



Corporate Supervision Department
Company Law Division

Before Abid Hussain –Executive Director

In the matter of

Pervez Ahmed Securities Limited

Date of Original order: June 14, 2016
Date of Appellate Bench Order: November 22, 2016
Date of hearings: June, 7, 2017, August 10, 2017, September 13, 2017,
September 27, 2017 and October 11, 2017
Present: Representatives of M/s Cornelius, Lane & Mufti - Legal Advisor
and Authorized Representatives

ORDER

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

This order shall dispose of the proceedings initiated against following Directors including the Chief Executive (the "Respondents") of Pervez Ahmed Securities Limited (the "Company") through show cause notice (the "SCN") dated November 13, 2015 issued under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

S.No	Name of Respondents
1	Mr. Pervez Ahmed, Chief Executive
2	Mrs. Rehana Pervez Ahmed, Director
3	Mrs. Ayesha Ahmed Mansoor, Director
4	Mr. Ali Pervez Ahmed, Director
5	Mr. Hassan Ibrahim Ahmed, Director
6	Mr. Muhammad Khalid Khan, Director
7	Mr. Mazhar Pervaiz Malik, Director

2. Previously, proceedings initiated against the respondents through the SCN dated November 13, 2015 were concluded through a penal order dated June 14, 2016 and the respective respondents were directed to deposit within thirty days an amount of Rs. 700,000 for contravening the provisions of section 196 of the Ordinance by disposing a sizeable part of the undertaking without the approval



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of shareholders. The respondents filed appeal No.46 of 2016 with the Appellate Bench (the "Appeal") of the Commission against the aforesaid order. Subsequently the Appellate Bench of the Commission through order dated November 22, 2016 remanded back the matter to the Corporate Supervision Department to reassess the facts of the instant case.

3. The brief facts of the case are that note 2 to the quarterly accounts for the period ended December 31, 2014 of the Company revealed that the Company sold its Trading Rights Entitlement Certificate ("TREC") and shares of Lahore Stock Exchange ("LSE"). As per minutes of board of directors meeting held on July 18, 2014, TREC and 337,590 shares of LSE were sold to Pervez Ahmed Capital (Private) Limited ("PACL"), an associated undertaking of the Company against a total consideration of Rs. 8.376 million consisting of Rs. 5 million for the TREC and Rs. 10 per share for the shares of LSE.

4. The Company is primarily a brokerage house engaged in the shares brokerage and trading, consultancy services and underwriting. The disposal of TREC by a brokerage company is a sizeable part of the undertaking of the Company since subsequent to the disposal, the Company cannot continue with its core business segment i.e. brokerage business.

5. It was apprehended that the Company has, *prima facie*, violated the provisions of section 196 (3) (a) of the Ordinance, as it disposed of sizeable part of its undertaking without obtaining prior authorization or approval of its shareholders. Consequently, a SCN was served upon the respondents on November 13, 2015 to show cause as to why penalty may be not imposed under Section 196 of the Ordinance.

6. The respondents made following submissions vide letter dated April 26, 2016 and in the hearing held in the matter on May 4, 2016 which was attended by Mr. Adil Umar Bandial of Cornelius, Lane & Mufti and Mr. Salman Farooq – Manager Operations of the Company ("*Authorized Representatives*").

- i. The principal activities of the Company include share brokerage, trading of shares, consultancy services and underwriting (which means brokerage is one of the principal activities of the Company) and that from last six years the Company has not conducted or been involved in brokerage of shares due to inadequacy of Net Capital Balance ("*NCB*"). If



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the TREC was not sold, the same would have been of no value because after the implementation of Stock Exchange (Corporatization, Demutualization and Integration) Act 2012 ("The Act") all the inactive brokerage houses, with negative NCB, would have ceased to do brokerage business.

- ii. The Company is not doing brokerage business for last six years therefore, TREC had no market value and certificates were deemed to be redundant if not sold. TRECs were sold considering shareholders interest. He also contended that brokerage was one of the businesses of the Company, moreover, due to suspension of the TREC, it did not contribute to the income of the company. Hence, considering the fact that the TREC and the shareholding of LSE (now PSX) did not contribute to the income of the company, it cannot be considered as a sizeable part of the assets of the Company that's why shareholders' approval was not considered.

7. Consequently, Order dated June 14, 2016 was passed by the undersigned as it was seen that the arguments of the respondents during the hearing and the written representations did not address the allegations of the SCN as they failed to counter the fact the TREC and the LSE shares constituted sizable part of the company being a brokerage house and it was also noted that the TREC were sold to an associated company which required approval from the shareholders and the sale and determination of the selling price was not made in a transparent manner. The respondents were penalized and a cumulative fine of Rs.700,000 was imposed on them.

8. The respondents preferred an appeal before Appellate Bench on the following grounds:
 - i. *Over the course of time, due to market conditions and the internal position of the Company, the value of brokerage services kept diminishing and with the passage of time it became the least significant portion of the business activities of the Company. Since 2010, the Company did not have the Net Capital Balance (NCB) necessary for provision of brokerage services in Pakistan. For this reason, since 2010 the Company had not been able to utilize its TRE Certificate and the brokerage service of the Company remained inactive. Due to the long inactivity of the brokerage business, the value of TRE Certificate had totally diminished and it had lost its market value. Therefore, keeping in view the inactivity of the brokerage business of the Company, TRE Certificate has been suspended by the Commission and this fact further supports the contention that TRE Certificate had lost its*



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market value and it was not contributing to the income of the Company at all. Moreover, the Stock Exchange (Corporatization, Demutualization and Integration) Act, 2012 (Demutualization Act) was passed in 2012 and pursuant thereto, the brokerage business of all the inactive brokerage houses which had a negative NCB would have ceased to be operational and the TRE Certificates of such brokerage houses would have become redundant and lost its value completely. The Appellants, as responsible managers of the Company and custodian of the rights of shareholders, decided to sell the TRE Certificate and the shares which otherwise would have lost all value to the detriment of the Company and the shareholders. In this regard, the Appellants endeavored vigilantly to find a buyer and the only company interested in buying the TRE Certificate and the Shares was PACL. The Company sold the TRE Certificate at a profit of Rs 0.9 million. At the time of sale of TRE Certificate and the shares to the purchaser, the value of TRE Certificate as intimated by LSE vide notice no. 804 dated 14/02/16 and Notice no. 3897 dated 20/06/16 was Rs 4.1 million. It is a matter of record that the Company sold the TRE Certificate for consideration of Rs 5 million. The decision of the Appellants to sell the TRE Certificate was only in the best interest of the Company and the shareholders and this sale secured the shareholders Rs 5 million out of an asset which was an insignificant part of its business activities and had lost its market value completely. The sale of TRE Certificate was never hidden from the shareholders. In the quarterly accounts of the Company for the period ending on 31/12/14, the sale reflected complete details. The same is also evident from the fact that the shareholders have never objected to the said transaction. This fact alone is enough to establish that the transaction was transparent and it was in the best interest of the Company and the shareholders.

- ii. The transaction has not caused any loss whatsoever to the Company or shareholders. On the contrary, the transaction has generated not only revenue but profit from an asset which had lost its value.

9. The Appellate Bench vide its order dated A November 22, 2016, concluded that:

"We are of the view that the Respondent did not fully consider all the facts and circumstances of the instant case before imposing penalty. Firstly, the Appellant's TRE certificate was insignificant in terms of generating revenue. Secondly, in terms of section 16 of the Demutualization Act, any person who shall retain the TRE Certificate has to register as a broker



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not later than six months from the date of issuance of TRE Certificate and commence business operations within the specified time, failing to which shall result in lapse of TRE Certificate in two years from the demutualization. In the instant case, the Company was unable to comply with the requirements of section 16 of Demutualization Act and considered it more appropriate to squeeze some value out of it by selling it off before expiry.

In view thereof, we remand the matter to the Respondent to reassess the facts of the instant case."

10. The case was thus remanded back for reassessment. Accordingly, the respondents were provided opportunities of hearings on June 7, 2017, August 10, 2017, September 13, 2017 and September 27, 2017 however, the hearings were adjourned on the request of the Authorized representative. On the hearing fixed for October 11, 2017, Mr. Ali Rana of Cornelius, Lane & Mufti (advocates and solicitors) appeared and relied on Para 10 of Appellate Bench Order which is reproduced below:

"We are of the view that the Respondent did not fully consider all the facts and circumstances of the instant case before imposing penalty. Firstly, the Appellant's TRE Certificate was insignificant in terms of generating revenue. Secondly, in terms of section 16 of the Demutualization Act, any person who shall retain the TRE Certificate has to register as a broker not later than six months from the date of issuance of TRE Certificate and commence business within the specified time, failing to which shall result in lapse of TRE Certificate in two years from the demutualization. In the instant case, the Company was unable to comply with the requirements of section 16 of Demutualization Act and considered it more appropriate to squeeze some value out of it by selling it off before expiry".

11. In terms of the Commission's notification S.R.O. 751(I)/2017 dated August 2, 2017 the powers to adjudicate cases under section 196 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

12. The basic contention put forth by the respondents is that the TREC and Company's shareholding in LSE (now PSX) did not constitute a sizable part of the Company's asset because neither did it have any value nor did it contribute to the income of the Company, therefore, sale of TREC does not attract provisions of the Section 196(2) of the Ordinance. I have analyzed the facts of



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the case; relevant provisions of the Ordinance, arguments put forth by the representative and respondents and observed the following:

- Part 4 History and Prospects of the prospectus published by Company on April 25, 2007 states:
“The principal activity of the Company is equity investments while share brokerage, underwriting and financial consultancy services will commence in the near future. The Company is a corporate member of the Lahore Stock Exchange (Guarantee) Limited since April 6, 2006 and was registered as a broker on May 3, 2006 under the Brokers and Agents Registration Rules, 2001.”
- It is further stated under the same heading that:
“At the end of the expansionary phase, Pervez Ahmed Securities Limited is expected to benefit from increase in its operating capacity. Under the leadership of Mr. Pervez Ahmed, the Company has demonstrated its capacity to operate in an efficient and profitable manner. With the start of its brokerage business, the Company will provide its clients financial services of highest quality. Further, the company is well positioned to negotiate any changes in the operational environment that might hamper its business activities.
- Para 4.6 highlights the future strategy of the Company providing a separate approach for each of the following four segments of the Company’s operations namely:
 - a) Brokerage
 - b) Portfolio Diversification strategy
 - c) Research Division
 - d) Corporate Finance Advisory
- The provisions contained in Section 196 of the Ordinance are clear and unambiguous; this Section draws a dividing line between power of directors of a company and that of its shareholders. Moreover, the procedure and manner of seeking shareholders’ approval in case of sizeable part of undertaking has been further elaborated through the SRO 1227/2005 dated December 12, 2005.
- The respondents have argued that the TREC did not represent a sizable part of the assets since the Company was not using it and as such no income was being generated through it. A company having multiple business segments has multiple undertakings i.e. assets for each segment themselves constitute an undertaking. The Directors of the Company themselves in the prospectus have identified brokerage as an independent business



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segment. The disposal of the TREC has inhibited the company from undertaking any activity in that particular segment of operations. Therefore, the argument that the TREC did not constitute an undertaking or a sizable part thereof does not hold merit at relevant time of disposal. The sale of TREC constituted sale of the undertaking with respect to the segment of the share brokerage business. The approval of its disposal was required to be taken in a duly convened shareholder meeting. The prior approval of the shareholders, is a condition precedent for selling or disposing of the undertaking or sizeable part thereof. This has been given special significance by providing that default of this provision would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

- The objective of Sub-section (1) and (2) of Section 196 of the Ordinance is to empower the directors to proceed with certain decisions without obtaining consent of general body of the shareholders. However, the provisions of Sub-section (3) of the aforesaid section clearly restricts the directors to not to proceed with the disposal of assets or sizeable part thereof except with the consent of general meeting either specifically or by way of authorization. If directors have proceeded with any business without obtaining shareholder's approval in general meeting at all or without providing complete information to the shareholders, the directors have exceeded their powers as established in section 196 of the Ordinance and as held by superior courts;
- This is also important to note that the shareholders were not taken into confidence prior to the disposal of a sizeable part of the undertaking of the Company. This gives rise to apprehension that the management has not only suppressed but also concealed the information about sale of assets of the Company from the shareholders. In my view, where the sale of a whole undertaking or sizeable part of the undertaking is intended, the following minimum information needs to be sent to the shareholders in relation to material facts:
 - a. The need for the sale;
 - b. How the sale is in the interest of the Company;
 - c. The mode of disposal; the procedure to be followed; to whom the sale is intended to be made, if known at the date of notice;
 - d. The expected proceeds of the sale;
 - e. How the company would benefit from the sale of undertaking or its sizeable.



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- The sale of TREC was made to PACL, in which three directors were common with that of the Company, further it has been noticed that the fourth director Mrs. Rehana Pervez Ahmed is also a shareholder of PACL. This makes four directors of the Company interested directors in terms of Section 214 of the Ordinance therefore their presence in the meeting did not form part of quorum in terms of section 216 of the Ordinance. These facts establish that this transaction could not be approved by directors in the board meeting due to apparent lack of quorum. Therefore, even if the disposal of TREC and shares of LSE, is not considered as sizeable part of the undertaking, even then approval of shareholder was needed in terms of afore referred provisions of the Ordinance as the quorum was not established.

13. For the foregoing reasons, I am of the firm view that shareholders' approval was required before sale of TREC and shares of LSE to associated company. However, it has been observed that TREC of the Company would have lapsed as on August 26, 2014 if not sold, moreover, the Company sold TREC for Rs. 5 million, more than reserve price fixed by LSE as Rs. 4.1 million on June 20, 2014. As per PSX notice dated September 29, 2016 the notional value of TREC was Rs. 5 million and breakup value of PSX shares was Rs. 9.98 per share as on June 30, 2016, consequently, I have observed that no loss was apparently caused to the Company. The Appellate Bench has also concluded that sale of TREC was in the interest of shareholders as some value was squeezed out of it by selling it off before its expiry. Therefore, I am taking a lenient view and instead of imposing fines, hereby conclude the subject proceedings with a warning to the respondents to be careful and ensure meticulous compliance with applicable laws.

Abid Hussain
Executive Director

Announced:
December 6, 2018
Islamabad