

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before Tariq Hussain, Director (Enforcement)

Order in the matter of

Mr. Shahid Ali Habib, Director Thatta Cement Company Limited

Number & Date of the Show Cause Notice:	EMD/233/694/2008- 1189 dated December 12, 2008
Hearing Date	March 24, 2009 & April 2, 2009

ORDER

Under Section 187 Read with Section 189 and Section 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against Mr. Shahid Ali Habib, a director of Thatta Cement Company Limited (the "Company"), through show cause notice dated December 12, 2008 under the provisions of section 187 read with section 189 and section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that examination of the relevant records maintained by the Securities and Exchange Commission of Pakistan, (the "Commission") revealed that Mr. Shahid Ali Habib, director of the Company, which is a listed company with its shares quoted on Karachi Stock Exchange, was also a director of M/s Aba Ali Habib Securities (Private) Limited, which is providing brokerage services.

3. As directorship of Mr. Shahid Ali Habib, in the Company while he was also a director in the corporate brokerage house was, *prima facie*, in violation of proviso (j) of section 187 of the Ordinance, therefore, a show cause notice in terms of section 187 read with section 189 and section 476 of the Ordinance was issued on December 12, 2008, to the concerned director requiring to explain as to why a penalty in terms of section 189 of the Ordinance may not be imposed on him.

4. The above show cause notice was replied by the respondent vide letter dated December 27, 2008. Mr. Shahid Ali Habib argued that he had given the consent for directorship of Company when it was an unlisted company i.e before its listing. He further submitted that upon knowing the aforementioned amendment introduced vide Finance Act, 2008, he had resigned from the directorship of the Company, and requested to take a lenient view.

5. Subsequently, hearing in the matter was fixed on March 24, 2009 which was adjourned on the request of the respondent and was fixed on April 2, 2009. The Commission received a letter through fax dated April 1, 2009, mentioning the names of Mr. Shahid Ali Habib and Mr. Aslam Moriwala, stating that their presence at the hearing would not contribute materially. The letter however, was not signed by Mr. Shahid Ali Habib. The Commission vide letter dated April 7, 2008 required the respondent to submit a signed copy of the said letter. The respondent in his reply vide letter dated April 10, 2009 maintained the stance that he was the director of the

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Enforcement Department

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Company by virtue of significant shareholding and since the Company was not listed. He however, informed that subsequent to receipt of the show cause notice, he had resigned from the board of the Company w.e.f December 20, 2008.

6. I have gone through the facts of the case, record of the Company, relevant provisions of the Ordinance and submissions made by the respondent in writing. I feel it appropriate to advert to the relevant proviso of the Ordinance. Clause (j) of section 187 of the Ordinance, as amended through Finance Act, 2008 with effect from July 1, 2008, provides as under:

"No person shall be appointed as a director of a listed company if he is engaged in the business of brokerage, or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house."

Section 189 of the Ordinance provides that if a person who is not qualified to be a director, acts as a director he shall be liable, in respect of each day during which he so acts, to a fine which may extend to two hundred rupees.

It is important to mention that before the afore-mentioned amendment which took effect from July 1, 2008, clause (j) of section 187 of the Ordinance provided, as under:

"No person shall be appointed as a director of a listed company if he is member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member."

7. It transpires from the above that the amended proviso of section 187 has, *inter alia*, prohibited sponsors, directors and officers of corporate brokerage houses from becoming directors of listed companies. It can be safely concluded that the proviso (j) of section 187 of the Ordinance has been contravened in case of Mr. Shahid Ali Habib, as he continued as director of the Company while he was also director of a corporate brokerage house, and the default continued with effect from July 1, 2008 till the date of his resignation i.e December 20, 2008, from the directorship of the Company. However, based on his acquiescence of default and the fact that he has made good the default by resigning from the board of directors of the Company, I am inclined to take a lenient view in the matter and impose no penalty, however, I warn Mr. Shahid Ali Habib to be careful in future and ensure meticulous compliance with relevant provisions of the Ordinance.


Tariq Hussain
Director (Enforcement)

Announced:
April 17, 2009