



Corporate Supervision Department
Company Law Division

Before Abid Hussain –Executive Director

In the matter of

Pervez Ahmed Securities Limited

Number and date of notice: CSD/ARN/136/2015-1361-67 dated November 13, 2015

Date of hearing: April 14, 2016 and May 4, 2016

Present: Representatives of M/s Cornelius, Lane & Mufti (“CLM”)- 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 (“SCN”) dated November 13, 2015 issued under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (the “Ordinance”).

Name of Respondents
Mr. Pervez Ahmed, Chief Executive
Mrs. Rehana Pervez Ahmed, Director
Mrs. Ayesha Ahmed Mansoor, Director
Mr. Ali Pervez Ahmed, Director
Mr. Hassan Ibrahim Ahmed, Director
Mr. Muhammad Khalid Khan, Director
Mr. Mazhar Pervaiz Malik, Director

2. 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 (“TRE Certificate”) and shares of Lahore Stock Exchange (“LSE”). As per minutes of board of directors meeting held on July 18, 2014, TRE Certificate and 337,590 shares of LSE were sold to Pervez Ahmed Capital (Private) Limited (“PACL”), an associated undertaking, against a total consideration of Rs. 8.376 million being Rs. 5 million for TRE Certificate and Rs.3.376 million for shares of LSE i.e. Rs. 10 per share of LSE.

3. The Company is primarily a brokerage house engaged in the shares brokerage and trading, consultancy services and underwriting. The aforementioned disposal constituted a sizable

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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.

4. Clause (a) of sub-section (3) of section 196 of the Ordinance provides as under:

“The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely.-

(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing;”

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 the 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 were provided opportunity of hearings on January 21, 2016 and February 15, 2016 but the hearings were adjourned on respondents' requests. The hearing held on April 14, 2016 was attended by Mr. Furqan Naveed of CLM and Mr. Salman Farooq – manger operations, who requested for further time for submission of written reply which was duly granted.

7. The respondents replied vide letter dated April 26, 2016 and submitted that 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”). They further argued that if the TRE Certificate 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 been ceased to do brokerage business.

8. The respondents were granted another opportunity of personal hearing on May 4, 2016 which was attended by Mr. Adil Umar Bandial of CLM and Mr. Salman Farooq – manger



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operations and submitted that the Company is not doing brokerage business for last six years therefore, TRE Certificate had no market value and certificates were deemed to be redundant if not sold. TRE Certificate was sold considering shareholders interest. He also contended that brokerage was one of the businesses of the Company moreover, due to suspension; the TRE certificate did not contribute to the income of the company. Hence, considering the fact the TRE certificate and the shareholding of LSE did not contribute to the income of the company, it cannot be considered as sizeable part of the assets of the Company and, therefore, shareholders' approval was not considered.

9. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 196 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

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



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- 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 powers of directors of a company and those 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 TRE Certificate 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 segment. The disposal of the TREC has inhibited the company from undertaking any activity in the particular segment of operations. Therefore, the argument that the TREC did not constitute an undertaking or a sizable part thereof does not hold merit. 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 shareholders' 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.

- Respondents' argument that TRE Certificates had no market value is not tenable. As per annual audited accounts of the Company for the year ended June 30, 2010, the value of membership card of Lahore Stock Exchange was Rs. 40 million. Thereafter, when the TREC was suspended the respondents did not make any visible efforts to revoke the suspension instead the impairment was charged thus reducing its' value through book entries. Furthermore, Stock Exchange TREC is a license issued to a selected few.



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- It has also been observed that the TREC has been sold to PACL an associated company by virtue of common directors Mr. Pervez Ahmed, Mr. Ali Pervez and Ms. Ayesha Ahmed Mansoor. In addition Director of the Company Ms. Rehana Pervez Ahmed and Company itself, are also a shareholder PACL. According to respondents PACL offered Rs. 5 Million for the TREC thereafter the sale was executed. Bearing in mind the personal interest of the directors in the transaction the mode of sale and determination of the sale price are not transparent. In view of the personal interest of the directors in the sale, the avoidance of the transparent mechanism provided in Section 196 and subsidiary legislation made thereunder appears to be deliberate. The objective of Sub-section (1) and (2) of Section 196 of the Ordinance is to empower the directors to proceed to for 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 the any business without obtaining shareholder's approval in general meeting i.e. without providing complete information to the shareholders, that resolution is not valid in the eyes of law 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 sizeable asset/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 part?
- It is the commercial consideration of the management to sell the undertaking or its sizeable part. What, however, is required in this respect is that the transactions should be transparent and in the best interest of the Company and its shareholders. As mentioned above the sale of TREC was made to PACL, in which three directors were common



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directors, therefore the afore-said directors had a fiduciary relationship with the Company hence they should have acted in the best interest of the Company instead they acted collusively in their personal interest. Further it has been noticed that the fourth director Mrs. Rehana Pervez Ahmed is also a shareholders 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 does 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 due to lack of quorum and therefore approval of shareholder was otherwise also needed in terms of afore referred provisions of the Ordinance.

11. Considering the above circumstances of the case, I am of the view that directors have failed to clarify their position with respect to non-compliance with the requirement of Sub-section (3) of Section 196 of the Ordinance therefore an action is necessary under Sub-section (4) of Section 196 of the Ordinance which not only provides a fine of one hundred thousand rupees for the responsible directors but also make them individually and severally liable for losses and damages arising out of such action. The fact of the case warrants no sympathy for the directors and requires a stern action against them. Therefore, in exercise of the powers conferred by Sub section (4) of Section 196 of the Ordinance, I hereby impose a fine of Rs.700,000/- (Rupees Seven hundred thousand only) in aggregate on respondents for contravening the provisions of Section 196 of the Ordinance. The respondents are directed to deposit the fine in the following manner:

Name of Respondents	Amount in Rupees
Mr. Pervez Ahmed, Chief Executive	100,000
Mrs. Rehana Pervez Ahmed, Director	100,000
Mrs. Ayesha Ahmed Mansoor, Director	100,000
Mr. Ali Pervez Ahmed, Director	100,000
Mr. Hassan Ibrahim Ahmed, Director	100,000
Mr. Muhammad Khalid Khan, Director	100,000
Mr. Mazhar Pervaiz Malik, Director	100,000
Total	700,000

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will



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be initiated. It may also be noted that the said fines are imposed on respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

12. Moreover, the department is advised to immediately review the matter of sale of TREC with reference to the requirements laid out in Section 193, 214 and 216 of Ordinance and evaluate initiation of proceedings thereunder.

Abid Hussain
Executive Director

Announced:
June 14, 2016
Islamabad