



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Company Law Division)
Corporatization & Compliance Department

In the matter of
M/s Tianshi International Pakistan Co. (Pvt) Limited

Date of hearing: July 2, 2013
Present: Nemo
Date of Order: November 4, 2013

Sanction under section 309 (b) of the Companies Ordinance, 1984

M/s. Tianshi International Pakistan Co. (Pvt) Limited (hereinafter called the “Company”) was incorporated on 20.9.2002 with the Company Registration Office, Karachi (the “CRO”). Its paid up capital is Rs.500,000 divided into 5,000 share of Rs.100 each. The registered office of the Company is situated at 1st Floor, Banner Store Plaza, Block No. 20-A, Main Civic Centre, G-8 Markaz, Islamabad.

2. The principle business activities of the Company as enunciated in its Memorandum of Association are manufacturing and processing of food, wholesale and retail of various materials, procurement services, consulting services for economic information, etc. At present, following are the directors of the Company as per annual return (Form-A) made up to 02.11.2012;

- (a) Mr. Li Jinyuan
- (b) Mr. Yan Yupeng
- (c) Cheah Yin Hoay

3. The then Additional Registrar, Company Registration Office, Karachi (the “registrar concerned”) after series of correspondence made with the Company and after satisfying himself about the activities of the Company, vide his letter dated 04.10.2006 sought the sanction of the Commission in terms of the proviso to Clause (b) of section 309 of the Companies Ordinance, 1984 (the “Ordinance”) and informed that the Company is involved in the following activities:


- (a) The Company is carrying on Multilevel Marketing Business (MLM) which is not authorized by its memorandum of association;


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- (b) The Company distributes some Chinese medicines and health products through distribution channel that has been constructed on the basis of MLM;
- (c) The paid up capital of the Company is Rs. 500,000 which is inadequate considering its wide network all over Pakistan;
- (d) The Company offers unusual and extra-ordinary incentives to the prospective buyers on sale of its products to boost the sale of the products fraudulently;
- (e) The Company intentionally avoided to provide the information / documents desired by the registrar concerned under section 261 of the Ordinance.

4. On perusal of the reports of the Registrar concerned, a show cause notice (the "SCN") dated November 3, 2006 was issued to the Company and its Chief Executive asking for making representation if so desired and to explain the position as to why the sanction for filing of winding up petition might not be granted. In response to the aforesaid SCN, the Company vide its letter dated November 20, 2006 responded that there was some misconception linking the Company with other small local or foreign companies doing dishonest businesses. It was informed that the Company is a part of Tiens, a China-based multinational group of companies with subsidiaries in 104 countries, including US, UK, France and Germany, listed at New York Stock Exchange (NYSE) and is marketing worldwide thousands of its own quality products from its own manufacturing facilities found in seven different regions in the world.

5. It was also informed that the Tiens products are quality products, meeting the world-leading quality certifications such as FDA, ISO, HACCP, GMP, etc and to meet the requirements of Muslim world, Tiens has its own halal certified production facility in Malaysia to supply to different Muslim countries. It was also stated in the reply that the Company is one of the hundreds of subsidiaries of Tiens Group marketing around 100 varieties of herbal food supplements, healthcare devices, cosmetics & perfumes, medical appliances, domestic cleansers bearing Tiens brands in four branches in Pakistan through its own marketing channel recognized all over the world and further the Company is investing in Pakistan since 2002. Only the tax and tariff being paid by the Company to the Pakistan exchequer up to 2006 amounted to \$454,200.00, while the Company is running the business on no-profit-no-loss basis and the Company has created thousands of self-employment opportunities in the country.


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6. In order to provide personal opportunities of representation to the management, hearings were fixed on different occasions for 10.1.2007, 7.2.2007, 13.2.2007, 13.3.2007, 21.3.2007, 4.9.2007, 11.9.2009, 18.9.2007, 26.9.2007, 8.10.2007, 30.10.2007, 13.11.2007, 14.12.2007, 2.1.2008, 21.2.2008, 30.4.2008, 11.6.2008, 27.8.2008, 29.9.2008, 18.11.2008, 23.12.2008, 20.1.2009 and 28.1.2009 but each time, the Company sought adjournment on one pretext or the other and prolonged the matter. The Company vide Order dated November 21, 2006 passed under section 472 of the Ordinance was also directed to stop and undo the irregularities forthwith.

7. The Company instead of complying with the aforesaid directions filed a Constitutional Petition No. 2371 of 2009 before the Hon'ble Islamabad High Court, challenging the validity of the SCN. The said petition was dismissed vide Order dated 11.04.2013. The operative part of the said Order is reproduced hereunder for ease of reference:

“It is suffice to observe that the communication between the parties by itself is sufficient to prove that the respondents have been providing fair opportunity to the petitioner before passing any verdict about the worth of the allegations/apprehension of the respondents. The petitioner will have the right to file appeal u/s 33 of the SECP Act, 1997, if the Commission issues any verdict against the petitioner u/s 309 read with Section 305 of the Ordinance. It will not be out of place to refer to letter dated 13.06.2007, which the petitioner, through his legal advisor, had submitted to the respondents wherein the petitioner mentioned that it has been making all the possible efforts to remove all those marketing incentives which were the subject of the concern of SECP and it has been further mentioned in this letter that if the SECP finds anything which needs further improvement on behalf of the Company. The rights and powers of commission constituted under SECP Act, 1997 have been defined in Section 20 of the SECP Act, 1997, which inter-alia elaborates the supervisory jurisdiction in the matters of the registered companies to safeguard the interest of the general public and at present the Commission is proceeding within its mandate without any illegality & malafide and there exists no ground to issue any writ in the matter so far as the proceedings of the Commission are preliminary and the petitioner may take part in those proceedings where the fair opportunity of hearing is being provided to them”.

8. After dismissal of the petition, hearing in the matter was again fixed for 15.05.2013 however the Company instead of appearing in the proceedings asked for the copy of the SCN and asserted that the Court had issued a stay order in favour of the Company. In response to the request of the Company and as requested, a copy of

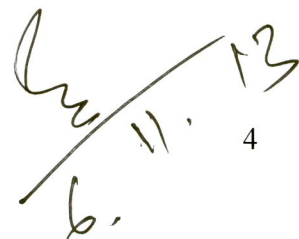
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the SCN was sent to it at its registered office and hearing was re-fixed for 06.06.2013 which was not again attended by anyone on behalf of the Company and it was informed that the Company had filed CPLA before the Supreme Court of Pakistan. The hearing was once again fixed for July 2, 2013 vide letter dated 19-06-2013 whereby the Company was intimated that the writ petition filed by the Company in the Honorable Islamabad High Court was disposed of and if the Company has filed an appeal before the Honorable Supreme Court of Pakistan, no such restraining order was passed by the Hon'ble Court or received by the Commission.

9. In addition to this, the Company was advised in each and every hearing letter to bring the latest audited accounts of the Company and all the material in support of its contentions but the Company never provided the same. Once again no one appeared on behalf of the Company rather its Counsel replied that the Hon'ble Islamabad High Court had disposed of its petition vide Order dated 11.04.2013 but the Supreme Court of Pakistan in Ashraf Tiwana case had decided on 11.04.2013 that the SECP was not properly constituted in terms of section 5 (5) of the SECP Act, 1997 and the Order was binding on all the Courts and executive authorities under Articles 190 of the Constitution of Islamic Republic of Pakistan. The Counsel once again requested to adjourn the hearing.

10. It is observed that the Company has been using delaying tactics and instead of presenting its case on merit before the undersigned, is trying to delay the matter on one pretext or the other. It is the duty of the management or its Counsel to appear before the undersigned to explain its case both on legal as well as on factual grounds in terms of the Order of Hon'ble High Court as stated above. There are no indications that the Company has removed the marketing incentives which are concern of SECP as mentioned in the Order of Hon'ble Islamabad High Court reproduced in para 6 above.

11. From the perusal of Clause 26 of the Memorandum of Association of the Company, it is clearly provided that the Company shall not engage in any unlawful business. The registrar concerned after taking into consideration of the complaints, report(s) submitted by the official of the CRO, as well as information / explanation called under section 261 of Ordinance and brochures containing information about the business, obtained from the business premises of the Company, has arrived at the conclusion and reported the matter vide letter dated 4.1.2006 that the Company is involved in business of Multilevel Marketing (MLM) which is not authorized by its memorandum, and has also failed to provide the information / documents desired by the Registrar concerned under section 261 of the Ordinance.

A handwritten signature in black ink, followed by the date '11.13' and the number '4' written below it.

12. The view of the registrar concerned also carries weight as the Company has not responded properly and delayed the matter considerably on one pretext or the other and has also failed to comply with the directions passed by the Commission in terms of section 472 of the Ordinance. As regards, observation of the Company on the constitution of the Commission, it has already been contended in reply to the Writ Petition No. 2371 of 2009 that section 5 of the SECP Act was amended through the Securities & Exchange Commission of Pakistan (Amendment) Act, 2013 (Amendment Act) and it provided that no act, proceeding or decision of the Commission shall be invalid only by reason of the existence of a vacancy or defect in the constitution of the Commission. Even otherwise, the matter of the Company relates to the period 2006 when the power to adjudicate the current matters was duly delegated to the officers of the Commission. Section 4 of the amendment act provide that anything done, actions taken, orders passed before the commencement of the Amendment Act shall be deemed to have been validly done and shall be deemed to had effect accordingly.

13. For the reasons as stated above, as the registered office of the Company has now been shifted to the Islamabad jurisdiction, I hereby grant sanction under clause (b) of section 309 of the Ordinance to the Additional Registrar, CRO, Islamabad to present a petition before the Court of competent jurisdiction for winding up of the Company in terms of sections 305 and 309 of the Ordinance.



(Nazir Ahmed Shaheen)
Executive Director (CCD)

Announced at Islamabad
Dated November 6, 2013