assets.



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

Clause (a) of sub-section (1) of section 160 of the Ordinance provides as under:

"The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:-

(a) *notice of the meeting specifying the place and the day and hour of the meeting alongwith a statement of the business to be transacted at the meeting shall be given--*

(i) *to every member of the company;*

(ii) *to any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and*

(iii) *to the auditor or auditors of the company;*

in the manner in which notices are required to be served by section 50, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;....."

Sub-section (8) of section 160 of the Ordinance, inter alia, provides that *every officer of a listed company who knowingly or willfully fails to comply with any of the provisions of section 160 shall be liable to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues.*

Sub-section (3) of section 196 of the Ordinance, inter alia, provides as under:

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 authorisation, do any of the following things, namely.-

a) *sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and..... Emphasis added*

Sub-section (4) of section 196 of the Ordinance provides that *whosoever contravenes any provision of this section shall be punishable with a fine which may extend to one hundred thousand rupees and shall be individually and severally liable for losses or damages arising out of such action.*

The Commission's S.R.O. 1227/2005 issued under section 246 (1) of the Ordinance requires that a listed company shall, while issuing notice of its general meeting where a special business relating to sale, lease or disposal of the sizeable part of its undertaking, is to be transacted under Section 196(3)(a) of the said



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Ordinance, annex a statement, pursuant to Section 160(1)(b) of that Ordinance, detailing, as minimum, the following information, namely :-

- (i) Detail of assets to be disposed of i.e. its description, cost, revalued amount (if available), book value and approximate current market price/fair value. In case of disposal of land location and area proposed to be sold shall be disclosed.
- (ii) The proposed manner of disposal of the said assets.
- (iii) Reasons for the sale, lease or disposal of assets and the benefits expected to accrue to the shareholders therefrom.

Sub-section (2) of section 246 of the Ordinance provides that *in the event of a default in complying with the order of the Commission issued under sub-section (1), the company, and every officer of the company who knowingly and willfully authorises or permits the default, shall be liable to a fine not exceeding one million rupees and to a further fine which may extend to ten thousand rupees for every day during which the default continues.*

6. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents and my observation are as under:

- The Company disposed of its fixed assets comprising land & building located at Plot No. 15, 7A, Korangi Industrial Area, Karachi, for a sale consideration of Rs42.500 million through sale deed dated February 24, 2011. As per copy of the sale deed available on record, the above property had been sold to Ms. Saima Habib daughter of Habib ur Rehman. The property had written down value of Rs12.098 million (cost: Rs29.981 million) that constituted 28.79% of the total written down value of Rs42.028 million of the 'Property, Plant and Equipment' of the Company. Therefore, it constituted a sizeable part of the undertaking of the Company.
- During the year ended June 30, 2012, the Company also disposed of its fixed assets comprising 313 machines that included 285 stitching machines, 11 snap button machines, 3 over lock machines, 2 grinding machines and 12 other machines for a sale consideration of Rs2.965 million, in the year 2012. The aforesaid machinery disposed of by the Company

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constituted sizeable part of its undertaking, because after its disposal the stitching capacity of the Company was reduced from 120,000 jackets per annum to nil resulting in abandonment of a business line.

- It is also clear that the Company sold the aforesaid property constituting sizeable part of its undertaking, without the consent of the general meeting of the Company, hence provisions of section 196 (3) of the Ordinance were contravened. The respondents have tried to justify the default by stating that the Company had called upon its major shareholders who visited the Company on February 20, 2011 and after detailed discussion approved the sale of land, building & machineries etc. in order to repay the bank's loan. The respondents have provided a list bearing signatures of 14 shareholders, whose stated shareholding is 1,928,600 (comprising 56.72% of total 3,400,000 shares). A plain reading of the provisions of section 196 (3) reveals that the law explicitly prohibits the directors of a company from selling, leasing or otherwise disposing of the undertaking of a company or sizeable part thereof, except with the consent of a general meeting. It is clear that approval of shareholders in a general meeting is a pre-requisite that needs to be fulfilled before disposing of the undertaking of a company or sizeable part thereof. Hence, approval of major shareholders for disposal of sizeable part of a company's undertaking without convening a general meeting cannot be construed as compliance of law. It is quite clear that the rights of remaining shareholders have been infringed. If respondents' plea is accepted, it would defeat the whole purpose and scheme of the law which lays down a procedure and mandates giving adequate disclosure to the shareholders so that they could make a well informed decision. Therefore, the respondents' plea is not tenable in the eyes of the law.
- Subsequent to the disposal through sale of 'land & building' and 'machinery' of the Company, the respondents obtained approvals from its shareholders for those transactions on a post facto basis in the annual general meetings ("AGMs") held on October 31, 2011 and October 31, 2012, respectively. Review of notices of the respective AGMs revealed that the notices did not include the disposal of aforesaid assets constituting sizeable part of undertaking in the agenda items of the meetings. Review of the minutes of the AGM reveals that the Company obtained the shareholders' approvals for



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disposal of the assets under 'any other business'. Hence, the respondents violated the provisions of section 160 (1) (a) by not including the business regarding disposal of assets as a special business.

Moreover, the respondent's failed to provide a statement of material facts including the minimum disclosures in respect of the aforesaid business of disposal of assets constituting sizeable part of the Company's undertaking as per requirements of the Commission's SRO 1227(I)/2005 issued under section 246 of the Ordinance. The respondents have again tried to justify the defaults in complying with provisions of section 160 and SRO 1227 (I)/2005 by pleading that approval of major shareholders who visited the factory on February 20, 2011 was obtained, hence, the respondents had done all actions correctly and did not violate any legal provision. The respondents' plea is not tenable in view of the fact that compliance of the aforesaid provisions of the law is mandatory to ensure providing of sufficient and adequate disclosures and information to the shareholders in the statement of material facts along with the notices of the general meetings, so that the shareholders can make a well informed decision based on such information. The respondents' have failed to provide the mandatory information to the shareholders. Moreover, obtaining shareholders' approval subsequent to the conclusion of sale transactions is of limited value, given the fact that actual decision was taken and implemented prior to placing the matter before the shareholders. Thus not only rights of the shareholders have been infringed but they have also been deprived of their right to have advance notice of mandatory information necessary for making a well informed decision.

7. I deem it necessary to make some observations on the importance of the conduct of the board of directors ("BOD"). The directors of a company hold a fiduciary position. They also hold the trust of the shareholders who have invested in the company and have empowered the BOD to manage it. The BOD is expected to run the Company within the parameters of law, in a manner which is fair, prudent and beneficial for the company and its shareholders. It is one of the core fiduciary duties of directors to provide reasonably complete disclosure to shareholders in cases when shareholders are asked to vote. The justification for full disclosure before a shareholder vote is obvious i.e. without good disclosure, the shareholders may not be able to make a well informed decision. Adequate disclosure gains even more importance in cases where shareholders' approval is required for disposing of the undertaking of a company or a sizeable part thereof. Keeping in



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view these factors, the law has required authorization or approval of shareholders in a general meeting before disposal of a sizeable part of a company's undertaking. It is of utmost importance that notice of general meetings called to seek approval of the shareholders for disposal of undertaking or a sizeable part of undertaking of a company must contain all the necessary information and give adequate and correct disclosures that are necessary for the shareholders to make a well informed decision in respect of the business to be transacted at the general meetings. Full and accurate disclosure before a shareholders' vote is required for a well informed decision. It is the duty of directors of a company to see that the disclosures made to the shareholders are adequate and correct and there is no omission of material facts. In view of their fiduciary duties that they owe to the Company, the directors are liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is their primary responsibility to oversee the functioning of the company and ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding compliance with applicable legal provisions.

8. For the foregoing reasons, I am of the view that the provisions of section 160 (1) (a), 196 and 246 of the Ordinance have been contravened by the respondents who not only failed to obtain shareholders' prior approval for disposal of sizeable part of the Company's undertaking, but also failed to give mandatory minimum disclosures to the shareholders subsequently while seeking their approval on a post facto basis. Therefore, in exercise of the powers conferred by section 160 (8) and section 196 (4) of the Ordinance, I hereby impose an aggregate fine of Rs385,000 (Rupees three hundred eighty five thousand only) on the respondents. The respondents are advised to deposit the fines as per following detail:

(Amounts in Rs)

Name of Respondents	Section 160	Section 196	Total
1. Mr. Muhammad Saleem Ahmed	5,000	50,000	55,000
2. Dr. Muhammad Shoaib Ahmed	5,000	50,000	55,000
3. Mr. Nayyer Ahmed Jalali	5,000	50,000	55,000
4. Mr. Azeem Ahmed	5,000	50,000	55,000
5. Mr. Bilal Ahmed	5,000	50,000	55,000
6. Mr. Umer Ahmed	5,000	50,000	55,000
7. Syed Fawad Hussain Rizvi	5,000	50,000	55,000
TOTAL			385,000

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In respect of violation of section 246 of the Ordinance, the respondents are hereby warned to be careful in future and ensure meticulous compliance with applicable legal provisions.

The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalties are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Ali Azeem Ikram
Executive Director (CSD)

Announced:
November 24, 2015
Islamabad