



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Pakistan Services Limited

Number and date of CSD/ARN/490/2017-777-785 dated November 15, 2017
notice:

Date of hearing: January 18, 2018,

Present: Mr. Mansoor Khan, Company Secretary
(Authorized Representative)

ORDER

**UNDER SECTION 196 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This Order shall dispose of the proceedings initiated against the Directors including the Chief Executive (*the "Respondents"*) of Pakistan Services Limited (*the "Company"*) through Show Cause Notice ("*SCN*") dated November 15, 2017 issued under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the examination of the record available with the Commission revealed that a Memorandum of Understanding dated August 1, 2007 (*the "MoU"*) was signed between Ms. Nadia Hashwani through Mr. Murtaza Hashwani, Chief Executive of the Company and Ms. Sahil Ramzan primarily to carry on business in the name of Nirvana Day Spa & Salon (*the "Nirvana"*). The correspondence revealed that when MoU was signed Ms. Nadia Hashwani was on foreign tour. Ms. Nadia Hashwani signed the MoU through Mr. Murtaza Hashwani, Chief Executive of the Company. Later



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on, the aforesaid MoU between Ms. Nadia and Ms. Sahil Ramzan was terminated on December 23, 2011. It was observed that the board of directors of the Company in their meeting held on February 20, 2011 unanimously resolved to acquire/take over rights and obligations of Nirvana under license given by DHA and complete the project as state-of-the-art Spa and health club facilities. The total cost estimate was stated to be Rs.150 million as per the minutes of the said meeting. Extracts of the said meeting are stated below:

"Mr. M. A Bawany informed the board that Nirvana Spa of Islamabad was granted license to set up SPA Health Club, Restaurant, Fashion and Designer outlets on a plot measuring 4 kanals situated in Phase V, DHA, Lahore. The completion time for the complete project was 2 years and after completion the license fee @ Rs. 400,000 per month is to be paid to DHA.

In order to establish the facilities Nirvana entered into joint venture with a local party in Lahore. However, due to economic down turn the joint venture partner has backed out and Nirvana has now approached Pearl Continental Hotel Lahore to take over this Project. He further informed that as per approved plans the project consists of basement, ground floor plus three floors. The total approved covered area is 45,843 SFT. Up till now, approximately Rs. 16 million has been spent by Nirvana on this project.

While giving project brief Mr. M. A Bawany informed the board that the project is ideally located in Commercial area of DHA Phase V, Lahore and is expected to be the most prestigious location for lifestyle shopping, leisure and entertainment in Lahore and if the Company has plans to diverse, its business into retail segment this could be a very lucrative proposal.

In response to a query Mr. M. A Bawany stated that the total cost estimates provided by Nirvana are to the tune of Rs. 150 million. However, BOQs or Architectural designs are



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not available due to lack of interest of JV partner. He further informed that Nirvana had engaged renowned Architects, Wasif Ali Associates.

The Chairman, after the brief, recommended that in these tiring economic conditions we have to look for alternative source of cash generation. He opined that presently there is huge potential in retail business. Mr. Rolf Bauer proposed that the Company may take over Nirvana Project and complete it as a state of art SPA and allied facilities. He also suggested to engage Wasif Ali Associates and get the final designs and cost estimates with complete project feasibility and have the project completed.

The board after due deliberation unanimously resolved to acquire/take over rights and obligations of Nirvana under license given by DHA and complete the project as state of the art SPA and health club facilities.

3. Furthermore, the Company entered into an agreement of absolute transfer and assignment named as Assignment Agreement dated September 28, 2011 wherein the Company in pursuance of its expansion plan, acquired rights in Nirvana, which was situated in building located at plot number 241/1, sector G, phase V, DHA, Lahore. This Assignment Agreement was executed while MoU dated August 1, 2007 was in place as the termination date of MoU was December 23, 2011. It was observed that:

- The Company made investment of Rs 16 million on the Nirvana as of the date of board meeting dated February 20, 2011, which was authenticated from the extract of said board meeting.
- The Company during the period, from passing of the board resolution on February 20, 2011 up to signing of the Assignment Agreement on September 28, 2011, invested funds amounting to Rs.24,812,372 in Nirvana project.



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- The Company during the period, from passing of the board resolution on February 20, 2011 up to the termination of the MoU on December 23, 2011, made investments amounting to Rs.30,143,434 in Nirvana project.
 - The Company made total investment amounting to Rs.291,327,589 in the Nirvana project from March 2011 to June 2016.
4. The Company in its letter dated January 6, 2017 further stated that:

"As already explained in our letter dated March 21, 2016, the amount spent by the Company on the construction of DHA project have been recorded as new assets in the financial statements of the Company for the year ended June 30, 2015."

5. It was also observed that at the time of board resolution of February 20, 2011 (for acquisition/assignment of Nirvana Project) and execution of Assignment Agreement dated September 28, 2011; MoU dated August 1, 2007 between Ms. Nadia Hashwani and Ms. Sahil Ramzan was in place as it was terminated on December 23, 2011. This raised observations regarding the execution of Assignment Agreement, in presence of MoU. Furthermore, the Company preferred to make investment of Rs 16 million before passing the board resolution dated February 20, 2011. The Company made investment of Rs. 24.812 million in Nirvana project in the period February 20, 2011 up to September 28, 2011. The Company made cash investments in the project amounting to Rs. 30.143 million when the MoU was still in field i.e. up to December 23, 2011. It was also observed that the Company discussed and approved a projected investment up to Rs. 150 million however, the Company made investment up to Rs 291 million i.e. beyond the approved limited of board of directors.

6. In view of the aforesaid, the SCN was issued for *prima facie* contravention of the provisions of Section 196(2) (e) and (j) of the Ordinance by the directors and the CEO of the Company.



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7. Mr. Mansoor Khan (the "Authorized Representative") vide his letter dated December 22, 2017 responded the SCN and sought two-week extension. Later on, Authorized Representative vide his letter dated January 8, 2017 submitted the reply to the SCN, brief of which is as follows:

- Mr. Murtaza Hashwani had executed the MOU dated August 1, 2007 on behalf of his sister Ms. Nadia with Ms. Sahil Ramzan purely in his personal capacity and not on behalf of Pakistan Services Limited.
- It is not denied that said MOU was terminated on 23 December 2011.
- Estimate of Rs.150 Million was provided by Nirvana as per their own scheme of project, which was not supported by detailed BOQ's etc. to PSL. Same fact is also evident in the minutes of the Board of Directors meeting dated February 20, 2011 wherein it was decided to seek final revised designs and cost estimates. It is specifically stated in said minutes that "*However, BOQs or Architectural designs are not available due to lack of interest of JV partner*" and "*Mr. Rolf Bauer proposed that the Company may take over Nirvana Project and complete it as a state-of-art Spa and allied facilities. He also suggested to engage M/s Wasif All Associates and get the final designs and cost estimates with complete project feasibility and have the project completed*".
- The revised architecture designs and BOQ were obtained which were considered by the Board on March 28, 2011 and accordingly the Board approved revised estimated cost of this project. The extract is reproduced below for your ease of reference:

"Mr. Rolf Bauer apprised the Board that in pursuance of the Board's decision in the last Board meeting regarding establishment of SPA in Lahore, the Company entered into MOU with M/s. Nirvana on March 01, 2011. He further informed the Board that the Company approached M/s. Wasif Ali Associates and obtained revised designs and cost estimate as per our requirement for building State of Art SPA and Health club.

He then tabled the revised designs and cost estimate along with BOQ's for approval of the



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Board. He informed the board that total estimated cost of this project based on revised architecture designs is approximately Rs. 225 million excluding overhead, lease rentals etc. He assured the Board of utmost efforts of project team to finish this project within this estimated cost.

The Board after due deliberation approved the architecture designs and estimated cost of the project and advised to enter into formal agreement of transfer/assignments with Nirvana as soon as possible."

- Rs.225 million was expressly approved by the Board "excluding overhead, lease rentals etc." In this respect, please note that Rs.45,268,752/- alone was paid to DHA Lahore for the lease rentals during the period March 2011 to June 2016. Moreover, it is noteworthy that all capital expenditures incurred by the company were duly approved by the Board of Directors at the time of approval of the Audited Accounts.
- After the in-principle approval of acquisition of Nirvana Project, the Company has signed an MOU on March 1, 2011 based on which the Company started making investment for the completion of state of the art SPA and Health club.
- MOU dated August 1, 2007 between Ms. Nadia and Ms. Sahil Ramzan was their internal issue and has no legal binding on PSL which could prevent the Company from taking over this project beside this MOU is irrelevant to this project.
- Rs.16 million has been incurred by Nirvana. Project was under construction therefore till 2015 it was classified under capital work in progress and it was recorded as asset in year 2015 after its completion.
- The contents of paragraph 5 of the Show Cause Notice are vehemently denied as being totally incorrect. As already explained above, the Company signed an MOU on March 1, 2011 after in-principle approval from the Board in its meeting held on February 20, 2011 and started making investment on the project in accordance with its legal obligations under Clauses 3 and 4 of the said



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MOU. Hence, your observation regarding unauthorized investment is not correct as investments during the period February 20, 2011 up to September 28, 2011 were made under specific / express Board approval and in accordance with the Company's legally binding obligations.

- The contents of paragraph 6 of the Show Cause Notice are vehemently denied as being incorrect. As noted in the said paragraph under reply, it is admitted the Board discussed and expressly approved investment up to Rs.150 million in its meeting held on 20 February 2011. During the said meeting, the Board expressly sought final / detailed cost / expenditure in respect of the project. Subsequently cost of this project was expressly approved by the Board of Directors on 28 March 2011 based on revised architecture designs and BOQ (excluding lease rentals, overheads etc.). Therefore, it is submitted that the Company made all investment in accordance with approval of the Board and that no violation of Section 196 of the Companies Ordinance, 1984 was committed by the Company and its Directors.
- The contents of paragraph 7 being a reiteration of provisions of law require no specific comment. However, it is pertinent to state that the Board of Directors of the Company have fulfilled all the legal requirements of the law by making decision(s) to invest in the project under authority of resolutions passed at their meetings, as explained above. Moreover, it is useful to refer to the case of *Muhammad Sulemon Kanjini vs. Dadex Eternet Limited* reported in 2009 CLD 87 (High Court of Sindh) to understand the scope and ambit of section 196 of the Companies Ordinance, 1984. This case is being relied upon by way of contradistinction. In the instant case, the important distinction by contrast to the above-noted facts of the judgment referred above is that all approvals have been obtained prior to investments made in the project, as is evident from the facts available on the record.
- The contents of paragraph 8 under reply are denied, as no contravention of the law has taken place in the instant case as is evident from the facts on the record.



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It was stated in the reply that, In view of the above, it is submitted that the imposition of fine/penalty on our Directors under Section 196 of the Ordinance of your above referred Show Cause Notice is unjustified and therefore you are humbly requested that the Show Cause Notice in question may kindly be withdrawn.

8. Considering the reply to the SCN, hearing in the matter was fixed on January 18, 2018. The Authorized Representative in reply vide his email dated January 9, 2018 submitted that we have already submitted our detailed reply in the said matter. Please let us know if still there is need for a hearing. To conclude the show cause proceedings, matter was fixed again on May 24, 2018. Mr. Mansoor Khan appeared in the said hearing. He reiterated his view point as submitted in the written reply to the SCN.

9. Before proceeding further, it is necessary to advert to the relevant provisions Section 196(2) (e) & (j) of the Ordinance provide that the directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely

(e) to invest the funds of the company

(j) to incur capital expenditure on any single item or dispose of a fixed asset in accordance with the limits as prescribed by the Commission from time to time;

10. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the Authorized Representative. I hereby concur with the viewpoint of the Respondent that the MoU between Ms. Nadia and Ms. Sahil was their personal issue and has no legal binding on the Company. Furthermore, the Company in its board meeting held on February 20, 2011 had resolved to acquire/takeover rights and obligations of the Nirvana under the license given by DHA. Authorized Representative, subsequently, in support of his arguments submitted the copy of MoU dated March 1,



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2011 executed by the Company as a proof of its investment made in Nirvana. With regard to the fact that the directors made investment beyond the threshold of Rs 150 million as approved in the board meeting dated February 20, 2011, the Authorized Representative has provided the copy of minutes of meeting dated March 28, 2011 wherein the board approved the revised estimate of Rs 225 million excluding the overhead, lease rentals etc. This shows that the board approved the investment amount. Authorized Representative submitted that the Board of Directors duly approved all the capital expenditures incurred by the Company at the time of approval of audited accounts. The project was under construction till 2015 and was classified under capital work in progress and it was recorded as asset in the year 2015 after the completion.

11. In view of the above, I am of the opinion that the Respondents duly approved the transaction in their board meetings held on February 20, 2011 and March 28, 2011. Therefore, I hereby close this proceeding with no adverse order.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
July 03, 2018
Islamabad

