



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

Before the Director/HOD (Market Supervision and Capital Issues Department)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Ahmad Bin Shahid, a Director of Shadman Cotton Mills Limited

Date of Hearing: 02/08/2011

Present at Hearing:

- Representing the Respondent:*
- (i) Mr. Waqar Ahmad,
Advocate High Court
- Assisting the Director (SMD):*
- (i) Mr. Muhammad Farooq,
Joint Director (SMD)
 - (ii) Mr. Nazim Ali,
Assistant Director (SMD)

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/ 4(981)11 dated 19/07/2011 ("**Notice**") issued to Mr. Ahmad Bin Shahid ("**Respondent**") a Director of Shadman Cotton Mills Limited ("**Issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that it was observed from the record of this office that the Issuer Company is a public listed company and the Respondent is on its Board of Directors. It was further observed that the Respondent has made some purchase and sale transactions (detail given in para 6 of the Order) in January 2011. Thus, pursuant to provisions of Section 222(2)(c) of the Ordinance, he was required to file his return of beneficial ownership on prescribed form, within the stipulated time period. But, he failed to discharge his said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222 of the Ordinance deals with the submission of statements by beneficial owners of listed securities. For convenience the provisions of the said Section are reproduced



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hereunder:-

- (1) Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.
- (2) The period within which the said return is to be submitted to the registrar and the Commission shall be—
 - (a) where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;
 - (b) in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;
 - (c) 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; or
 - (d) where the Commission by an order so requires, within such period as may be specified in such order.

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.



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5. Since the Respondent failed to file his return of beneficial ownership, therefore, he was asked vide letters dated 11/04/2011 and 29/04/2011 to file said returns of beneficial ownership on Form 32 alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance.

6. In response to aforementioned letter, the Respondent filed Form 32 for the following changes in shareholding with the delay mentioned against each:-

Sr. No.	No. of Shares	Nature of change in shareholding	Date of change in shareholding	Due date for filing the return	Return filed on	Delay in days
1	768,893	Purchase	04/01/2011	19/01/2011	06/05/2011	107
2	417,150	Purchase	05/01/2011	20/05/2011	06/05/2011	106
3	500	Sale	10/01/2011	25/05/2011	06/05/2011	101

Thus the aforementioned changes in shareholding were reported to the Commission with delay ranges from 101 days to 107 days, in contravention of Section 222(2)(c) of the Ordinance. The said default attracts penal provisions of 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 accordingly 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 contraventions of Section 222(2)(c) of the Ordinance. The written reply in this regard was submitted by Mr. Waqar Ahmad. Advocate High Court ("**Legal Counsel**") vide letter dated 29/07/2011. He, on behalf of the Respondent, stated that:-

"The return for change in beneficial ownership of directors as per practice is compiled by

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the Company Secretary who after getting the returns signed by the directors submits the same to the SECP offices as per laid down procedure. Due to the multiple litigations between the sponsors of the Company which are pending before the SECP and the honorable Courts, the return of beneficial ownership could not be filed as per existing practice. As soon as it came to the knowledge of the Respondent, the Form 32 was filed by him without any delay with the Company Registration Office, Karachi on March 07, 2011. Inadvertently, however, the same could not be filed with the SECP at that time. It is only after filing of the return that SECP vide its letter dated April 11, 2011 required submission of the return of beneficial ownership. Accordingly, the Respondent in compliance submitted the return. In repose to the Respondent's letter dated April 13, 2011, SECP required filing of revised return which was duly submitted by the Respondent vide letter dated May 05, 2011. Thereafter, the Respondent received the show cause notice dated July 19, 2011.

In the above background, you will kindly appreciate that the element of failure to comply knowingly and willfully does not arise as stipulated in Section 224 (4) of the Companies Ordinance, 1984. The late filing of return is, therefore, unintentional and not willful".

8. Furthermore, in order to provide him an opportunity of being heard in person, hearing in the matter was fixed for 02/08/2011 at Commission's Head Office, Islamabad. On the given date the above named Legal Counsel appeared before me on behalf of the Respondent and made the following submissions:-

- a) The Respondent has recently joined his family business after completing his studies and intend to conduct the business in accordance with the best corporate practices. He is a law abiding citizen who is fully cognizant of the compliance with the legal provisions in the performance of his duties as a director of the Company.
- b) SECP has very graciously condoned such minor delays in the past which has improved the culture of compliance which is the objective of SECP in the overall scheme of the corporate laws.
- c) The Respondent assured to observe the strict compliance with the provisions of Section 224 of the companies Ordinance, 1984. The delay in submission of the return of beneficial ownership was not willful, which may kindly be condoned.

9. I have considered written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Legal Counsel during the course of personal hearing. The

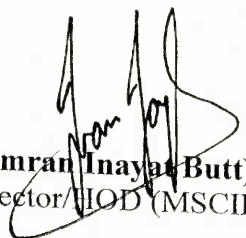


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Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The Respondent has assured for timely filing of the returns of beneficial ownership in future and requested to condone the default in question. In order to arrive at conclusion, I have also reviewed the available record which reveals that the Respondent has earlier filed Form 31 within the stipulated time period. The record further signifies that the Respondent has filed the return promptly on receipt of letter from the Commission. Considering the arguments advanced on behalf of the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the under reference return of beneficial ownership may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.

10. 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.

Islamabad.
Announced on August 11, 2011


(Imran Inayat Butt)
Director/IOD (MSCID)