



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Capital Issues Department

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Asim Azim Siddiqui, Director of Pakistan International Container Terminal Limited

Date of Hearing: November 13, 2012

Present at Hearing:

Representing the Respondent:

- (i) Mr. Aftab Salahuddin *Executive Director,
Ernst & Young Ford Rhodes Sidat Hyder,
Chartered Accountants*
- (ii) Mr. M. Masood Ahmed Usmani *Chief Financial officer,
Pakistan International Container Terminal
Limited*

Assisting the Director/HOD (MSCID):

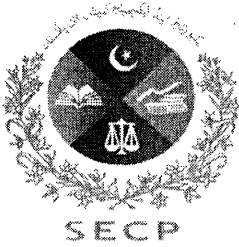
- (i) Mr. Muhammad Farooq *Joint Director*

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 (“**Ordinance**”) by the Securities and Exchange Commission of Pakistan (“**Commission**”) through Show Cause Notice No. S.M(B.O)C.O.222/13(306)2010 dated 30/07/2012 (“**Notice**”) issued to Mr. Asim Azim Siddiqui, Director (“**Respondent**”), Pakistan International Container Terminal Limited (“**Issuer Company**”).

2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being its Director was required to file returns of changes in beneficial ownership on Form 32, within the period stipulated under Section 222 of the Ordinance. However, he failed to discharge the said obligations which attract penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222(2)(c) of the Ordinance stipulates the period within which the said return (Form 32) is to be submitted as under:-



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“where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change;

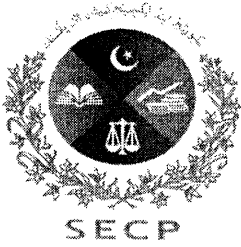
4. It is worth mentioning that in order to provide an opportunity to directors/beneficial owners of listed companies to file their over due returns of beneficial ownership without facing penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.

5. On account of scrutiny of record of this office, it was observed that the Respondent has failed to file Form 32 as a Director of Company with this Commission, for the changes mentioned in para 6 of the Notice. The said changes were taken place in his beneficial ownership during the period of September 2009 to October 2011 (the “Period”).

6. The Respondent was, therefore, asked vide letter dated 27/02/2012 to file returns of beneficial ownership on Form 32 alongwith the reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance. But, despite reminder dated 24/04/2012, the Respondent failed to file Form-32 for the aforementioned changes in beneficial ownership, in contravention of Section 222(2)(c) of the Ordinance, which attract penal provisions contain in Section 224(4) of the Ordinance, which provides as under:-

“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.

7. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222 of the Ordinance. Moreover, the Respondent was also advised to inform in writing if he wishes to be heard in person or through authorized representative to present the stance in person. In response, the Company Secretary of the Issuer Company, vide letter dated 09/08/2012, informed that the Respondent is out of country and requested for extension in time up to 13/09/2012 for submission of reply to the Notice, which was accepted. The matter was responded by the Respondent vide letter 13/09/2012 but he did not file the returns for the under reference changes in beneficial ownership.



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8. In order to provide an opportunity of being heard in person, hearing in the matter was fixed for 13/11/2012 at the Commission's Regional Office, Karachi. On the said date, Mr. Aftab Salahuddin, Executive Director, Ernst & Young Ford Rhodes Sidat Hyder and Mr. Masood Ahmed Usmani, Chief Financial Officer of the Issuer Company ("Authorized Representatives") appeared on behalf of the Respondent. The submissions made by the Respondent in writing as well as verbally by the Authorized Representatives during the course of hearing be summarized as under:-

- a) *The Respondent was of the view that the Company Registration Office is extended arm of SECP established in various cities of Pakistan to facilitate the management of companies to file various prescribed returns from time to time, if and when due under the provisions of the Ordinance with the concerned CRO.*
- b) *The Respondent was of the impression that filing of Form 31 and 32 with the CRO is the same as filing with the SECP.*
- c) *The returns for the under reference changes in beneficial ownership were timely filed with the CRO, Karachi.*
- d) *The act of omission of filing of the said returns with the Commission was not done knowingly and willfully.*
- e) *The Authorized Representative ensured that the Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*

9. During the Course of personal hearing, the Authorized Representatives were intimated that the Respondent has not yet filed the Form-32 for the under reference changes in beneficial ownership. The Authorized Representatives were, therefore, advised to ask the Respondent for filing of the said returns.

10. The Respondent, in response to the aforesaid directive filed Form-32 with the Commission on 19/11/2012, for the changes taken place in his beneficial ownership during the aforesaid period, with delay ranges from 1,521 days to 380 days. Concerning the sale transaction mentioned at serial No 3. of the table given in para 6 of the Notice, the Respondent stated vide letter dated 12/12/2012 that actually it was a movement in the pledged account instead of sale transactions, which was opened with Central Depository Company of Pakistan, for obtaining a loan from International Finance Corporation.

11. I have considered the aforesaid submissions made by the Respondent in writing as well by the Authorized Representatives verbally during the course of hearing. The Respondent has stated that he was *of the impression that filing of Form-31 and Form-32 with the CRO is the*

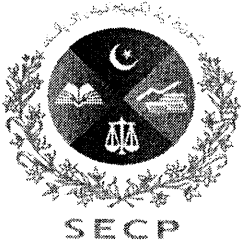


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same as filing with the SECP. For the purpose of arriving at conclusion, I have reviewed the record of this office, which reveals that:-

- (i) The Respondent became Director of the Company on 08/07/2003. Thus, he was required to file his first return of beneficial ownership on Form-31, within 30 days of occupying the position of Director in the Company. But, the said return was filed by him with the Commission on 10/05/2004, in response to this office letter dated 15/04/2004, wherein it was clearly mentioned that the returns of beneficial ownership are required to be filed with the Registrar and the Commission.
- (ii) In response to this office letter dated 06/07/2010, the Respondent filed Form-32 with the Commission on 17/09/2012, for receipt of 133,074 bonus shares on 01/10/2009 and purchase of 5,000 shares on 25/02/2010.
- (iii) This office, vide letter dated 24/09/2010, advised the Respondent for filing of Form-32 with the Commission, for the changes taken place in his beneficial ownership during the period from September 2009 to September 2010. In response, the Company Secretary of the Issuer Company requested for extension in time for fifteen days. Meanwhile, the Commission provided an opportunity through Notice dated 21/09/2010 to the director/officers of listed companies for filing their over-due returns of beneficial ownership with Head Office of the Commission by 31/10/2010, without facing penal action. But, the Respondent despite the aforesaid letter and the Notice did not file the returns of beneficial ownership on Form 32 with the Commission.
- (iv) The Respondent was asked by this office vide letter dated 27/02/2012 followed by reminder dated 24/04/2012, for filing of the Form-32 for the transactions made by him during the aforesaid period but he did not respond the matter. Consequently, the under reference Notice was issued.

12. In view of the foregoing discussion, it is evident that since occupying the position of Director in the Issuer Company, each return of beneficial ownership has been filed by the Respondent upon receiving letter from the Commission. He filed his first return of beneficial ownership on Form-31 as at 30/10/2003, in response to this office letter dated 15/04/2004, wherein it was clearly mentioned that pursuant to the provisions of Section 222 of the Ordinance, the returns of beneficial ownership are required to be filed with the Registrar and the Commission. Similarly, in response to this office letter dated 06/07/2010, he filed Form-32 as at 31/07/2010 for receipt of bonus shares and purchase of 5,000 shares. Thus, I am of the view that the Respondent was fully aware about his liability of filing of Form-32 with the Commission.



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13. For reporting of the under reference changes in beneficial ownership on Form-32, the Respondent was asked by the Commission through letter dated 27/02/2012, but despite reminder dated 24/04/2012, he failed to discharge his said liability. Hence, in my opinion, the Respondent has contravened the provisions of Section 222 of the Ordinance despite having knowledge of the requirement of the law.

14. Thus, in the light of aforesaid discussion, I am of the view that the Respondent has committed the violation. However, in response to directive given during the course of personal hearing, he has filed the Form 32. Taking a lenient view of the default, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 30,000 (thirty thousand rupees only) on the Respondent and no further fine for continuous default is imposed.

15. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited, within 30 days of the date of this order and furnish Original Deposit Challan to this office.

16. This Order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.




(Imran Inayat Butt)
Director/HOD (MSCID)

Islamabad.
Announced on January 24, 2013