



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Capital Issues Department (MSCID)

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Shariq Iftikhar, Chief Executive of Diamond Industries Limited

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan ("**Commission**") through Show Cause Notice No. SM(BO)222/18(566-D)/96 dated 29/09/2011 ("**Notice**") issued to Mr. Shariq Iftikhar ("**Respondent**") Chief Executive of Diamond Industries Limited ("**Issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that it was observed from the record of this office that the Issuer Company is a public listed company and the Respondent is its Chief Executive. Furthermore decrease of 50,000 shares was also observed in shareholding of the Respondent. Thus, pursuant to provisions of Section 222(2)(c) of the Ordinance, he was required to file return of beneficial ownership on prescribed form, within the stipulated time period. But, he failed to discharge his said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222 of the Ordinance deals with the submission of statements by beneficial owners of listed securities. For convenience, the provisions of the said Section are reproduced hereunder:-

- (1) *Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.*
- (2) *The period within which the said return is to be submitted to the registrar and the Commission shall be—*



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- (a) where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;
- (b) in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;
- (c) where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change; or
- (d) where the Commission by an order so requires, within such period as may be specified in such order.

4. It is worth mentioning that in order to provide an opportunity to directors/beneficial owners of listed companies to file their over due returns of beneficial ownership without facing penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.

5. On account of scrutiny of record of this office, it was observed that the Respondent has failed to file the return of beneficial ownership for the aforesaid change in shareholding. He was, therefore, asked vide letter dated 18/01/2011 to file return of beneficial ownership on Form 32 for said change(s) in shareholding alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance.

6. Subsequent to seeking extensions in time, the Respondent filed Form 32 with this Commission on 30/08/2011 showing therein that 50,000 shares of the Issuer Company were sold



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on 12/11/2004. Thus the aforementioned change in shareholding was reported to the Commission with delay of 2,467 days in contravention of Section 222(2)(c) of the Ordinance, which provides as under:-

"Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues".

7. The Commission accordingly took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contraventions of Section 222(2)(c) of the Ordinance. The Company Secretary of the Issuer Company on behalf of the Respondent filed written reply to the Notice vide letter dated 07/10/2011, wherein he inter alia stated that:-

- a) *Compliance of the Commission Notices dated 07/09/2009 and 21/09/2010 could not be made because the person who was dealing with this case expired in the year 2007 and thus no handing over/taking over of the files was done with the present staff of corporate affairs. The mistake once committed continued till the pointing out by the Commission.*
- b) *On receipt of letter dated January 18, 2011 we immediately started digging of old record and also approached M/s Escort Investment Bank Limited our broker, who unfortunately had closed their trading house business. Thus it took some time to reach at a right conclusion. When it transpired that there was an omission, Form 32 was submitted immediately through our letter dated 27/08/2011.*
- c) *The mistake was inadvertent and the Respondent has not knowingly and willfully contravened the provisions of section 224 of the Companies Ordinance, 1984. Thus the same may be condoned.*
- d) *The Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*

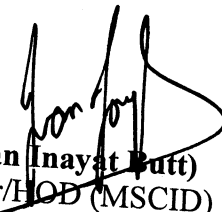


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8. Furthermore, in order to provide him an opportunity of being heard in person, hearing in the matter was fixed for 14/10/2011 at Commission's Head Office, Islamabad. In this regard, the Company Secretary in his aforementioned letter stated that our Corporate Manager Mr. Zahoor Ahmad who is well versed in this matter is suffering from Dengue fever coupled with other serious complications has been advised not to travel by road/air due to deteriorating health position. He further requested that if personal hearing in the matter is necessary, then the same may be fixed at regional office the Commission, Lahore.

9. I have considered written submissions made on behalf of the Respondent by the Company Secretary of the Issuer Company. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The Respondent has assured for timely filing of the returns of beneficial ownership in future and requested to condone the default in question. I have also reviewed the available record which reveals that the Respondent has sold only 50,000 shares on 12/04/2004 and has not made any purchase/sale transaction subsequent to it. Considering the submissions made by the Company Secretary, I intend to agree with the contention of the Respondent and of the view that the late filing of the return of beneficial ownership on Form 32 as at 26/08/2011 may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.

10. This order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.


(Imran Inayat Butt)
Director/HOD (MSCID)

Islamabad.
Announced on October 31, 2011