

Before Ashfaq Ahmad Khan, Director (Enforcement)

In the matter of

M/s. Beema Pakistan Company Limited

(Under Sub-section (4) of Section 158 of the Companies Ordinance, 1984)

No. and date of show cause notices	ID:SEC:1.0.51(46)/2005 Dated July 20, 2005
Date of hearing	September 15, 2005
Present	Mirza Shahnawaz Agha Chief Executive Officer
Date of Order	September 29, 2005

Order

This Order shall dispose off the proceedings initiated against M/s. Beema Pakistan Company Limited (hereinafter referred to as the “Company”) and its directors for defaults made in complying with the provisions of Sections 158 and 233 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meeting (the “AGM”) for the year ended December 31, 2004 on or before April 30, 2005. Further, in terms of the Provisions of Section 233 of the Ordinance, the Directors of the Company were required to lay before the Company in the AGM a balance sheet and profit and loss account for the year ended December 31, 2004 by April 30, 2005. The company was also required to send the said accounts alongwith the auditors and directors reports to the shareholders, the Commission, the Stock Exchange(s) and the Registrar at least 21 days

before the date of AGM. Failure of the Company to comply with the aforesaid mandatory requirements necessitated action against the Company and its Directors in terms of Sub-section (4) of Section 158, Sub-section (6) of Section 233 read with Sub-section (7) of Section 230 and Section 476 of the Ordinance. Accordingly, show cause notices dated July 20, 2005 were served to the Company, its Chief Executive and Directors calling upon them to show cause as to why penal action may not be taken against them under the aforesaid provisions of the Ordinance.

3. In response to the show cause notices, Mr. Sarfaraz Khan, Company Secretary contended vide his letter dated August 03, 2004 that the Company by an application dated April 06, 2005 requested SECP for an extension of time for 60 days for holding AGM for the year ended 31.12.2004 but the request of the Company was declined by SECP against which the Company filed a Constitution Petition No. 453 of 2005 and a stay application bearing No. 1751/2005 in the Hon'able High Court of Sindh, Karachi praying that SECP may be restrained from acting upon the aforesaid order or for taking any type of coercive action against the Company in pursuance thereof. It was further stated that the Hon'able Sindh High Court on the said application had directed SECP not to take any adverse action against the Company. It was also submitted that as the Company being aware of about the importance of laying of its accounts before the shareholders, held an EOGM on 27.07.2005 in which accounts for the year ended 31.12.2004 were presented. The Company, therefore, requested for withdrawal of the show cause notices in question.

4. As the reply was not considered satisfactory, a hearing in the matter was fixed before the undersigned on September 15, 2005. On the date of hearing Mirza Shah Nawaz Agha, the Chief Executive of the Company appeared. He also filed a written reply vide his letter dated September 14, 2005. In the written as well as verbal submissions, he reiterated the same arguments as were advanced in earlier reply to show cause notices dated July 20, 2005. It was however, further contended that according to Section 233 (1) laying of accounts depends on the holding of AGM which in their case could not be held as they have requested the Commission for an extension of time in holding of AGM, which request was turned down by the Commission without any plausible reasons. The Company filed an appeal in the Sind High

Court at Karachi against Commission's decision for not allowing extension of time for holding of AGM and the Court through an Interim Order dated May 06, 2005 directed the SECP not to take any adverse action against the Company. It was further contended that as the said matter was subjudice, the Commission was barred from taking any action against the Company. He however, stated that to avoid further delay due to holidays in the Courts, the Company decided to hold an EOGM on July 27, 2005 to lay the accounts before the shareholders. He thus requested to drop proceeding against the Company and its Directors. He, on a query as to whether annual accounts can be presented in an EOGM, took the plea that his legal advisor has given him an opinion that the Company can get the accounts approved in the EOGM instead of in an AGM. He was advised to give a copy of the said opinion within 7 days of the hearing which he failed to provide.

5. I have given careful consideration to the arguments advanced for failure to hold the AGM and to circulate annual accounts within the mandatory time period. However, none of them justify the default in holding of AGM and transmission of annual accounts. As regards request of the Company for grant of extension in time for holding AGM, the same was rejected because no cogent reason was provided by the Company for the same. The Company requested SECP for extension on the grounds that they were preoccupied with the renewal of registration of the Company. The reasons put forth do not appear plausible. In terms of Rule 14(1) of the Companies (General Provisions and Forms) Rules, 1985, the Company was required to submit application for extension of time to the Commission not less than 30 days before the last date on which AGM was required to be held, but the Company submitted the said application with a delay of 8 days. Additionally, involvement in the process of renewal of registration is not a special reason for not timely holding the AGM. The appointment of new auditors as stated by the Company also cannot constitute a valid reason for delay in finalization and audit of the accounts. As regards Company's contention that the Court vide its Order dated May 26, 2005 had directed SECP not to take any action against the petitioner Company is not correct. The Writ petition filed by the Company and orders passed in this respect by the Hon'ble High Court of Sind dated May 06, 2005 and May 26, 2005 have been reviewed and it has been observed that the order passed by Hon'ble Court dated May 06, 2005 was modified vide subsequent order dated May 26, 2005 where the Commission

(respondents) was directed not to take any action against the petitioner Company **except in due process of law**. In other words, the said order clearly states that the Commission can take legal actions against the Company and its Directors **in due process of law**. Accordingly, show cause notices were issued under Sections 158 & 233 of the Companies Ordinance 1984 for non holding of AGM and non presentation of accounts for the year ended December 31, 2004 by April 30, 2004. It was further noticed that the Hon' able High Court of Sind did not impose any restriction on the Company to hold its overdue AGM which was a mandatory requirement, however, the Company instead of holding AGM held an EOGM on July 27, 2005 and presented its annual accounts in the said meeting which is not a proper forum for approval of annual accounts. The matters pertaining to placement of annual accounts and appointment of auditors are mandatorily required to be placed before an AGM only. It is also important to mention that KSE had also informed the Company vide its letter dated July 08, 2005 that under the listing regulations of KSE and the Companies Ordinance, 1984 there is no concept of holding EOGM in place of an AGM for preparation of annual accounts.

6. As per the provisions of Sub-Section 1 of Section 233 of the Ordinance, the Directors of every company are required once atleast in every calendar year to lay before the company in the AGM a balance sheet and profit & loss account for the year since the preceding accounts made up to a date not earlier than the date of the meeting by more than 4 months. The provisions of Sub-Section (5) of Section 233 require that a listed Company shall simultaneously with the dispatch of the balance sheet and profit & loss account together with the reports to the shareholders as referred to in Sub-Section (4) of Section 233, send five copies of each of such balance sheet and profit & loss accounts and other documents to the Commission. The Company by not holding an AGM and not presenting therein its annual accounts has thus contravened the statutory provisions of law. However, as the Company has circulated its accounts to the shareholders, though late, I am ignoring the default relating to circulation of accounts.

7. As regards default for non-holding of AGM under Section 158 of the Ordinance, the contentions of the Directors do not carry any merit. It is the responsibility of the Directors of the Company to timely hold AGM for providing timely information to its shareholders to

enable them to deliberate and approve the significant matters like approval of accounts, appointment of auditors, election of directors, performance of the company and other important issues relating to the Company. The past record of the Company reveals that in the past also, the management had committed such default. The repetition of default shows that the management of the Company does not take the provisions of law seriously. Accordingly, the default under Section 158 is considered willful and deliberate, which attracts the penal provisions of Sub-section (4) of Section 158 of the Ordinance.

8. Taking into consideration the facts and circumstances of the case, I, in exercise of powers delegated to the undersigned vide SRO No. 161(1)/2004 dated March 17, 2004 impose the following penalties on the Chief Executive and other Directors of the Company under Sub-section (4) of Section 158 of the Ordinance as under:-

S. No	Name	Penalty Rs.
1.	Mr. Shahnawaz Agha Chief Executive	50,000
2.	Mirza Zaheer Agha, Director	20,000
3.	Syed M. Salahuddin, Director	20,000
4.	Mr. Jawied Ishaque, Director	20,000
5.	R. Adm. (R) Syed Hamid Khalid, Director	20,000
6.	Mr. Hasan Inamullah, Director	20,000
7.	Dr. Naseemuddin Qureshi, Director	20,000
	Total	170,000

9. The Chief Executive and Directors of the Company are hereby directed to deposit the aforesaid fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited or pay through a demand draft in the name of Securities and Exchange Commission of Pakistan within thirty days from the receipt of this Order and furnish receipted Challans to the Commission failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It should also be noted that the above mentioned penalties on the Chief Executive and Directors are

imposed in their personal capacity, therefore, they are required to pay the said amount from their personal resources.

Ashfaq Ahmad Khan
Director (Enforcement)