

Status: There is stay order on the proceedings of this Order and the matter is pending adjudication before the Sindh High Court.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT

Before Commissioner (Specialized Companies Division)

IN THE MATTER OF SHOWCAUSE NOTICE DATED MAY 02, 2016 ISSUED TO THE CHIEF EXECUTIVE AND ACTING COMPANY SECRETARY UNDER SECTION 282 E OF THE COMPANIES ORDINANCE, 1984 ALONG WITH ALL OTHER ANCILLARY MATTERS, DIRECTED BY THE HONORABLE COURT VIDE ORDER DATED OCTOBER 17, 2016 PASSED IN W.P No. 2342 OF 2016, TO BE DECIDED BY THE COMMISSION

Date of first hearing

May 25, 2016

Present

i. Mr. Muhammad Tariq Masud (CEO)

Assisting the Commissioner (SCD)

- i. Mr. Imran Inayat Butt (Executive Director)
- ii. Ms. Saima Ahrar (Joint Director)
- iii. Mr. Muhammad Jehangir (Joint Director)
- iv. Mr. Ibrar Saeed (Joint Director)

Date of second hearing

November 10, 2016

Present

- i. Mr. Muhammad Tariq Masud (CEO)
- ii. Mr. Sardar M. Ghazi

Assisting the Commissioner (SCD)

- i. Mr. Imran Inayat Butt (Executive Director)
- ii. Ms. Saima Ahrar (Joint Director)
- iii. Mr. Ibrar Saeed (Joint Director)

Date of third hearing

November 16, 2016

Present

- i. Mr. Niaz Ahmed Khan Toru
(also representing Mr. Najamul Hasnain Kazmi)
- ii. Mr. Hashmat Ali Habib
(on behalf of Mr. Ahsanullah Khan and Mr. Muhammad Ameen)
- iii. Mr. Shaikh Aftab Ahmed, EVP (SAPICO)
- iv. Mr. Zafar Iqbal, SVP Law (SAPICO)

Assisting the Commissioner (SCD)

- i. Mr. Imran Inayat Butt (Executive Director)
- ii. Ms. Saima Ahrar (Joint Director)

ORDER

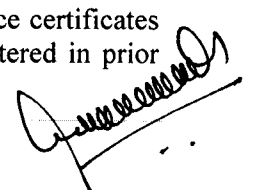
This order shall dispose of the proceedings initiated against Mr. Muhammad Tariq Masud, Chief Executive (herein referred to as the "CEO") and Mr. Zahiruddin Kazi, Acting Company Secretary (herein referred to as "Mr. Kazi") of Saudi Pak Leasing Company Limited (the "Company") through Show Cause Notice (hereinafter referred to as the "SCN") dated May 02, 2016 under Section 282 E of the Companies Ordinance, 1984 (the "Ordinance") and shall also dispose of all the related matters as directed by the

honorable Islamabad High Court vide order dated October 17, 2016 passed in case titled Mohammad Tariq Masood vs SECP & others (W.P No.2342 of 2016).

2. The brief facts of the case are that the overdue Annual General Meeting (“AGM”) of the Company for the period ended June 30, 2015 was held on March 22, 2016 and notices to this effect were given in the newspapers. One of the Agenda item was “election of directors”. Twelve contestants filed their nomination papers for the election. Prior to AGM date, Securities & Exchange Commission of Pakistan (hereinafter referred to as “SECP”) received certain complaints from Mr. Ahsanullah Khan, Mr. Niaz Ahmed Khan, Mr. Syed Najmul Hasnain Kazmi & Mr. Muhammad Ameen, wherein, the complainants alleged that their nomination papers were rejected unfairly, without valid grounds and they were also disqualified from contesting the election by Mr. Kazi. Feeling aggrieved from afore-mentioned action of Mr. Kazi, two contestants challenged the election and also obtained stay order on March 19, 2016. However, AGM was held on March 22, 2016 and a seven-member Board of Directors (“BOD”) was constituted and application for its approval was submitted to SECP for clearance. The stance taken by Mr. Kazi was that the number of contestants was equal to the number of directors fixed, therefore, the BOD stood elected and election was not required.

3. In pursuance of the above, an enquiry/inspection into the affairs of the Company was ordered by SECP on April 06, 2016. Major instances highlighted by the enquiry team are as follows:

- i. As per the qualification, Mr. Kazi was ineligible to become Company Secretary. Form 29 of his appointment was never filed with Registrar and he was involved in the scrutiny of candidatures for election of directors.
- ii. Nomination papers of four contestants Mr. Ahsanullah Khan, Mr. Niaz Ahmed Khan, Mr. Najmul Hasnain Kazmi and Mr. Muhammad Ameen were rejected unfairly, without stating any valid grounds on which the nomination papers were rejected and were also disqualified from contesting the said election.
- iii. Despite the stay order on the election of directors, a seven-member board was constituted and application for its approval was submitted to SECP for clearance with the stance that the number of contestants was equal to the number of directors fixed, therefore, the board stood elected and election was not required. The utmost motive of the CEO and Mr. Kazi was to constitute a board of people of their own choice to whom they can easily influence as per their own intensions.
- iv. The approval of shareholders for the BOD constituted in the AGM of March 22, 2016 does not hold valid grounds in light of the stay order dated March 19, 2016.
- v. There were some disputes between the CEO and other Board members which resulted in Company’s non-compliance of regulatory provisions etc.
- vi. Total assets declined by 30%, the equity decreased by 93% and classified assets increased by 24% during the tenure of the present CEO. Furthermore, revenues declined by 71% during the year ended June 30, 2015 as compared with the previous year while the company incurred loss of Rs. 193 million for the year ended June 30, 2015 as compared with profit of Rs. 7 million for the year ended June 30, 2014.
- vii. The Company incurred a net loss of Rs. 192.928 million during the year ended June 30, 2015 and as of that date, the Company's current liabilities exceeded its current assets by Rs. 571.878 million and had a negative equity of Rs. 556.763 million.
- viii. The Company defaulted in making payments of its borrowings, term finance certificates and certificates of investment for which restructuring agreements were entered in prior



years. As of June 30, 2015, outstanding liability on which defaults were made amounted to Rs. 1,001.969 million including default mark-up of Rs. 286.983 million.

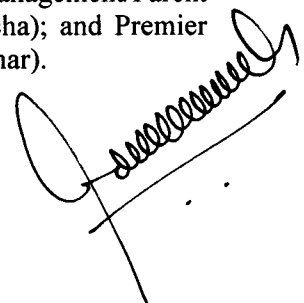
- ix. As the Company currently does not meet the minimum equity requirements, as per the Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 ("NBFC Rules") and Non-Banking Finance Companies and Notified Entities Regulations, 2008 ("NBFC Regulations"), the Company's license to carry out the leasing business which was expired on May 18, 2010 has not been renewed by SECP till date.
- x. The Company has not accrued the liquidated damages of Rs. 17.933 million due to defaults against the amount due to certain financial institutions. As per the auditors, had the charge been recognized by the Company, loss before taxation and negative equity would have been higher by Rs. 17.933 million.
- xi. The auditors of the Company, KPMG Taseer Hadi & Co., in their audit report dated January 6, 2016 has given adverse opinion on the financial statements of the Company for the period ended June 30, 2015. In their opinion, the financial statements do not give true and fair view of the state of affairs of the Company. The auditors have further reported certain other issues with the Company including violations of regulatory framework and accordingly raised questions in their audit report regarding the Company's ability to remain a going concern.
- xii. The Company has failed to comply with the requirements of Section 234 (1) of the Ordinance. As reported by the statutory auditors in their audit report, the financial statement of the Company for the financial year 2015 do not present/demonstrate a true and fair view of its state of affairs as at June 30, 2015.
- xiii. The Company has failed to transmit to the members, its accounts for quarter ended September 30, 2015 and half year ended December 31, 2015, which is a violation of Section 245 (a) of the Ordinance. Furthermore, the Company has also failed to submit its quarterly/half-yearly accounts with SECP, which is a violation of Section 245 (b) of the Ordinance and Rule 7 (1) (da) of the NBFC Rules.

4. On the basis of findings of the enquiry report, SCN was issued to the CEO and Mr. Kazi under section 282 E of the Ordinance whereof they were called upon to show cause, in writing, as to why they may not be removed. The CEO and Mr. Kazi were required to submit their replies to the SCN by May 09, 2016 and hearing, in this regard, was fixed for May 10, 2016. Mr. Kazi submitted his response on May 06, 2016, however, he did not opt for personal hearing. Whereas, the CEO of the Company asked for an extension in time for the submission of his reply to the SCN. While accepting the request of the CEO, the Commission allowed further time up to May 23, 2016 for the submission of written response and the hearing was re-fixed on May 25, 2016. The CEO submitted his written response on May 18, 2016 and opted for personal hearing which was held as scheduled on May 25, 2016.

5. The summary of written submissions made by the CEO as well as Mr. Kazi, oral arguments and contentions made during the course of hearing by the CEO are as follows:

Written and Oral submissions made by the CEO

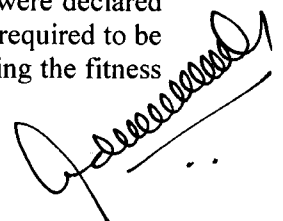
- i. The CEO contented that from 1997 to March 2016, the affairs of the Company, its management, operations, decisions and controls were in the hands of three major shareholders who hold 65% shareholding of the Company i.e. (i) Saudi Pak Industrial & Agricultural Investment Company Limited ("SAPICO") Islamabad (Management/Parent company); (ii) Paracha Group (Mr. Ahsan Paracha/Mr. Haroon Paracha); and Premier Mercantile Service (Pvt.) Limited (Mr. Asim Siddiqui/Mr. Arsalan Iftikhar).



- ii. He was made the CEO on June 02, 2014 by the BOD.
- iii. At that time, there was lack of professionally qualified and experienced staff. Company Secretary, Internal Auditor and Law Department were not in place. In addition, the IT services of the Company were also not upto the mark.
- iv. He with his efforts and hard work managed to keep the Company alive and performed his functions honestly, sincerely and professionally and managed to settle the liabilities of HSBC, Bank of Khyber, Pak Brunei Limited, COIs of Evacuee property Trust Board, St. Peters School Lahore etc.
- v. He further added that Mr. Kazi conducted scrutiny of all the candidates on merit.
- vi. He also stated that the findings and report of SECP's enquiry team are absolutely wrong and are twisted against the facts/documents and appears to be motivated and influenced. He further contented that he does not have any personal dispute with anyone and that he never worked for personal cause and motives.
- vii. He also contented that the financial position of the Company did not deteriorate during his tenure as the CEO of the Company. There was deterioration in the financials of the Company since 2008.
- viii. Upon query, raised by the adjudicating authority, the CEO of the Company opted not to comment on the adverse opinion of external auditors i.e. M/s. KPMG Taseer Hadi.
- ix. He linked the finalization and submission of quarterly and half yearly accounts of September 31, 2015 and December 31, 2015 with the approval of SECP for the newly elected BOD.
- x. Regarding payment of Al-Ghazi Tractors, he stated that during his tenure, the Company as a good gesture made partial payment to them and proposed a viable plan for the settlement of their outstanding deposits. Al-Ghazi Tractors, however, never came up for a viable solution.
- xi. In addition to the other submissions stated herein, he also contented that, being Director/CEO of the Company, he expressed/communicated to BOD from time to time about those issues which required compliance with the relevant/requisite provisions of law(s), Code of Corporate Governance and good corporate practices.
- xii. He further submitted that the Company, its CEO and management performed their duties regarding compliance with legal requirements, however, it remained on part of certain Directors who failed to perform their fiduciary duty.

Written submissions made by Mr. Kazi

- i. He stated that he was appointed by the BOD in 2015 for secretarial & corporate matters and since the nature of job was temporary, therefore, Form 29 was not filed.
- ii. The nomination papers of the applicants were rejected as they did not submit papers timely as per the requirements of the notice and prevailing regulatory framework.
- iii. After withdrawal of consent by Mr. Ahmed Khan Malik, seven members were declared successful under section 178 of the Ordinance and as such election was not required to be held. Since, the BOD stood constituted therefore required papers for assessing the fitness



and propriety of the of the Board members were sent to SECP for clearance.

6. Prior to issuance of order by SECP in the matter of SCN, the CEO approached the honorable Islamabad High Court by filing a writ petition titled 'Muhammad Tariq Masud vs SECP & others' (W.P No.2342 of 2016) and obtained a stay order dated June 14, 2016 to the effect that proceedings under SCN may continue but no final/adverse order may be passed. On July 01, 2016, SAPICO under section 159 (2) of the Ordinance advised the Company to call extra ordinary general meeting ("EOGM"). The Company filed suit No. 90/2016, whereby, challenging the authority of SAPICO officer giving requisition for holding EOGM. The Company also approached the Islamabad High Court and filed another writ petition titled 'Saudi Pak Leasing Company & another vs SECP & others' (W.P No.2862 of 2016) seeking a restraining order against SECP from acting upon the letters of SAPICO dated July 01, 2016 & July 28, 2016. The Islamabad High Court vide its order dated August 04, 2016 held that SECP may proceed strictly in accordance with law.

7. Since W.P No. 2342 of 2016 and W.P No.2862 of 2016 were interlinked with each other, therefore, honorable Islamabad High Court heard both the petitions together and after hearing at length all the parties, Court disposed of both the above mentioned writ petitions with the following instructions through its order dated October 17, 2016:

"Learned counsel for the contesting parties after making detailed submission in the instant writ petition as well as W.P.No.2862/2016, have arrived at a consensus viz that the petitioner's application to the Security Exchange Commission of Pakistan (SECP) dated 29-03-2016, shall be decided by SECP after affording an opportunity of hearing to the petitioner. Furthermore, the contesting parties also agreed that since a detailed reply to the show cause notice dated 02-05-2016, issued by the SECP under Section 282-E of the Companies Ordinance, 1984, has already been submitted by the petitioner, that matter shall also be decided by the SECP after affording an opportunity of hearing to the petitioner.

Learned counsel for respondent No.4 in the instant petition submits that an application on behalf of respondent No.4 has also been filed before the SECP, which is also yet to be decided by the SECP. The SECP shall also decide respondent No.4's pending application.

The SECP shall take decision on the aforesaid matters strictly in accordance with the law and facts of the case. The SECP may hear any other proper and necessary party that it deems appropriate.

Since, intricate questions of interpretation of the provisions of the Companies Ordinance, 1984 are involved in the instant case, the SECP shall permit the parties to appear along with their respective counsel. The said matters shall be decided by the SECP within a period of one month from today".

8. In pursuance with the aforementioned direction given by the honorable Islamabad High Court, SECP scheduled hearing of the CEO and Mr. Kazi on November 09, 2016 which was rescheduled for November 10, 2016. On the said date of hearing, the CEO appeared with his counsel namely Sardar Muhammad Ghazi, Advocate Supreme Court, whereas, neither Mr. Kazi nor any of his representative appeared before the adjudicating authority on his behalf.

9. The CEO and his counsel reiterated their previous arguments with the following additional contentions:

- i. The CEO's counsel raised various legal and factual grounds including issuance of SCN by the Commissioner under Section 282E of the Ordinance before invoking his power(s) under Section 282D of the Ordinance. He further added that since 2008, the financial position of the Company started deteriorating thereby negating the allegation on the CEO that the financial health deteriorated during his tenure.



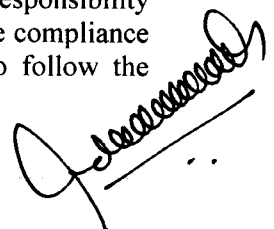
- ii. The CEO stated that due process of law was followed during election of directors and application for approval of fit and proper criteria of duly elected Board of the Company; pending with SECP may please be decided on priority basis as non-existence of BOD is hampering the functions of the Company.
- iii. The CEO also showed his commitment and seriousness in managing the affairs of the Company and highlighted his efforts towards recovery of struck up portfolio. He also requested SECP to take lenient view and decide the case in a manner that management of the Company should work under strict observation of the Commission in order to bring its affairs within the regulatory requirements of prevalent and applicable laws.

10. In pursuance of the instructions of the honorable Islamabad High Court regarding other issues raised therein as envisage in para 2 & 3 of order dated October 17, 2016, opportunity of hearing was also provided to all aggrieved parties and, for this purpose, hearing was scheduled for November 16, 2016. Mr. Ahsanullah Khan, Mr. Niaz Khan Toru, Mr. Najmul Hasnain Kazmi, Mr. Muhammad Ameen and CEO of SAPICO were called for hearing. Mr. Ahsanullah and Mr. Muhammad Ameen authorized Mr. Hashmat Ali Habib, Advocate Supreme Court, Mr. Toru appeared in person and also on behalf of Mr. Syed Najamul Hasnain Kazmi and SAPICO nominated Mr. Shaikh Aftab Ahmed, EVP - Portfolio Management Division and Mr. Zafar Iqbal, SVP - Law for the hearing. Mr. Kazi authorized Mr. Sardar Muhammad Ghazi to represent him on the date of hearing but the representative neither appeared on the date of hearing nor asked for an adjournment.

11. All the parties reiterated their previous stance with some additions. Their submissions are summarized below:

- i. Election was manipulated by the CEO and Mr. Kazi to elect people of their own choice.
- ii. The CEO was initially nominee of SAPICO but he contested the election as independent candidate.
- iii. They all demanded for removal of CEO and Mr. Kazi as the company resources were being managed by the CEO as per his own wish and will and that their close association with the Company is detrimental to the interest of the stakeholders of the Company.
- iv. They also demanded fair election under the supervision of SECP.
- v. SAPICO stated that management is still in violations of various regulatory requirements i.e. not maintaining website as per the requirement of law and directives of SECP, GM and Head of internal audit are father and son which is a conflict of interest. Furthermore, the CEO and Mr. Kazi are not proceeding for holding of EOGM as requested by SAPICO.

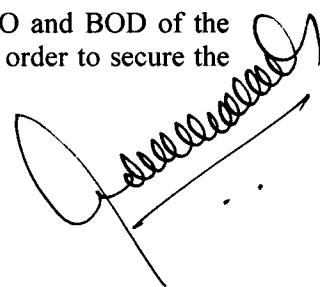
12. After hearing all the concerned parties at length and perusing the oral as well as written submissions made therein and considering relevant provisions of the Ordinance, it can safely be concluded that deteriorating financial and operational condition of the Company is primarily due to the disputes and rift going on between the directors and the management of the Company including the present CEO and Mr. Kazi. Being a public listed entity with outstanding deposits on its books, such an unprofessional attitude of the directors as well as the CEO is extremely disappointing and detrimental to the interest of the shareholders. I understand that the responsibility of managing affairs of the Company lies with the management, however, the directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with due care and prudence. Being the supreme body of the Company, it is BOD responsibility to oversee the functioning of the Company, to keep it appropriately staffed and to ensure due compliance of relevant/applicable provisions of the Law. Moreover, management is also required to follow the instructions of the BOD and comply with the policies and guidance provided by the BOD.



13. After considering the arguments of all the concerned parties in the instant case, it transpires that from the last six years, the Company is not having a valid license to undertake leasing business and no efforts have been seen on part of the management as well as the BOD to obtain the same to comply with the regulatory requirements of applicable laws. The perusal of the Company's entire record and in particular the annual reports reveal that the Company at this point in time is not doing any business and its survival is merely dependent on a few recoveries. Despite representation of majority shareholders on the BOD, the Company's functioning did not show any improvements. It has also been observed that SAPICO, being a majority shareholder, has lost interest in the Company and its subsidiary status has been removed from the books of accounts of SAPICO. Hence, both the management and the BOD are responsible for the current state of affairs of the Company. In order to turn around the Company and manage its affairs prudently, the only way forward is that all the stakeholders, BOD and CEO in particular, should work together for the revival of the Company and to safeguard the interest of its shareholders. Therefore, at this point only removal of CEO of the Company will not serve the purpose rather CEO and BOD should work together for the smooth and swift functioning of the Company as discussed above. However, it has also been observed that few shareholders/stakeholders have serious reservations against the present election of the Board as discussed in detail herein below.

14. Since the honorable Islamabad High Court in Para.2 of the its order dated October 17, 2016 has also decided the application of Respondent No.4 i.e. Mr. Niaz Ahmed Khan. Therefore, in compliance with order of the honorable Islamabad High Court, Mr. Niaz Ahmed Khan and all other aggrieved persons as detailed in Para.10 ibid were issued notices accordingly. After hearing all concern parties and perusal of record, it is noted that when the notices for conducting the overdue AGM on March 22, 2016 were published, twelve contestants filed their nomination papers for the elections including present complainants i.e. Mr. Ahsanullah Khan, Mr. Niaz Ahmed Khan, Mr. Najmul Hasnain Kazmi & Mr. Muhammad Ameen. However, their nomination papers were rejected by Mr. Kazi on sole ground that they have not submitted their papers within stipulated time and consequently disqualified them from contesting the upcoming election. It is a matter of record that Mr. Niaz Ahmed and Syed Najmul Hasnain being dissatisfied from the decision for rejection of nomination papers approached to learned Civil Court and obtained restraining order on March 19, 2016, whereby, learned Court restrained the defendants from conducting the election of directors in scheduled meeting of AGM to be held on March 22, 2016. However, the Company convened its AGM on March 22, 2016 and Mr. Niaz Ahmed Khan accordingly apprised about restraining order but Mr. Kazi turned down the same on the ground that the Company has not received any notice regarding stay till date and proceeded for election of directors. All these facts are duly recorded in minutes of 25th AGM of the Company which is sufficient to establish that Company and its Secretary were informed regarding restraining order of learned Court before the election of directors and propriety demands that the Company should have approached the learned Court for clarification of order rather than ignoring the same on flimsy ground of non-receipt of order from learned Court. However, on the other hand, the Company acted in haste and immediately decided to proceed with election and deprived the other contestants from taking part in the said election. Hence, the board elected through a disputed meeting was not notified by the SECP till date and it will be in the interest of all shareholders that re-election may be conducted after providing fair and equal opportunity to all shareholders. Board elected in a fair and transparent manner will be in a better position to manage the affairs of the Company in collaboration with its CEO.

15. Perusal of entire record, statements of all concerns and detailed discussion above suffice to establish that affairs of the Company are not being managed prudently. However, being conscious of the fact of difference between CEO and BOD and in particular the deteriorating financial position wherein survival of the Company is entirely dependent on recoveries of outstanding loans, I am of the view that removal of CEO may not be in the interest of the Company in present circumstances. However, in order to prevent the affairs of the Company from being conducted in a manner detrimental to the interests of shareholders and prejudicial to the interest of the Company, it is inevitable to issue directions to CEO and BOD of the Company to rectify the situation from doing and desist from doing certain actions in order to secure the proper management of the Company.



16. Therefore, in compliance with the order dated October 17, 2016 of honorable Islamabad High Court and in exercise of the powers conferred under Section 282D of Part VIII of the Ordinance read with all enabling provisions of the Ordinance and directions, scope and mandate envisage in the aforementioned order of the honorable Islamabad High Court, the following directives are hereby issued, to be complied in letter and spirit, to prevent the affairs of the Company from being conducted in a manner detrimental to the interest of shareholders and to ensure proper functioning and supervision of the Company:

- i. The management shall conduct fresh election of BOD under supervision of SECP within 45 days of the date of this order; Any officer, other than Mr. Kazi, among the senior management of the Company be nominated by the CEO to manage the process of holding election.
- ii. The Company shall appoint a new Company Secretary in compliance with the requirements of NBFC Regulatory framework and Code of Corporate Governance within 60 days of this order.
- iii. It shall be the responsibility of the management to turn around the operations of the Company in the best interest of stakeholders of the Company. The BOD will meet at least after every two months for next six months and management will apprise the BOD about the progress made during that period. The conduct of the management of the Company and its BOD should be professional and they should work in harmony with each other.
- iv. The management will work and make all possible efforts to remove the auditor's adverse opinion as per the audited annual accounts of the Company as of June 30, 2015.
- v. The management shall comply with the requirements of applicable regulatory framework mentioned at sub-para (vii) of para 8 of the SCN within 60 days of the date of this order.

17. In view of above directives, SCN and all other ancillary matters as discussed above are disposed of accordingly and instant order is being passed without prejudice to any other action that may be taken or warranted in respect of any of the above mentioned contravention(s) or any other default under any other provision of law.

18. Receipt of this order must be duly acknowledged, in writing including through return fax.


(Zafar Abdullah)
Commissioner (SCD)

Announced: December 2, 2016
Islamabad