



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/281/2016-3498-3504 dated April 26, 2017  
Date of hearing: June, 7, 2017, August 10, 2017, September 13, 2017, September 27, 2017 and October 11, 2017  
Present: Representatives of M/s Cornelius, Lane & Mufti ("CLM")- Legal Advisor and Authorized Representatives

**ORDER**

**UNDER SECTION 237 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 26, 2017 issued under the provisions of Section 237 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. Brief facts of the case are that the review of annual audited accounts for the year ended June 30, 2016 ("Accounts") revealed that the Company hold shares of Pervez Ahmed Capital Private Limited ("PACL") and D.S Industries Limited ("DSIL") as per following details:

Note 8.1.1: Investments in  
Pervez Ahmed Capital Private Limited 8,498,300 shares (2015: 8,498,300 shares)  
Total holding: 49.36% shares of Pervez Ahmed Capital Private Ltd.

Note 10: Investments in  
D.S Industries Limited: 3,614,000 shares (2015: 3,614,000 shares)  
Total holding: 6.02% shares in D.S Industries Limited

3. The Company directly or indirectly holds more than fifty percent shares of PACL and has power to elect and appoint more than fifty percent of its directors as explained below;

	Percentage holding
Company direct holding in PACL	49.36%
Company indirect holding in PACL	
Company holds 6.02% shares of DSIL	
DSIL holds 44.88% shares of PACL	
Therefore Company indirect holding in PACL	6.02% times 44.88% = 2.70%
Company direct & indirect holding in PACL	Exceeds 50% i.e 49.36%+2.70%=52.06%



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 1 -

4. It has been observed that the Company despite being the holding company of PACL has not attached to its Accounts for the year ended June 30, 2013, 2014, 2015 and 2016, the consolidated financial statements of the group presented as those of a single enterprise.
5. Section 3 of the Companies Ordinance, 1984 provides that;
- (1) For purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if—
- a) that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent of its directors; or
- b) the first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary;
- (2) For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.
6. Sub-Section (1) of Section 237 of the Ordinance provides that;
- there shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under Sub-Section (3) of Section 234;*
7. The Company has *prima facie*, contravened the provisions of Sub-Section (1) of Section 237 of the Ordinance by not attaching to its Accounts the consolidated financial statements of the group comprising the Company and its subsidiary. Consequently a SCN was served upon the respondents on April 26, 2017 to show cause as to why penalty be not imposed under Section 237 of the Ordinance for the alleged violations by the respondents.
8. The respondents vide letter dated June 3, 2017 submitted that earlier a similar SCN was sent in 2012 and detailed reply submitted by the Company and relied on letter dated July 2, 2012, contents of which relevant to the SCN is reproduce below;
- The Company has investment of 49.37% in share of PACL and classified it as "investment in associated undertaking".



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 2 -

- The status of investment as subsidiary on the basis of power to elect and appoint more than fifty percent of its directors is not possible because of another company DSIL is also holding 44.88% shares of PACL and it is not legally possible for PACL having two holding companies. Similarly both the companies can't make consolidated accounts simultaneously on the basis of investment in PACL.
9. The respondents were provided opportunities of hearings on June, 7, 2017, August 10, 2017, September 13, 2017 and September 27, 2017 but hearings were adjourned on the request of the Authorized representative. Finally hearing was held on October 11, 2017 and Mr. Ali Rana of CLM appeared and reiterated the submissions made in the reply to SCN.
10. Before proceeding further, it is necessary to advert sub-section (9) of section 237 of the Ordinance which states that;
- if a holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable with fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not willful and intentional.*
11. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 237 of the Ordinance have been delegated to the Director (CSD).
12. 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;
- 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-*

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# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 3 -

*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.*

13. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the respondents and representative in writing and during the hearing and observed that:

- Section 3 of the Ordinance clearly specify that for purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if other company directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent of its directors.
- The submissions of respondents are not cogent as DSIL direct and indirect holding in voting shares of PACL is less than 50% therefore, it cannot be termed as holding company of PACL. However the Company's direct holding in PACL is 49.36% and as elaborated in Para 3 of this order the Company indirectly holds 2.7% shares of PACL therefore, PACL is subsidiary of the Company as it directly and indirectly hold more than fifty percent of voting shares of PACL and has power to elect and appoint more than 50% of its directors.
- Section 237 of the Ordinance necessitate that there shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under Sub-Section (3) of Section 234.
- The Company despite being the holding company of PACL has not attached to its Accounts for the year ended June 30, 2013, 2014, 2015 and 2016, the consolidated financial statements of the group presented as those of a single enterprise.

14. For the foregoing reasons, I am of the opinion that the provision of Section 237 of the Ordinance has been violated by the respondents. Therefore, in exercise of the powers conferred by

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# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 4 -

aforesaid provision of the Ordinance, I hereby impose a fine of Rs. 70,000/- (Rupees seventy thousand only) in aggregate on respondents for contravening the provisions of Section 237 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	10,000
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.

Arjina Aziz  
Director (Corporate Supervision Department)

**Announced:**

December 6, 2017

Islamabad

