



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Registration Department

Before the Director/HOD (MSRD)

In the matter of recovery of gain made in terms of Section 224(1) of the Companies Ordinance, 1984 by United Bank Limited, a beneficial owner of more than ten percent equity securities of Fauji Cement Company Limited

Date of Hearing:

June 14, 2013

Present at Hearing:

Representing the United Bank Limited

- (i) Mr. Rashid Sadiq,
Chief Executive Officer,
RS Corporate Advisory
- (ii) Syed Zulfiqar Ahmed
Vice President, United Bank Limited
- (ii) Mr. Faisal Latif,
VP/ Head Equities Department,
United Bank Limited

Assisting the Director/HOD (MSRD)

- (i) Mr. Muhammad Farooq,
Joint Director, SECP

Order

This Order will dispose of the proceedings initiated through Show Cause No. S.M(B.O)222/4(593)2001 (**Notice**) dated 17/04/2013, issued under Section 224 of the Companies Ordinance, 1984 (**Ordinance**) to United Bank Limited (**Respondent**) a beneficial owner of more than ten percent equity security i.e. ordinary shares of Fauji Cement Company Limited (**Issuer Company**).

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN
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Islamabad, Pakistan

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2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company. While, the Respondent is a beneficial owner of more than ten percent ordinary shares of the Issuer Company. The Respondent has made the following sale and purchase transactions in ordinary shares of the Issuer Company, within the period of less than six months:-

Sr. No.	Date	Nature	No. of Shares	Rate per Share (Rs.)
1	9/4/2009	Sale	1,405,500	6.97
2	9/4/2009	Sale	600,000	7.01
3	16/04/2009	Sale	155,000	6.87
4	21/05/2009	Purchase	1,000,000	6.49
5	2/6/2009	Purchase	90,000	6.47
6	3/6/2009	Purchase	300,000	6.47
7	3/6/2009	Purchase	200,000	6.45
8	10/6/2009	Purchase	155,500	6.6
9	11/6/2009	Purchase	12,500	6.6
10	17/06/2009	Purchase	157,000	6.74
11	18/06/2009	Purchase	2,500	6.7
12	18/06/2009	Purchase	4,000	6.74
13	18/06/2009	Purchase	239,000	6.75
14	9/7/2009	Sale	1,972,500	7.49
15	10/7/2009	Sale	16,500	7.47
16	13/07/2009	Sale	2,950,000	7.54
17	15/07/2009	Sale	3,000,000	7.96
18	16/07/2009	Sale	500,000	7.97
19	23/07/2009	Sale	400,000	8.29
20	24/07/2009	Sale	860,000	8.36
21	31/07/2009	Sale	775,000	8.47
22	3/8/2009	Sale	500,000	8.57

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23	3/8/2009	Sale	100,000	8.67
24	7/8/2009	Sale	177,433	8.47
25	10/8/2009	Sale	100,000	8.59

3. On account of the aforesaid transactions, the Respondent in terms of Section 224(1) of the Ordinance read with Rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (**Rules**) has apparently made gain of Rs 4,198,308.00 (Rupees four million one hundred ninety-eight thousand three hundred eight only).

4. Section 224 of the Ordinance provides that where *inter alia* a more than ten percent beneficial owner of listed equity securities makes any gain by purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such person is required to make a report and tender the amount of such gain to the company and simultaneously send an intimation to that effect to the Registrar of Companies and the Commission. The said Section further provides that where such person fails or neglects to tender or the company fails to recover, any such gain within a period of six months after its accrual, or within sixty days of a demand thereof, whichever is later, such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

5. In the instant case, as per record of this office, neither the accrual of the aforesaid gain was reported in Part-D of the prescribed returns of beneficial ownership filed with this Commission on Form 32, nor the same was tendered to Issuer Company by the Respondent. Similarly, the Issuer Company did not raise demand for recovery of the aforesaid gain, within the stipulated time limit. The Respondent was, therefore, asked vide letter dated 24/01/2013 to furnish *inter alia* documentary evidence, if the legal obligation arose under Section 224 of the Ordinance has already been discharged. In response, the Company Secretary of the Respondent vide letter dated 04/02/2013 stated that:

"The transactions pointed by the Commission did not result in gain to the Respondent. The Respondent pursuant to underwriting agreement took up 116,669,075 right shares of the Issuer Company on 11/03/2008. The shares were sold in April 2009, in compliance of State Bank of Pakistan's instructions. Furthermore, the purchases were made during the period just to support the market. Besides, shares were purchased from 04/07/2008 to 09/07/2009 at an

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average price of Rs. 15.71 per share and sold from 31/12/2008 to 13/03/2012 at an average price of Rs. 5.02 per shares. Thus, the Respondent has incurred loss and has not violated the provisions of Section 224 of the Ordinance”.

6. The aforesaid contention submitted on behalf of the Respondent was examined in the light of provisions of Section 224 of the Ordinance and Rule 16 of the Rules and was not found convincing. Thus, the above mentioned Notice was issued wherein the Respondent was called upon to show cause in writing along with documentary evidence, if any, as to why:-

1. Action may not be taken against it under Section 224(4) of the Ordinance for non-reporting and non-tendering of gain within the stipulated time period, in violation of Section 224(1) of the Ordinance.
2. The amount of aforementioned gain may not now be recovered from it in the manner provided in Section 224(2) of the Ordinance.

7. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed for 03/05/2013 at the Commission's Head Office, Islamabad. Mr. Rashid Sadiq Chief Executive Officer, RS Corporate Advisory (Pvt.) Limited (**Authorized Representative**) filed written response to Notice and requested for adjournment of the hearing. The request was accepted and hearing was rescheduled for 14/06/2013. On the said date, the Authorized Representative alongwith Syed Zulfiqar, Vice President of the Respondent and Mr. Faisal latif, Head Equities Department of the Respondent appeared on behalf of the Respondent. The Authorized Representative stated that the Respondent has neither violated the provisions of Section 224 of the Ordinance nor made gain in terms of the provisions of Section 224(1) of the Ordinance. The Authorized Representative requested to withdraw the Notice without any adverse action. The submissions made by the Authorized Representative in support of his aforesaid assertion in writing as well verbally during the course of hearing be summarized as under:-

- a) **Acquisition of shares was by default not by choice:** The Authorized Representative stated that *the Respondent has underwritten 188,796,452 right shares of Issuer Company at an offer price of Rs. 16 per share inclusive of a premium of Rs. 6 per share. As a result of under subscription of the right shares, the Respondent has to take up 116,669,975 shares at Rs. 16 per share in the year 2008. So, the first thing, which may be kept in view while considering the matter is that the*





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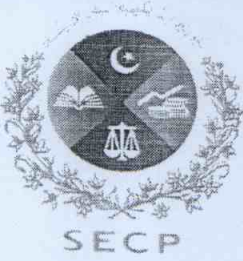
Respondent had to acquire the shares of Issuer Company by default and not by choice and crossing of threshold of beneficial ownership was not pre-planned.

- b) **The shares were sold in compliance of State Bank of Pakistan's Regulations:-** The Authorized Representative stated that the Prudential Regulations issued by State Bank of Pakistan (R6 —B(d) requires banks to dispose of the shares in excess of the limit stipulated in the said Regulations within one year of their acquisition. Therefore, the sale of shares was made to comply with the State Bank of Pakistan's Regulations and subsequently specific instructions to the Respondent.
- c) **Trading in the shares by the Respondent was a single sided:-** The Authorized Representative contended that the purchases were made from 21 May 2009 to 18 June 2009 as regular capital market operations which is one of the core business activities of the Respondent. The crux of the matter is that the trading in the shares was a single sided trading, that is sale of the right shares taken up as result of under subscription. The purchases were in small quantities as compared to take up and those too were to rationalize the holding cost and were not meant for reaping any gains through trading of these shares because it was impossible to reap any gain through trading in the existence of large inventory at a holding cost much higher than the prevailing market price.
- d) **The Respondent sustained overall loss:** The Authorized Representative asserted that the Respondent incurred loss on account of trading of these shares instead of making any gain.
- e) **The Commission's took up the matter after lapse of five years:** The Authorized Representative stated that the Commission has taken up this matter after almost five years of actual purchase and sale of shares. During all this period, it may be noted that the Bank's shareholding in the Issuer Company has been published in the annual reports of the Bank and these annual reports were duly filed with the Registrar and the Commission as prescribed under the law. Furthermore, the Issuer Company also similarly published the Respondent's shareholding in its annual reports for all these years in the Form 34 (Pattern of Shareholding) annexed with its Directors Report under Section 236 of the Ordinance. The said

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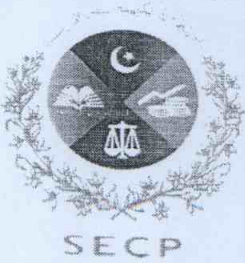


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shareholding is also disclosed in Form 'A' filed annually by Issuer Company with the Commission's Company Registration Office. The prescribed Returns under Section 222 of the Ordinance were also filed. The Respondent, therefore, fully complied with the said provision at all times and it is evident that there is no mala fide intention on the part of the Bank to withhold such information from its shareholders or the Commission. As per Section 224(4) of the Ordinance, liability will be established if either Section 222, 223 or 224 of the Ordinance is "knowingly and willfully" contravened.

- f) **The provisions of Section 224 do not apply to the Respondent:** The Authorized Representative stated that Section 224 of the Companies Ordinance 1984 does not apply to Respondent because the use of the word "person" in Section 224 along with several corporate offices such as director, chief executive, managing agent, chief accountant, secretary, auditor, strongly suggests that the word "person" covers only "natural persons" and not "legal persons". Section 224 is directly associated with Sections 15A to 15E of the Securities and Exchange Ordinance, 1969 ("1969 Ordinance"). It can be readily observed that Section 15C of the 1969 Ordinance, wherein the word "insider" has been defined, applies only to natural persons. A legal person, by virtue of being a legal fiction, cannot physically receive and make use of any information without the involvement of a human agent, and only such a human agent can be considered an "insider" within the meaning of Section 15C of the 1969 Ordinance. For the same reason, Section 224 also applies only to human agents and not to corporate entities. It is worth mentioning here that Respondent does not have any representation on the Board of Issuer Company. Besides, the officers designated for trading in shares do not have any personal motive, gain and stake in the shares trading and they perform their functions/duties on behalf of the shareholders and management of the Respondent.
- g) **The gain if any does not go to the pocket of the Respondent:-** The Authorized Representative pleaded that whatever gain is reaped by the Respondent does not directly go into its pockets rather it becomes the part of profit of the Respondent and is distributed amongst its shareholders. The trading in shares by the Respondent is governed by many factors, like regulatory compulsions, market conditions and investment policies of the banks.
- h) **Rule 16 is ultra vires the Section 224 of the Ordinance:** The Authorized Representative stated that without conceding any liability under Section 224, it is





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submitted that Rule 16 of the Companies (General Provisions and Forms) Rules, 1985, is ultra vires the Section 224 to the extent that it goes beyond the intention, spirit and scope of that Section. Section 224(1) stipulates recovery of "any gain by the purchase and sale, or the sale and purchase, of any such security, within a period of less than six months". Section 224 is, thus, aimed at deterring "insiders" from making any gains by indulging in purchase-and-sale or sale-and-purchase transactions within a period of less than six months. The focus is on "gains" and the period of "less than six months". Thus, if an alleged "insider" made multiple such transactions which resulted in an overall loss over a period of six months, then no gains shall be tenderable to the company. Rule 16 goes much beyond the scope of Section 224, because firstly, sub-rule (3) of Rule 16 excludes the losses incurred during the six month period from computation of tenderable gains, even though Section 224 applies to all sale-and-purchase and purchase-and-sale transactions within a period of less than six months. The Rule, therefore, creates the absurdity that a person would be liable to tender "gains" under Section 224 even though he has actually suffered losses on his trading. Secondly, the method of "lowest price in, highest price out" exacerbates the absurdity perpetuated by sub-rule (3). This method is against the fundamental principles of investment because it results into inflicting maximum penalty regardless of the actual commercial effect of the trading involved, and for that matter, regardless of the actual gain made by the alleged insider. In this way it seems to be against the principle of justice and equity. It is, therefore, respectfully submitted that Rule 16 is ultra vires to the extent that Section 224 only prescribes tendering of gains earned on the trading within a period of less than six months, ignoring the overall end result of the total investment and allows calculation of such gains by using methods that inflict arbitrary and disproportionate penalty on the violator.

- i) **Technical contravention:** The Authorized Representative argued that the penal provision, i.e. Section 224(4) of the Ordinance invoked by the Commission in the SCN has recently been interpreted by the superior judiciary of Pakistan. It was clarified that since the penal provision is stringent in nature, therefore, the same should be applied in an appropriate manner. In applying such a provision, SECP should always bear in mind the importance of determining not merely a technical contravention but a substantial finding of guilt in relation to the person on whom the fine or penalty is being levied. It is not sufficient merely on the basis of a technical contravention to arbitrarily impose a fine of either in full amount or any other





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arbitrary chosen figure. (SECP V. First Capital Securities Corporation Limited, PLD 2011 SC 778).

8. I have thoroughly reviewed the submissions submitted on behalf of the Respondent in the light of prevailing Laws and Rules on the subject matter and my findings in this regards are as under:-

(a) The issue of Acquisition of shares by default:- In this regard it is pointed out that entering into Underwriting Agreement was a commercial decision of the Respondent. Section 222 of the Ordinance is attracted as and when *inter alia* a person becomes more than ten percent beneficial owner of equity securities of a listed company, irrespective of mode of acquisition as well as outcomes of said commercial decision/transaction owing to which it becomes beneficial owner of the listed company. Admittedly, the Respondent on account of acquiring of unsubscribed right shares became more than ten percent beneficial owner of ordinary of shares the Issuer Company, therefore, its trading was required to be monitored pursuant to the provisions of Section 224 of the Ordinance.

It is worth mentioning that transaction/acquisition of unsubscribed right shares by the Respondent in March 2008 does not have nexus with calculation of under reference tenderable gain, as the said gain has been accrued because of sale and purchase transactions made during the period from March 2009 to August 2009.

(b) The Issue of State Bank's Regulations and applicability of the Companies Ordinance:

Concerning the plea of the Authorized Representative that "*shares were sold in compliance of Prudential Regulations issued by State Bank of Pakistan (R6 —B(d) which requires banks to dispose of the shares in excess of the limit stipulated in the said Regulations within one year of their acquisition*" it is stated that the argument does not have merit because the under reference Regulation does not have any association with Companies Ordinance. Moreover, the major law always overrides the regulations. Furthermore, the under reference sales do not enjoy exemption provided in Section 224 of the Ordinance or Rule 16 of the Rules. It is to be noted that the act of making only sale or purchase transactions never attracts the provisions of Section 224 (1) of the Ordinance. The





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said section is attracted, when both sale and purchase or purchase and sale transactions are made, within the period of less than six months and the same act has been done by the Respondent in the instant case.

- (c) **The issue of single sided trading:-** In this concern, it is pointed out that the Authorized Representative is of the view that sold and purchased shares were not same because sale was made out of right shares which were subscribed in March 2008, while purchases were made in May-June 2009. In fact, the Respondent has erred in interpretation of the Provisions of Section 224(1) of the Ordinance. The primary notion of the said Section of the Ordinance is that the securities of same class are fungible, therefore, I do not agree with the plea of the Authorized Representative. It is pointed out that due to fungibility of the securities, the Law and Rule available on the subject matter do not allow making any distinction between the securities newly purchased and previously held. In this regard attention is invited to Section 224 of the Ordinance which provides that;-

“Where any director, of its listed equity securities makes any gain by the purchase and sale, or the sale and purchase, of any such security within a period of less than six months

Thus, the words “or the sale and purchase” appear in Section 224 of the Ordinance itself suggest that the securities of the same class are fungible. And this concept has explicitly expressed in Rule 16(1)(b) of the Rules, which states that;-

“the purchases and sales shall be matched as aforesaid so long as the securities involved in the purchase and sale are of the same class and of the same listed company and for this purpose the shares shall be deemed as fungibles”

Hence, in terms of above-mentioned primary law and Rule, purchase and sale transactions shall be matched so long as the securities involved are of the same class and of the same listed company. If both these conditions are met, the shares shall be deemed fungible. In the instant case the shares sold and purchased were of same class of the same listed company and sale and purchase transactions fall within the period of six month, therefore, the matter falls in the ambit of Section 224(1) of the Ordinance.





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- (d) **The issue of sustaining overall loss by the Respondent:** In fact the plea of Authorized Representative is based upon the argument extended by the Company Secretary vide letter dated 04/02/2013, wherein he stated that *"shares were purchased from 04/07/2008 to 09/07/2009 at an average price of Rs. 15.71 per share and sold from 31/12/2008 to 13/03/2012 at an average price of Rs. 5.02 per shares. Thus, the Respondent has incurred loss instead of making any gain"*. In this regard, it is pointed out that for purpose of calculating overall loss, the Respondent has taken into account the average price of entire purchase and sale transactions made by it since becoming more than ten percent beneficial owner of the Issuer Company. In this concern, I am of the view that the transaction period as well as manner of calculation of gain/loss applied by the Respondent/Authorized Representative do not coincide with the time limitation of six months and manner of calculation provided in the law and rules governing the subject matter, therefore, the contention does have any substance.
- (e) **The issue of taking up the matter by the Commission after lapse of five years:** In this regard it is pointed out that the Respondent in response to this office letter dated 14/04/2011, filed the returns of beneficial ownership on 20/4/2011 *inter alia* for the under reference changes in beneficial ownership. Reported sale and purchase transactions were examined in the light of provisions of Section 224(1) of the Ordinance. Meanwhile, Supreme Court of Pakistan decided Civil Appeal No. 946/2005, in May 2011. Thus, in order to meet the ends of justice, the Commission before initiation of recovery proceedings in fresh cases, decided to review the gain recovery procedure, in the light of guidelines given by the apex court in the aforesaid judgment. Recovery proceedings in the instant case have, therefore, been initiated after finalization of the revised recovery procedure of gain.
- (f) **The issue of applicability of provisions of Section 224:** The Authorized Representative contended that *"the word "person" as mentioned in section 224 would only be applicable to natural person and not to legal person/entity"*. In this regard, I am of the view that it is a well settled principle that the term 'person' includes both natural and juridical persons. Moreover, the word "person" has been defined in the Securities and Exchange Ordinance, 1969, from where the provisions under reference were transferred to this Ordinance, which *inter alia* include *"a company and every other artificial juridical person"*. Since, the companies are juridical persons and in case of having shares of other listed company, avail the





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voting rights through representative, therefore, the listed companies also fall within the definition of person, used in section 222 and 224 of the Ordinance.

In order to substantiate the foregoing view-point, attention is invited to Note (3) of the Return of Beneficial Ownership which clearly states that "*The statement must be signed by the beneficial owner himself, and in the case of a Company, by its Chief Executive, Director or Secretary*". Thus, pursuant to the provisions of Section 222-224 of the Ordinance, it is both the legal as well as natural persons who may be beneficial owner of securities. Furthermore, the General Clauses Act 1956 defines 'person' as including "any company or association or body of individuals, whether incorporated or not".

Besides, attention is invited to Civil Appeal No. 946/2005 (also referred by the Authorized Representative in his written response to the Notice) which was decided by Supreme Court of Pakistan in May 2011. In the said Appeal the beneficial owner/Respondent namely First Capital Securities Corporation Limited was also a legal entity like the Respondent in the instant case. The honorable apex court in its said judgment has thoroughly discussed the applicability of the provisions of Section 224 of the Ordinance but did not give any such observation as contended by the Authorized Representative.

In view of the foregoing, I am of the view that the under reference contention of the Legal counsel lacks merit, as the provisions of Section 224(1) of the Ordinance are equally applicable to juridical/legal person.

- (g) **The gain if any does not go to the pocket of the Respondent being legal entity:-** Concerning the contention of the Authorized Representative that "*gain may not be recovered from the Respondent, because whatever gain is reaped does not directly go into the pocket of the Respondent rather it becomes part of profit and is distributed amongst the shareholders of the Respondent*" Attention is again invited to above referred Supreme Court's judgment, wherein the honorable court categorically held that "*gain will remain under all circumstances property of the company (issuer company)*". Hence, the contention of the Authorized Representative does not have merit.





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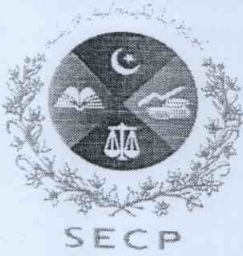
by the Authorized Representative has been considered by the Commission in another case of similar nature and has been discussed in detail in later part of the Order.

(i) The Issue of Technical contravention:- The Authorized Representative in this concern has just referred the "text" of the aforementioned judgment of the Supreme Court, but did not mention nature or details of "technical contraventions" which are committed by the Respondent. However, I am of the view that the Respondent has committed substantial violations of the provisions of Section 224 of the Ordinance rather than technical violations, because, the Respondent neither reported the accrual of gain nor tendered the gain to the Issuer Company.

9. From the foregoing, it may be inferred that the primary plea of the Authorized Representative is that the Respondent did not make any gain on account of under discussion transactions, as shares were sold out of previous holding, which was acquired in March 2008 through acquisition of unsubscribed right shares, while, purchase transactions were made just to support the market/as regular market operation. The Authorized Representative is further of the view that since, no gain was made, therefore, was no legal obligation was required to be discharged by the Respondent. But, as discussed above in detail, that merits of the case do not support the contention submitted on behalf of the Respondent. Admittedly, the Respondent has made sale and purchase in same class of shares, within the period of less than six months. As explained earlier, by virtue of "fungibility" shares of the same class may not be divided in two groups i.e. previously held shares and newly purchased shares, therefore, the arguments presented on behalf of the Respondent do not have any merit and substance.

10. Prior to conclude the findings, it seems necessitated to mention the following:-

(a) before announcing decision in the instant matter, the Appellate Bench of the Commission decided Appeal No. 49/2011 filed by Mrs. Nasreen Humayun Shaikh, a beneficial owner of Azgard Nine Limited. The Appellate Bench vide Order dated 19/06/2013, stated that "rule 16 of Rules has not been framed within the four corners of section 224 of the Ordinance. We are aided by the



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inconsistent with the statute and contradicts the express provisions of the statute from which it derives authority. The Appellant cannot be burdened to submit a gain, which never accrued to her in first place". Besides, the Appellant Bench in the said Appeal calculated the amount of gain by matching the purchase and sale transactions in sequential manner rather than by applying lowest in highest out manner prescribed in Rule 16 of the Rules.

- (b) Subsequent to the said judgment of the Appellate Bench, decision in the instant case was held because the amount of tenderable gain in the instant matter (at the time of issuance of Notice) was calculated pursuant to the manner provided in Rule 16(2) of the Rules, which has been declared "*inconsistent with the statute*" by Appellate Bench of the Commission. After seeking views of the Legislation, Litigation and General Counsel Department of the Commission, the issue of deviation of the manner of calculation of gain used by the Appellate Bench with the method of calculation prescribed in Rule 16 of the Rule was placed before Commission. The Commission considered and *inter alia* decided in its seventh meeting held on 25/05/2014 that the cases of recovery of gain be disposed of in the light of judgment made by the Appellate Bench of the Commission in the aforesaid appeal as well as the judgment made by Supreme Court of Pakistan in the matter of Appeal No. 946/2005.

11. Pursuant to the aforementioned decision of the Commission, the amount of tenderable gain in the instant matter has been recalculated as under, in the light of manner approved by the Commission:-

Buy Date	Buy Quantity	Sale Date	Sale Quantity	buy Quantity to be Matched	Sale Quantity to be Matched	Quantity Matched	Buy Rate	Sale Rate	Gain Per Share (Rs.)	Total Gain (Rs.)
							(Rs.)	(Rs.)		
21/5/2009	1,000,000	9/4/2009	1,405,500	1,000,000	1,405,500	1,000,000	6.49	6.97	0.48	480,000
2/6/2009	90,000	9/4/2009	1,405,500	90,000	405,500	90,000	6.47	6.97	0.5	45,000
3/6/2009	300,000	9/4/2009	1,405,500	300,000	315,500	300,000	6.47	6.97	0.5	150,000
3/6/2009	200,000	9/4/2009	1,405,500	200,000	15,500	15,500	6.45	6.97	0.52	8,060
3/6/2009	200,000	9/4/2009	600,000	184,500	600,000	184,500	6.45	7.01	0.56	103,320
10/6/2009	155,500	9/4/2009	600,000	155,500	415,500	155,500	6.6	7.01	0.41	63,750
11/6/2009	12,500	9/4/2009	600,000	12,500	260,000	12,500	6.6	7.01	0.41	5,125
17/6/2009	157,000	9/4/2009	600,000	157,000	247,500	157,000	6.74	7.01	0.27	42,390

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SECP

18/6/2009	2,500	9/4/2009	600,000	2,500	90,500	2,500	6.7	7.01	0.31	77
18/6/2009	4,000	9/4/2009	600,000	4,000	88,000	4,000	6.74	7.01	0.27	1,08
18/6/2009	239,000	9/4/2009	600,000	239,000	84,000	84,000	6.75	7.01	0.26	21,84
18/6/2009	239,000	16/4/2009	155,000	155,000	155,000	155,000	6.75	6.87	0.12	18,60
Total Gain										939,94

12. In pursuance of the decision of the Commission, the benefit of the manner approved by the Commission has been passed on in the instant matter, resultantly, the amount of tenderable has been reduced from Rs. 4,198,308/- to Rs 939,945/-.

13. It is evident from the foregoing discussion that the Respondent has made gain on account of the aforesaid sale and purchase transactions. Since the transactions have resulted in gain, therefore, the Respondent was required to discharge its certain obligations pursuant to Section 224(1) of the Ordinance. But, the Respondent has failed to discharge its said obligations, therefore, the request to withdraw the Notice is rejected and matter is disposed of as under:-

- a) The amount of gain is still with Respondent, therefore, as provided in Section 224(2) of the Ordinance the gain has vested to the Commission. Since Supreme Court of Pakistan in aforementioned judgment held that "the gain will remain under all circumstances property of the company". While, the entitlement of SECP to recover the amount in question from the company would be treated as being in nature of an enforcement mechanism to ensure that the wrongful gains do not remain with person who has violated the section, but are transferred for the benefit of the company. Since ultimately, the amount of gain is required to be transferred to the Issuer Company, therefore, in order to make the process of recovery of gain simple, the Respondent is hereby directed to tender Rs 939,945/- to Issuer Company, within 30 days of the Issue of this Order and provide a copy of its bank account statement of the respective date highlighting therein debit entry of aforementioned amount, for the record of this office, within seven days of the tendering of the gain.
- b) It is evident from the foregoing discussion that the Respondent has contravened the provisions of Section 224(1) of the Ordinance. In the light of said discussion, I am of the view that the Respondent has committed the violation. However, taking a lenient view of the default, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 30,000/- (thirty thousand rupees only) on the Respondent.



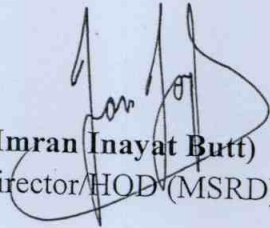


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14. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

15. 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 (MSRD)

Islamabad.

Announced on September 25, 2014