



Corporate Supervision Department  
Company Law Division

Before Ms. Amina Aziz – Director (Corporate Supervision Department)

*In the matter of*

**Pervez Ahmed Securities Limited**

Number and date of notice: CSD/ARN/136/2015-3483-89 dated April 25, 2017  
Date of hearing: June, 7, 2017, August 10, 2017, September 13, 2017  
Present: Representatives of M/s Cornelius, Lane & Mufti ("CLM")- Legal Advisor and Authorized Representatives

**ORDER**

**UNDER SECTION 214, 216 AND 193 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 Pervez Ahmed Securities Limited (the "Company") through show cause notice ("SCN") dated April 25, 2017 issued under the provisions of Section 214, 216 and 193 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. Brief facts of the case are that note 2 to the quarterly accounts for the period ended December 31, 2014 of Pervez Ahmed Securities Limited ("Company") revealed that during the period the Company sold Trading Rights Entitlement Certificate ("TREC") and shares of Lahore Stock Exchange ("LSE"). As pre minutes of board of directors meeting held on July 18, 2014 in which it was resolved to sell out TREC and 337,590 shares of LSE to Pervez Ahmed Capital (Private) Limited ("PACL") as associated undertaking offered Rs. 5 million for TREC and Rs. 10 per share of LSE.

3. The meeting was attended by five directors out of which two directors were interested as follows:

Name of Director of Company	Nature of interest
Mr. Pervez Ahmed	Also director of PACL
Mrs. Rehana Pervez Ahmed	Holds 227,000 shares (2.7%) of PACL and also spouse of Mr. Pervez Ahmed

4. The two interested directors out of five present in the meeting, being concerned and interested in the transaction, were not qualified to participate and vote to approve transactions with the associated company, therefore, the quorum of directors was not formed in terms of Sub-

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section (1) of Section 193 of the Ordinance which provides that the quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater.

5. It appeared that the respondents have, prima facie, violated the following provisions of the Ordinance:

- Mrs Rehana Pervez, prima facie, violated the provisions of Section 214 of the Ordinance as despite being interested have not disclosed interest in term of Section 214 of the Ordinance.
- Mrs. Rehana Pervez, prima facie, violated the provisions of Sub-section (1) of Section 216 of the Ordinance as she participated in the proceedings of the meeting despite being concerned and interested in contrary to the requirements of Section 216 of the Ordinance.
- The respondents, prima facie, contravened the provisions of Sub-section (1) of Section 193 of the Ordinance as they accorded approvals for the transactions with the associated company in the absence of quorum.

Consequently, a show cause notice dated April 25, 2017 was issued to the respondents calling upon them to show cause in writing as to why prescribed penalties may not be imposed on them for, prima facie, contravening the afore-referred provisions of the Ordinance. The respondents failed to respond SCN.

6. The respondents were provided opportunities of hearings on June, 7, 2017 and August 10, 2017 but hearings were adjourned on the request of the Authorized representative. Finally hearing was held on September 13, 2017 and Mr. Furqan Naveed of CLM appeared and submitted that shareholding of Mrs. Rehana Pervaiz is insignificant which is only 2.7% and asked for lenient view.

7. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance, which states as under:

**214. Disclosure of interest by director.** - (1) *Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered*



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*into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors:*

*Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.*

*(6) a director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.*

**Section 216. Interested director not to participate or vote in proceedings of directors.** - (1) *no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.*

*(3) every director who knowingly contravenes any of the provisions of Sub-section (1) or Sub-section (2) shall be liable to a fine which may extend to five thousand rupees.*

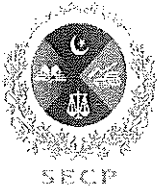
**Section 193. Proceedings of directors.-**

*(1) the quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater.*

Sub-section (3) of Section 193 of the Ordinance, inter alia, provides that if a meeting of directors is conducted in the absence of a quorum specified in Sub-section (1), the chairman of the directors and the directors of a listed company shall be liable to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding one hundred rupees for every day after the first during which the default continues.

8. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 214,216 and 193 of the Ordinance have been delegated to the Director (CSD).

9. It is important to highlight here that the Ordinance has been repealed while promulgating Companies Act, 2017 ("Act"). However, provisions of Section 509(1)(f) of the Act clearly provides that the pending proceedings should be concluded as provided in the Ordinance;



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509. *Repeal and savings.*—(1) *The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIII A consisting of sections 282A to 282N, from the date of coming into force of this Act and the provisions of the said Part VIII A along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:*

*Provided that repeal of the repealed Ordinance shall not-*

- f) *affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act has not been passed.*

10. I have analyzed the facts of the case, provisions of Sections 193, 214 and 216 of the Ordinance, arguments put forth by the respondents in writing and during the hearing and my observations are as follows:

- The first underlying question that needs clarity is what constitutes interest or concern of directors. Sections 214 and 216 of the Ordinance both make reference to a director who is in any way, directly or indirectly, concerned or interested in a contract or arrangement entered into or to be entered into by a company. By bare reading of these sections, one can say that it includes both personal as well as professional interests of directors. Moreover, such use of the word 'concerned' in conjunction with the word 'interested' further widens the ambit of these provisions. It has been held by Lord Greene M.R. in *Batts Combe Quarry Ltd. v. Ford*, "The word 'concerned' is of quite general import. Clearly it cannot be limited to 'concerned' in the sense of financial interest or being an employee of the business".
- The Bombay High Court (*T.R. Pratt (Bombay) Ltd. v E.D. Sasoan & Co. Ltd. – AIR 1936 Bom 62*), in discussing the scope of Section 300 of the Indian Companies Act, 1956 (the equivalent of Section 216 of the Ordinance) in explaining the rule of equity on the basis of which these provisions were included in the Company law, quoted the following words of Lord Cranworth in *Aberdeen Railway Co. v Blaikie*:

*"A corporate body can only act by agents and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are*



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*conducting. Such agents have duties to discharge of a fiduciary nature towards their principle. It is a rule of universal application, that on one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interest of those whom he is bound to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into. It obviously is, or may be, impossible to demonstrate how far in any particular case the terms of such a contract have been the best for the interest of cestui que trust, which it was possible to obtain. It may sometimes happen that the terms on which a trustee has dealt or attempted to deal with the estate or interests of those for whom he is a trustee, have been as good as could have been obtained from any other person, - they may even at the time have been better. But still so inflexible is the rule that no inquiry on that subject is permitted."*

- Mr. Pervaiz Ahmed- director of the Company is also director in PACL and Mrs. Rehana Pervaiz Ahmed- director of the Company is not director in PACL but holds 227,000 shares in PACL and is spouse of Mr. Pervaiz Ahmed who is director in PACL, hence both of them are interested in the transaction. Mrs. Rehana Pervaiz Ahmed failed to disclose her interest in the transaction with the associated company.
- Sub-section (1) of Section 216, prohibits voting and participation in meeting of directors by a director who is directly or indirectly concerned or interested in the contract or arrangement to be discussed or approved in such meeting. The interested directors, owing to their common directorship and beneficial ownership of shares of the associated companies, were not allowed to participate and vote in the proceedings of directors of the Company to consider and approve the transactions with the associated company. Despite that, Mrs. Rehana Pervez Ahmed interested director accorded approval for transaction with associated company. Therefore, the act of considering and casting votes as director to pass the resolutions for approval of transactions with associated company by the interested director despite being concerned and interested in the transaction, is clearly in contravention of the provisions of Section 216 of the Ordinance.



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- Thus quorum of directors, which was a minimum of four directors in the instant case in terms of Sub-section (1) of Section 193 of the Ordinance, was not formed as two interested directors out of five present in the meeting, being concerned and interested in the transaction, were not qualified to participate and vote to approve transactions with the associated company. The respondents have, therefore, violated the provisions of Section 193 of the Ordinance by considering and approving the aforesaid transaction with associated company in the absence of the quorum.

11. For the foregoing reasons, I am of the opinion that the provision of Section 214 and 216 of the Ordinance has been violated by Mrs. Rehana Pervez Ahmed and provisions of Section 193 has been violated by the respondents. Therefore, in exercise of the powers conferred by aforesaid provisions of the Ordinance, I hereby impose a fine of Rs.75,000/- (Rupees seventy five thousand only) in aggregate on respondents for contravening the aforesaid mandatory provisions of the Ordinance. The respondents are directed to deposit the fine in the following manner:

S.#	Names of Respondents	Amounts in Rs.
1	Mr. Pervez Ahmed	10,000
2	Mrs. Rehana Pervez Ahmed	15,000
3	Mrs. Ayesha Ahmed Mansoor	10,000
4	Mr. Ali Pervez Ahmed	10,000
5	Mr. Hassan Ibrahim Ahmed	10,000
6	Mr. Muhammad Khalid Khan	10,000
7	Mr. Mazhar Pervaiz Malik	10,000

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 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.

Amina Aziz  
Director (Corporate Supervision Department)

**Announced:**

December 6, 2017

Islamabad

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