



Corporate Supervision Department
Company Law Division

Before Abid Hussain
Executive Director (Corporate Supervision Department)

In the matter of

Towellers Limited

Number and date of notice: CSD/ARN/207/2015-1922-1930 dated December 10, 2018
Date of hearing: January 30, 2019
Present: Mr. Rashid Sadiq of M/s RS Corporate Advisory
(Authorized Representative)

ORDER

UNDER SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the directors/ex-directors including the company secretary (*the "Respondents"*) of Towellers Limited (*the "Company"*) through show cause notice dated December 10, 2018 (*the "SCN"*) issued under the provisions of Section 492 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that Ms. Swaleha Alam (*"Ms. Alam"*) filed a complaint dated September 3, 2018 against the Company, wherein she alleged that the Company was using her name as director/independent director/non-executive director and chairman of audit committee, from 2012 to 2017 without her permission and consent. She expressed that she did not held any of these positions in the Company. Furthermore, she submitted that she had not attended any meeting of the Company, with its Board, staff or stakeholders in any capacity representing the Company.

3. Upon query of the Commission on complaint of Ms. Alam; the Company responded as follows:

- a. Vide letter dated October 11, 2018 submitted that *"Ms. Swaleha Alam Shehzada was appointed as a director on the board of Towellers Limited in the year 2012 with consent and continued to hold the position of director until 2017"*.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

b. Vide letter dated October 24, 2018, submitted that *"Ms. Swaleha Alam Shahzada was appointed as an independent director by the board of the Company in the year 2012 and resigned in the year 2017"*

4. Earlier, it was observed that the Company vide letter dated August 18, 2018 addressed to Ms. Alam, claimed that she was appointed as an independent director on the board of the company with her consent and on the recommendation of the majority shareholders of the company.

5. In view of the aforesaid circumstances, it was necessary to examine the record of the Company including annual accounts and statutory forms filed with the Commission. Upon examination of record it was observed that:

- a. Annual audited accounts of the Company for the year ended June 30, 2012 to June 30, 2015, under the head "Company Information" show name of *Ms. Alam* as Chairman of the Audit Committee.
- b. Annual audited accounts for the year ended June 30, 2012 to June 30, 2015 do not disclose Ms. Alam as member of board of director of the Company.
- c. Annual audited accounts of the Company for the year ended June 30, 2016 (the "Accounts 2016") show Ms. Alam as "Independent Director" as well as Chairman of the Audit Committee.
- d. Annual Report to the members on Accounts 2016 discloses as under:
 - i. Para 4 – "Board of Directors" shows that during the year, Ms. Alam (Non-Executive Director) attended 2 board meetings.
 - ii. Para 5 – "Audit Committee" shows that during the year, Ms. Alam (Chairman) attended 01 audit committee meeting.
- e. Annual Report to the members on annual audited accounts for the year ended June 30, 2017 discloses as under:
 - i. "Board Meeting and Attendance of each director" shows that during the year, Ms. Alam (Non-executive director) attended 2 board meetings and leave of absence was granted to her for 2 board meetings.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

- ii. "Board Audit Committee" shows that during the year, Ms. Alam (Chairman) attended 2 audit committee meetings.
- iii. "Board Human Resource and remuneration Committee" states that *the board has approved resignation of Swaleha Alam, Independent Director of the Company and appoint Mr. Valy Tariq Rangoonwala as a same position i.e. from April 06, 2017.*
- f. Form 28 dated December 3, 2012 and November 7, 2015 filed with the Commission do not reflect the name of Ms. Alam.
- g. Form 29 dated December 3, 2012 and November 7, 2015 do not reflect the name of Ms. Alam as director of the Company.
- h. Form A for the years 2012 to 2017 do not reflect the name of Ms. Alam as director of the Company.

6. In view of the foregoing, it appeared that the annual reports of the Company for the year ended June 30, 2012 to June 30, 2017, *prima facie*, misstated the facts and the Company has also *prima facie* misstated in its letters addressed to the Commission as referred above in terms of Section 492 of the Ordinance. Therefore, SCN dated December 10, 2018 was issued to the Respondents.

7. The SCN was responded by Mr. Rashid Sadiq of M/s RS Corporate Advisory vide his letter dated December 22, 2018 (Authorized Representative) on behalf of the respondents. Brief of his reply is as follows:

- a. Ms. Alam provided her consent in writing to act as an independent director on the board of the Company in the year 2012, as per requirements of Section 184 (1) of the Repealed Ordinance. Her allegations stated in her letter dated 3 September 2018 are categorically denied.
- b. It is surprising that she has not denied her written consent letter but filed the purported 'complaint' and did not raise any voice in all previous years.
- c. The Company's relevant officer, however, failed though inadvertently, to appreciate that the independent directors are to be elected in the manner as other directors are elected in terms of Section 159 of the Companies Act, 2017 (Section 178 of the Repealed Ordinance).



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

- d. This inadvertent and unintentional omission was due to mistaken belief that the position of the independent directors is different from and is in addition to the regular board members.
- e. This omission was not in the knowledge of the management of the Company and accordingly the same could not be rectified at the appropriate time.
- f. SCN is being issued after promulgation of the Companies Act, 2017 (hereinafter the 'Act') which has repealed the Companies Ordinance, 1984. It is respectfully submitted that while the Act seeks to allow the continuation of certain pending processes initiated under the Repealed Ordinance, as enumerated in Section 509(l)(f) of the Act, the matter at hand does not fall within the definitions for any of the processes provided for therein.
- g. Even, if it is arguable that Section 509 of the Act may function to save the operation of Section 492 of the Repealed Ordinance as may be applicable to actions of companies in contravention of Section 492 of the Repealed Ordinance taken before promulgation of the Act, there is no provision in the Act or any secondary legislation providing for the processes or authority for issuance of show cause notices under the Repealed Ordinance.
- h. The Complainant has not provided any documentary evidence to the Commission, which could substantiate her claims.
- i. Provisions of Regulation 6 of the SECP Regulations that a complaint cannot be entertained without following the mandatory laid down procedure. Similar requirements had been placed by the Companies (General Provisions and Forms) Regulations, 1985 (hereinafter the "Companies Regulations"). The "Complainant" has failed to file the complaint as per requirements of the law and therefore, the complaint is liable to be dismissed without any further action.
- j. It is hereby submitted that the Company could not appoint the independent director in the manner as other directors are elected in terms of the relevant provision of law, however, Ms. Alam had given her consent in writing which is also attached hereto and, therefore, the Company has not misstated the facts in the annual reports of the Company for the years ended June 30, 2012 to June 30, 2017 and further there was no misstatement in the replies of the Company.

A handwritten signature in black ink, appearing to be 'M. Alam', is located in the bottom right corner of the page.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

- k. It is respectfully submitted that this has happened due to mistaken belief as stated in the preceding paragraphs. The non-appointment of independent directors by the Company in the manner required under the law does not fall under Section 492 of the Repealed Ordinance, and therefore, we request the Commission to kindly discontinue the proceedings taking a lenient view of the matter at hand.
- l. We wish to state that the Company and its Directors / Company Secretary are compliant corporate citizens and are fully committed to complying with all mandatory provisions of the Act and all the relevant rules and regulations in all the operations of the Company. The Company is also mindful of the important role the Commission plays in enforcement of the corporate laws in Pakistan to protect the interest of stakeholders of corporate enterprises and anticipates that the contributions being made by the Commission would substantially improve the corporate culture as well as corporate governance of the corporate enterprises. The regulatory framework, therefore, is beneficial for the Company and its stakeholders.
- m. It is the submission of our clients that there has in fact been no violation of Section 492 of the Repealed Ordinance as alleged in the SCN. The omissions highlighted in the SCN were inadvertent and a result of genuine misunderstanding of the scheme of law as applicable to appointment of independent directors.
- n. It is respectfully prayed that in order to ensure justice on the basis of the available facts and circumstances, the Commission may be pleased to withdraw the SCN without any adverse action against our clients, taking a lenient view for the sake of uniformity as enshrined in Section 20(6)(c) the Securities and Exchange Commission of Pakistan Act, 1997.
8. Considering the reply to the SCN, hearing in the matter was fixed on January 30, 2019. Hearing was attended by Mr. Rashid Sadiq as Authorized Representative. He reiterated the viewpoint as submitted in written reply to the SCN. He however submitted that it was an inadvertent mistake on the part of the relevant officer of the Company who failed to appreciate that independent director are to be elected in the same manner as other directors are elected in term of Section 159 of the Companies Act, 2017 (Section 178 of the Ordinance). The management of the Company was not in knowledge of this omission. The Authorized Representative submitted that the directors/company secretary are compliant corporate citizens and are fully committed to



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 5 -

comply with all mandatory provisions of the Act and all the relevant rules and regulations in operations of the Company. He requested for the lenient view and close the proceedings with no adverse action.

9. Before proceeding further, I would like to reiterate the relevant provisions;

a. Clause 35(xxiv) of the then applicable Code of Corporate Governance states that:

The board of directors of every listed company shall establish an Audit Committee, at least of three members comprising of non-executive directors. The chairman of the committee shall be an independent director, who shall not be the chairman of the board.

b. Provision of the Section 492 of the Ordinance provides that:

Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.

10. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under Section 492 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

11. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the Authorized Representative. At the outset, I would like to mention here that the provisions of Section 178 of the Ordinance (Section 159 of the Companies Act, 2017) are clear and unambiguous. No provision of the Ordinance or the Act, by any means provides that election criteria of the independent director is different from the other directors. All the directors including independent directors are to be elected as per the criteria envisaged in the repealed Ordinance and now under the Act. I have noted that the relevant officer of the Company as well as the board of directors failed to comprehend the manner of the appointment of independent directors.

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SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 6 -

12. I am of the view that the Company unlawfully used the name of Ms. Alam as the independent director of the Company and her name was also disclosed as a member of various committees. Accounts 2016 state Ms. Alam as an independent director and chairman of the audit committee, whereas the Form 28, 29 and Form A filed by the Company during the period from the year 2012 to 2017, do not disclose her as a member of board of directors.

13. Authorized Representative argued that Ms. Alam filed the consent with the Company for the election of directors. This argument of the Authorized Representative is not tenable. It is obvious that merely filing of the consent for election of director of the Company cannot be construed that the person has been elected as director of the company nor the person can be directly appointed as an independent director without having passed through the electoral process envisaged in the law.

14. With regard to the argument of the Authorized Representative that SCN was issued after promulgation of the Act, which has repealed the Ordinance, I would like to mention that Section 509 empowers the Commission to initiate proceedings against the Respondents. Clause (d) of the proviso of Sub section (1) of Section 509 of the Act stipulates that the repeal of the repealed Ordinance shall not affect the right, obligation or liabilities acquired, accrued or incurred under the said repealed Ordinance. The argument of the Authorized Representative therefore is not cogent and acceptable. The Company in its letters dated October 11, 2018 and October 24, 2018 addressed to the Commission has categorically stated that Ms. Alam was on the board of directors from the year 2012 to 2017. This argument is self-contradictory in view of the statutory forms filed by the Company, which cannot be construed otherwise but as an outright misstatement with the Commission. Any false or incorrect statement in any form, report, return, statement etc. attracts the provisions of Section 492 of the Ordinance. In the instant case, I have observed that the Respondents made gross misstatements in the annual reports of the Company for a period of around 6 years. The users of the financial statements were provided false and wrong information with respect to the appointment of independent director as well as chairman of the audit committee. Considering the gravity of the misstatement, the Commission took cognizance of the matter and initiated necessary show cause proceedings against the Respondents.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 7 -

15. In view of the foregoing, I am of the considered opinion that the Respondents have misstated with the Commission by disclosing Ms. Alam as a member of Board of Directors of the Company. This attracts the provision of Section 492 of the Ordinance. I am of the view that more responsibility lies on chief executive, members/ex-members of audit committee and company secretary for providing incorrect information to the stakeholders including the Commission. I therefore impose aggregate penalty of Rs. 700,000 (Rupees seven hundred thousand only) on chief executive, members/ex-members of audit committee and company secretary under the provisions of Section 492 of the Ordinance in the following manner:

S.#	Particulars	Penalty (Rs)
	<u>Chief Executive Officer</u>	
1	Ms. Mehreen Obaid Agha	200,000
	<u>Members/Ex-members of Audit Committee</u>	
2	Ms. Sana Bilal – Director	100,000
3	Mr. Javed Ashfaq – Ex-director	100,000
4	Mr. Abdul Jalil Shariff – Director	100,000
5	Ms. Hadeel Obaid – Director	100,000
	<u>Company Secretary</u>	
6	Mr. Farhan Adil	100,000
	Total	700,000

16. I further warn all the Respondents to ensure strict compliance of the law.

17. The aforesaid fine 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 fine, proceedings for recovery of the fines as arrears of land revenue will be initiated.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:

February 14, 2019

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