Corporate Supervision Department
Company Law Division

SECP **Before Abid Hussain – Executive Director (Corporate Supervision Department)**

In the matter of

Saleem Sugar Mills Limited

Number and date of notice:	EMD/233/359/2002-1703, dated January 23, 2014
Date of hearings:	December 7, 2015 and February 2, 2016
Present:	Mr. Raza Imtiaz, Mr. Sabeel T. Mannan, Representatives

ORDER

UNDER SECTION 492 READ WITH 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 **Saleem Sugar Mills Limited** (the "Company"):

1. Mr. Mujeeb-ur-Rehman, Chairman
2. Mr. Faisal Saleem, Director & CEO
3. Mr. Masood ur Rehman, Director
4. Mr. Pazeer Ahmad, Director
5. Mr. Muhammad Azeem, Director
6. Mr. Ghulam Shah, Director
7. Mr. Mehmood Shah, Director

These proceedings were initiated against the respondents through show cause notice (the "SCN") dated January 23, 2014 issued under section 492 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the respondents submitted a revival proposal in the Honorable Lahore High Court (the "LHC") during the proceedings filed by the Securities and Exchange Commission of Pakistan (the "Commission") under section 309 of the Companies Ordinance for winding up of the Company. The LHC directed on August 8, 2012 that proposal for revival shall be presented before the Commission for evaluation about its genuineness. The management made a presentation before the Commission on the proposal for revival, through their authorized representatives MJ Panni and Associates. The highlights of submissions with regard to the revival plan were as under:

a) Arranging an investment of Rs.250 million under a Joint Venture Agreement (JV Agreement) dated November 22, 2011, with Q Group from UAE, that shall be utilized for:
   - balancing, modernization and replacement-BMR of Plant and Machinery and working capital requirement of the company from May to September, 2012;
   - the repair and maintenance of the building, that will be conducted at the same time;

The investment was subject to certain pre-requisites including, inter alia, holding of annual general meetings ("AGMs"), dismissal of winding up petition filed by the Commission, and consent from banks for providing credit facility up to Rs.200 million.

b) As a top most preference for phase-1 the plan included developing best quality/model sugar cane and beet farms by providing imported seeds, guaranteed price, survey of land; applying for banking credit lines in 2012 for payments to the sugarcane growers; payment of Rs.75 million and Rs.25 million to growers in 2012 and 2013, out of total of Rs.250 million to be injected by Q group.

c) The company based its projections on the installed crushing capacity of 2200 M. Tons for sugarcane crushing and 1470 M. Tons for beet crushing, during phase-1 from 2011-12 to 2014-15, that will be enhanced to 12000 M. Tons in subsequent phases of the business plan.

3. Based on the revival plan / presentation, the Commission submitted its consent to the LHC for grant of relaxation in timeline up till September 30, 2014, for the revival of the Company, subject to certain guidelines and conditions including submission of quarterly review on revival plan. The Court disposed of the winding up petition of the Commission vide order dated April 23, 2013. Subsequently, in terms of the order of the Court, the Commission received a quarterly review report dated August 13, 2013 from the Chairman / Directors of the Company on injection of funds and compliance and achievements against the projections. The review report revealed as under:

a. The Q Group terminated the JV Agreement due to failure on the part of company in meeting the agreed conditions, including the consent of the banks for credit facilities;
b. The directors could not succeed to borrow money or raise funds as per business plan;
c. Creditor issued notice for payment of Rs.874.536 million and intimated to takeover possession of the mills;
d. Major growers in the area demanded huge unsecured advances and guaranteed price of sugar cane against assurances for supplies;
e. Sugarcane industry experts apprised the directors that existing plant and machinery should be considered as scrap. Most of the portions of the buildings are damaged and require new construction instead of repair as no repair and maintenance was carried out for last 20 years.

The contents of the aforesaid review report reveal that the condition of the fixed assets of the

Company, which lends critical support to the production capacity of the Company *(including building, plant and machinery)* were significantly deteriorated, in contradiction to the statements / assertions made out in the revival proposal. Review of the projections, in the light of assertions stated in the revival plan and presentation to the Commission, revealed that the physical condition of the fixed assets, the conditions imposed in the JV Agreement, and the financial position of the Company did not warrant such unrealistic and optimistic projections. It appeared that the revival of plan was not prepared with due diligence and the information / assertions provided to the Commission were, *prima facie,* incorrect. Consequently, the SCN was issued to the respondent for alleged misstatements in terms of section 492 of the Ordinance and they were called upon to show cause as to why fines may not be imposed on them for the aforesaid contraventions and why a direction to comply with the requirements of the Ordinance may not be given. Since the SCN sent to the respondents at the address of the head office of the Company was returned undelivered, it was served through letter dated February 24, 2014 at their other available addresses.

4. In response to the SCN, Mr. M. Javed Panni, as representative of the respondents requested through letters dated March 3, 2014, March 11, 2014 and March 24, 2014 to allow further time for submission of reply. Later on, through letter dated April 8, 2014 Mr. Panni, submitted reply on behalf of five of the respondents mentioned below and made following submissions:

1. Mr. Mujeeb-Ur-Rehman
2. Mr. Faisal Saleem
3. Mr. Masood-Ur-Rehman
4. Mr. Muhammad Azeem
5. Mr. Pazeer Ahmed

A. The then board of directors ("BOD") of the Company in their meeting held on August 15, 2013 had considered the following bottlenecks involved in the revival of the project:

(i) The banks refusal to provide finances for running of the project.
(ii) Cancellation of the JV Agreement by Q Group due to unavailability of banks finances.
(iii) Constant demand of the creditor for repayment of the loan (principle Rs.293.835 million plus mark-up of Rs.580.701 million as on 31.07.2013).
(iv) Creditor threat to takeover possession of the mills.

The Board after considering above factors was of the unanimous view that the Company could not proceed with the revival plan and has no choice except for liquidation under the Creditors Voluntary Winding-up in accordance with the provision of the Ordinance.

B. The general meeting of the members and the meeting of the creditors of the Company were held on September 13, 2013 and September 14, 2013 respectively and the members and the creditors respectively passed unanimous resolutions to wind-up the Company under the Creditors Voluntary Winding-up provisions of the Ordinance, and nominated Mr. Muhammad Ayub, Advocate, as Liquidator under section 375 of the Ordinance.

C. On appointment of the Liquidator, the Board stood dissolved and all the powers of the directors, chief executive and other officers stood ceased under section 378 of the Ordinance.

D. At the time of appointment of the Liquidator, the Board of directors comprised of the following directors who were elected on March 02, 2013.

1. Mr. Mujeeb-Ur-Rehman	2. Mr. Faisal Saleem
3. Mr. Masood-Ur-Rehman	4. Mr. Pazeer Ahmad
5. Mr. Muhammad Azeem	6. Mr. Dost Mohammad
7. Mr. Sarfraz	

E. The Liquidator had replied to the Commission's notice on February 4, 2014 regarding the liquidation of the Company. The final meetings of members and creditors were held on December 16, 2013 and statutory documents thereof had been filed with Registrar of Companies, Lahore, as required under section 382(4) of the Ordinance, on December 19, 2013. The Registrar was required to register the documents or point out any shortcoming in compliance with the legal requirements. Liquidation authority under the Ordinance vests with the Liquidator and cannot be questioned by the Registrar of Companies. After approval of liquidation in the final meeting of the members, there existed no board of directors and the members also ceased to be the members.

F. The Deputy Registrar of Companies, Lahore has passed an order dated March 10, 2014 under section 468 of the Ordinance by which the returns and documents filed by the Liquidator, have not been accepted. The Liquidator has filed an appeal against the said Order before the Registrar of Companies under section 468(4) of the Ordinance as in his opinion the said Order is illegal, void and without lawful authority.

In light of the above submission it was prayed that:

a) Proceeding in the matter may be held in abeyance till decision of the Liquidator's appeal before the Registrar of Companies;
b) No proceedings can be initiated against the ex-directors of the Company as the Company stands liquidated in the eyes of the law

5. Subsequently, through letter dated February 13, 2015 addressed to all the respondents, a hearing in the matter was fixed on February 26, 2015, however no one appeared on due date. Another hearing was fixed on September 14, 2015 through letter dated August 21, 2015 in response to which Mr. Panni though reply dated September 10, 2015 submitted that the Registrar

of Companies through order dated June 19, 2014 remanded back the case of Creditors Voluntary Winding up to the concerned registrar at the CRO with further direction to call comments from the Liquidator in respect of the observations. The Liquidator preferred an appeal in the Appellate Bench of the Commission, however, the appeal was dismissed through the Appellate Bench's order dated June 29, 2015 and the Registrars' order was upheld. Mr. Panni further stated that the Liquidator filed an appeal in the Lahore High Court against Appellate Bench's order and the matter was subjudice, therefore, hearing could not be held. He also stated that he was no more a representative of the respondents.

6. The Commission through letter dated October 9, 2015 issued to all the respondents, fixed another hearing on October 21, 2015. It was clearly stated in the letter that the subject proceedings were under section 492 of the Ordinance and related to alleged misstatements by the respondents with regard to revival plan. Therefore, filing of write petition in the Court in respect of Creditors' Voluntary Winding up would not affect the subject proceedings. Since no response was received from the respondents, another hearing notice dated October 22, 2015 was issued to all the respondents and hearing was fixed on November 4, 2015. It was clearly stated in the hearing notice that it was final opportunity and in case the respondents fail to attend the hearing in person or through a representative, the Commission shall proceed to issue an ex-parte order on the basis of material available on record. The Liquidator through his letter dated October 20, 2015 again reiterated that he had filed an appeal in Lahore High Court, against order of the Appellate Bench and the matter might be kept pending till the decision of the honorable High Court. (Appeal 34 of 2014 title Muhammad Ayub in the Matter of Saleem Sugar Mills Limited Vs. Registrar of Companies against Order dated 19-06-2014). The same was reiterated by all the seven respondents through their separate letters all dated October 28, 2015. In response to the letters from the respondents, the Commission through letter dated November 2, 2015 once again communicated that the subject proceedings were initiated under section 492 of the Ordinance and relate to alleged misstatements by the respondents who were directors of the Company at the relevant time. Therefore, filing of appeal / petition in the Court in respect of Creditors' Voluntary Winding up did not affect the subject proceedings. The respondents were again advised to appear in the hearing in person or through authorized representative on the appointed dated and time. Since no one appeared on the due date, a final opportunity of hearing was again provided to the

respondent on November 19, 2015 however, the representative of the respondents through letter dated November 18, 2015 again requested for adjournment.

7. As per record of the department a hearing was held on December 7, 2015 before Mr. Ali Azeem Ikram (Executive Director) who was the authorized officer at that time, and five of the respondents were represented by Mr. Raza Imtiaz and Mr. Sabeel Mann during the hearing. The remaining two respondents namely Mr. Ghulam Shah and Mr. Mehmood Shah have remained unrepresented. The representatives of the respondents submitted written reply during the hearing and also made verbal submissions mainly reiterating the written reply. A brief of submissions made by the respondents with reference to the contents of the SCN is given below:

- As per the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"), the Commission is to consist of such number of Commissioners, *being not less than five and more than seven,* as may be notified by the Federal Government under section 5 of the Act. During the last several years the Commission has comprised of only two to three members; particularly during 2014. At present the strength of the Commission is complete; however, the appointment of the Chairman of the Commission is the subject matter of litigation in terms of section 7 of the Act. The Supreme Court of Pakistan in its judgment dated April 27, 2001 passed in in CPLA No. 447 and 448 of 2001 has held that such an absence of the requisite strength of the Commissioners, renders the Commission as *coram non judice.* As per Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973, all orders and judgments of the Supreme Court are binding on subordinate courts, therefore, the aforesaid judgment is also binding on the Commission. In the said judgment, the absence of even one member of the Commission has been held by the august Supreme Court to have rendered the Commission to be *coram non judice* and the proceedings conducted by the Commission have been struck down.
- In the light of the judgment of Supreme Court and due to the Commission being *coram non judice* all the SROs and notifications issued by the Commission for delegation of powers by the Commission to the Commissioners and officers and the powers exercise under those notifications are also without jurisdiction.

- The JV Agreement was executed with Q Group on November 22, 2011 for financial assistance of Rupees 250 million for BMR of plant and machinery, development of sugarcane and beet farms and working capital requirements of the Company.

- Subsequent to the execution of the JV Agreement, the Company submitted a business plan in the honourable Lahore High Court during proceedings of winding up filed by the SECP. Upon direction of the High Court, the management of the Company presented the revival plan before the SECP through their authorized representatives M.J. Panni and Associates.

- The SECP evaluated the business plan and reported to the honourable Lahore High Court, Lahore with the following conditions:

  (a) *The company shall ensure, through its compliance, that the Annual Accounts do not attract adverse opinion from the Statutory Auditors for the year ending September 30, 2014.*

  (b) *The company should submit to the Commission, a quarterly review report on fund injection & compliance/achievement against its projection.*

  (c) *The management of the company shall ensure that all qualifications of the auditors in the audit report for the year ended September 30, 2012 are addressed, and no such qualification is contained in the audit report for the year ending September 30, 2014."*

- The honourable Lahore High Court's order dated April 23, 2013 disposed of the winding up petition, initiated by the Commission against the Company, after the Commission gave its consent to the court to dispose of the winding up petition subject to the Company's complying with guidelines, produced above.

- Subsequently, the company made written requests to Q Group, however the Q Group expressed their concern over delay, as the JV Agreement was executed on November 22, 2011 and the order of High Court allowing the revival of the Company was passed on April 23, 2013, a full year and a half later.

- After receipt of the order issued by the High Court, the banks were approached for credit facilities. Q Group required consents of the banks for credit facilities to the Company. As the same could not be obtained, the JV Agreement was terminated by Q Group.

- The directors of the Company made an utmost effort to secure loans and/ or raise funds, as per the business plan, however they were not successful in their dedicated endeavors.

- Keeping in view the recent valuation report and financial position of the Company, the creditors' claim of Rs.874.536 million could not be settled by any means, whatsoever.

- The secured creditors of the Company issued notice to take over the property of the Company due to non-payment of the principal amount, equivalent to Rs.293,835,669 plus mark-up of Rs.580,701,192. A request furnished by the management of the Company, to the creditors, for an extension of time was also rejected. The same led to the initiation of winding up proceedings in terms of section 358 of the Ordinance. The formalities in this regard were accomplished in terms of the Ordinance and the Liquidator submitted, to the CRO Lahore, the relevant documents of winding up of the Company.

- The contents of the show cause notice under reply are without any basis whatsoever, thus the same are denied in totality. The directors of the Company were helpless for a number of reasons. The SECP's role was a substantive contributing factor vis-à-vis delaying the process of having the business plan/ revival proposal, accepted. As a result of the same, implementation of the JV Agreement was delayed and subsequently the agreement was cancelled by the foreign investor.

- The secured creditors of the Company, issued notices for taking over possession of the Company's assets, being first charge holders, and consequently convened meetings of the creditors and shareholders for a liquidation of the Company, under the creditors' voluntary winding up of the company; the Company stood wound up as a result thereof.
- The business plan and the JV Agreement clearly indicated the BMR of plant and machinery, the development of sugarcane and beet farms and a working capital for the Company. Therefore, the observation of the SECP, in Paragraph No. 4 and 5 of its notice dated January 23, 2014, is not correct. Paragraph No. 3.10 on Page No. 32 of the business plan is reproduced below:

  "3.10. *Out of initial investment of Rupees 250 million, Rupees 150 million will be used for balancing, modernization and replacement of plant and machinery during the period from May to September 2012. Repair and maintenance of the building will be conducted at the same time.*"
- In addition to the afore, Clause 1.1 on Page 2 of the Joint Venture Agreement is reproduced below:

  "Q Group" shall provide financial assistance of Rupees 250 million (Rupees Two Hundred fifty Million) for balancing, modernization and replacement of plant and machinery, development of sugarcane and beet farms and working capital requirement of "The Company" after compliance of all legal and corporate requirements for holding annual general meetings, dismissal of winding up petition C.0 No. 56/2009 filed by Additional Registrar of Companies, Securities and Exchange Commission of Pakistan in the Lahore High Court, Lahore, consent of the banks for providing credit facility up to Rupees 200 million (Two Hundred Million), payment of Government dues etc.

- The above reproduced paragraphs of the business plan and the Joint Venture Agreement manifest that the assertion of the SECP in its notice of January 23, 2014, specifically paragraphs No. 4 and 5 thereof, are not substantiated and are merely assertions without any base or substance. The entire purpose of the investment of Rs.250 million, from the Q Group, was to be inter alia for the BMR of the plant and machinery, repair and maintenance of the building etc.
- Without prejudice to the afore, it is submitted that the revival plan submitted by the management of the Company, to the Lahore High Court, was presented to the SECP, which on its own evaluated the same along with the business plan and with certain conditions accepted the same. Thus at this stage, the SECP cannot alone hold the ex-management responsible for any shortcomings in the revival plan and the projections thereof. Thus the provisions of section 492 of the Ordinance are not attracted to the facts of the case as no misstatement/incorrect information was submitted to SECP.
- Without prejudice and in addition to the afore, it is submitted that subsequent to the preparation of the revival plan and its approval by the honourable Lahore High Court in light of the recommendations/condition of SECP, the political and economic conditions in the Province of KPK changed substantially due to various factors beyond the control of the management. In addition thereto, the Province of KPK suffered heavily on account of floods as

well as the influx of IDPs thus any change in the economic scenario was beyond the contemplation of the management, therefore, the revival plan/projections could not be achieved.

Based on their submissions, the respondents requested to recall and vacate the SCN.

8. During the hearing the representatives were advised to provide the correspondence with Q Group including letter whereof the JV Agreement was terminated. The representative of the respondents through letter dated December 9, 2015 provided the various letters by the Company addressed to banks for availing credit facilities and banks' refusal letter in response. Copies of correspondence letter with Q Group were also provided including the letter dated July 31, 2013 from Q Group in terms whereof it was communicated to the Company regarding termination of the JV Agreement. Later on due to change in Authorized Officer, another hearing in the matter was fixed on February 2, 2016 before the undersigned and Mr. Raza Imtiaz appeared on behalf of the respondents excluding Mr. Ghulam Shah and Mr. Mehmood Shah who have remained unrepresented despite several opportunities given to them. The representative mainly reiterated the earlier written submissions and requested to withdraw the proceedings against the respondents. He further submitted that the revival plan submitted by the management of the Company was dependent on credit facilities from banks and the Q Group and substantive due diligence was done by the respondents in this regard. They made their best efforts to obtain financing and to revive the company but due to refusal of the banks and termination of JV Agreement by Q Group, the respondents could not succeed. The Creditors' Voluntary Winding up was inevitable due to notices from the secured creditors for taking possession of Company's property.

9. Before proceeding further, it is necessary to advert to the provisions Section 492 of the Ordinance, which states as under:

"Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 492 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

10. I have analyzed the facts and circumstances of the case, submission of the respondents and relevant provisions of the Ordinance and my observations are as under:

- The respondents' argument that the Commission was *coram non judice* and all its SROs and proceedings are therefore without jurisdiction in the light of the judgment of Supreme Court of Pakistan is misconceived. The explicit provisions of sub-section (5) of section 5 of the SECP Act, substituted by the Finance Act, 2013 that was passed by the parliament and received assent of the President on March 22, 2013, state that *no act, proceeding or decision of the Commission shall be invalid only by reason of the existence of a vacancy or defect in the constitution of the Commission.* Therefore, after substitution of the aforesaid specific provisions, the existence of a vacancy or defect in the constitution of the Commission does not affect the proceedings or acts of the Commission.

- The respondents have pleaded that the revival plan presented to the Commission was prepared after substantive due diligence and it failed despite best efforts of the respondents. As per their submissions failure was mainly caused due to refusal of banks to extend financing to the Company. Respondents' failure to obtain bank financing resulted in termination of JV Agreement by the Q Group. Hence, the respondents were left with no option but to go for creditors voluntarily winding up of the Company. It is relevant to note that it has not been alleged that revival plan was not implemented rather the allegation is that the submission of the Company that the revival plan was devised after substantive due diligence, is false and misleading. As persons entrusted with stewardship of the company for best utilization of its resources, it was the responsibility of the respondents to exercise due care and diligence and draw up revival plan of the company keeping in mind the ground realities including the credit worthiness and standing of the company and its directors, the condition of plant, machinery and building and trade norms of the local farmers. The events that unfolded subsequent to the Court

Order, whereof time was allowed to the company to revive, made it evident that contrary to the assertions made before the Commission the revival plan was not based on the concrete facts and was drawn up without any due diligence. In view of the aforesaid, the respondents' plea that the revival plan was evaluated by the Commission and therefore, respondents cannot be held liable for any shortcomings in the revival plan does not have any merit.

- The two key basis i.e. availability of financing from banks and investment from Q Group were used by the management of the Company to prepare revival plan. Review of correspondence of the Company with various banks reveals that the Company made requests on its letterhead to banks communicating its interest to avail long term and short term credit facilities stating that it intended to start production in November / December 2013. The Company attached copies of audited financial statements with the application along with a very brief profile of the Company. It was further stated in the letters that there was no charge or lien on Company's assets except for the charge of its sponsors namely Saleem Group of Industries. The banks in response communicated regarding rejection of the Company's request for credit facilities. The whole correspondence does not show any lucid base work, appropriate documentation and supporting evidence to substantiate seriousness of efforts on the part of the management of the Company in respect of availing credit lines from the banks. In fact, being knowledgeable of the Company's state of affairs and its credit worthiness which are essential pre-requisite of access to bank financing, the respondents' use of assumption that substantial bank financing to the tune of Rs.200 million will be available, does not seem to be prudent or careful. Since the Company could not have access to financing from the banks, the Q Group also terminated the JV Agreement as a consequence. Therefore, the whole scheme of presenting the revival plan appears to be unrealistic after evaluation of the subsequent events that followed.
- Thus, I am of the view that the respondents, being custodians of the record and assets of the Company were fully aware of its circumstances and knowingly and willfully presented the plan and projections which were not viable. Given the fact, it can be concluded that they knowingly presented an unviable revival plan to get away from the winding up proceedings in the High Court. The condition of company's assets and its

credit worthiness was not a hidden fact from the directors.. Therefore, it is not tenable that the respondents did substantive due diligence while preparing the plan. It transpires that the respondents have deliberately tried to misguide the Commission and the Court regarding viability of the revival plan just to avoid winding up of the Company by Court based on the petition that was filed by the Commission under section 305 and 309 of the Ordinance.

- Subsequent events show that the respondents started the Creditors' Voluntary Winding up of the Company within less than four months of the order dated April 23, 2013 of the High Court, whereof the winding up petition was disposed of. The said secured creditors as disclosed in the audited accounts of the company are none other than Saleem Group of Industries, an associated concern of the directors of the Company. Moreover, the aforesaid loan has remained unverified during the year 2000 through to 2004 and the statutory auditor in his audit report to members on the annual audited accounts of the Company for the year ended September 30, 2012 and review report on half yearly Accounts for March 31, 2013 has given adverse opinion and has, inter alia, stated that the aforesaid loan balances has remained unverified. The respondents have failed to present any arguments as to what change in circumstances compelled the associated companies to initiate Creditors' Voluntary Winding up of the Company. Moreover, during the proceedings before the concerned registrar regarding the Creditors' Voluntary Winding up, the Liquidator of the Company failed to provide evidence of receipt of the aforesaid loan by the Company. As per audited Accounts of the Company the amount of the long term loan from Saleem Group of Industries ("SGI") has remained stagnant at Rs.256,767,060 and that is the only long term loan disclosed. The notes further disclose that SGI consists of entities run by the existing directors of the Company. In view of the aforesaid; firstly the veracity of the loan payable to secured creditors cannot be determined. Secondly, the submission that the company was at the mercy of the creditors who had demanded repayment of the loan is also a misstatement. The aforesaid clearly indicates that the representation regarding efforts for revival of the company was false and the directors had disguised their real intention. Commissioning a Creditors Voluntary Winding on behest of the SGI who is none other than the directors themselves clearly demonstrates that the respondents avoided a transparent winding up process through Court by presenting a fabricated revival plan to pass benefit to their associated concern in guise of a loan which is unverified and unsubstantiated.

- The aforementioned facts prove that the respondents deliberately misguided the Commission and the High Court by presenting a revival plan which was not viable just to avoid the winding up of the Company by the Court. Subsequently they themselves tried to wind up the Company under Creditors' Voluntary Winding up avoiding any check and balance or supervision by the independent person or authority in the process of disposal of assets and payments of the claims in a transparent and fair manner. Transparency demanded that once the revival plan was shelved, the respondents should have approached the Commission or the Court to seek guidance for a future course of action after giving an update on the matter. Instead, they proceeded for the Creditors' Voluntary Winding up and only approached the Registrar for filing of the documents regarding the Creditors' Voluntary Winding up.
- The conflict of interest of the respondents is very apparent in the whole process and it cannot be overlooked. I have also observed that the respondents made every effort and used dilatory tactics to avoid and delay the subject proceedings and they only appeared through their representative once it was made clear to them by the Commission through several correspondences that the instant proceeding were initiated for alleged misstatements in the revival plan and that the *sub-judice* status of their appeals in any other proceedings would not affect the current proceedings.

11. I deem it necessary to make some observations on the importance of adequacy and accuracy of disclosures in documents including the revival plans that are filed with the Commission and directors' duties and responsibilities towards the Company and shareholders. In case of winding up proceedings against a company, the revival plan prepared and presented by the directors is the basis for evaluating and deciding on whether to proceed for winding up of a company or give it a chance for revival of business. The directors are mandated by law to make prudent decision in the interest of the company and same applies in case of a revival. Prudence demands that revival plans are based on adequate, justifiable and reliable assumptions keeping in view the ground realities, knowledge of state of affairs, business and credit worthiness of the Company and its sponsors are of utmost importance. It is a fair expectation of the regulator that

the directors of a listed company while presenting a revival plan will exercise due care, prudence and their knowledge of affairs of the company and shall use valid basis and assumptions while preparing a revival plan. Such a revival plan would present reliable information and would be viable and practicable. In case the assumptions and basis used in preparing a revival plan are devoid of reasonable prudence and due care, it would not be unfair to conclude that the intention of those who prepared such a plan was to misguide or deceive the users. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding misstatements or omissions of material information in the revival plan that was based on assumptions which were not in line with the ground realities, state of affairs of the Company, condition of its assets and its inability to have access to bank financing. They also cannot avoid their responsibility of exercising due care and prudence while preparing and presenting the revival plan to the Commission.

12. For the foregoing reasons, I am of the view the respondents presented a revival plan that was based on unrealistic assumptions devoid of reasonable prudence and diligence and hence misstated regarding viability of revival of the Company. Therefore, in exercise of the powers conferred by section 492 of the Ordinance, I hereby impose an aggregate fine of Rs3,500,000/- (Rupees three million five hundred thousand only) on the respondents. The respondents are directed to deposit the fines in the following manner:

	Name of Respondents	Amounts in Rupees
1.	Mr. Mujeeb-ur-Rehman, Chairman	**500,000**
2.	Mr. Faisal Saleem, Director & CEO	**500,000**
3.	Mr. Masood ur Rehman, Director	**500,000**
4.	Mr. Pazeer Ahmad, Director	**500,000**
5.	Mr. Muhammad Azeem, Director	**500,000**
6.	Mr. Ghulam Shah, Director	**500,000**
7.	Mr. Mehmood Shah, Director	**500,000**
	Total	**3,500,000**

The aforesaid fines 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 penalties, 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.

Before parting with the Order, I hereby direct the concerned registrar to refer the matter to the relevant court, as in the instant case, the respondents also made misstatement before the honorable court and avoided winding up in a transparent manner.

Abid Hussain
Executive Director (Corporate Supervision Department)

Announced:
February 17, 2016
Islamabad