



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Bank Alfalah Limited, a more than ten percent shareholder of Wateen Telecom limited

Date of Hearing:

December 30, 2011

Present at Hearing:

Representing the Respondent:

*Mr. Hamid Ashraf,
General Manager, Legal & Company Secretary,
Bank Alfalah Limited*

Assisting the Director/HOD (MSCID):

*Mr. Muhammad Farooq,
Joint 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.222/1(85)11 dated 21/12/2011 ("**Notice**") issued to Bank Alfalah Limited ("**Respondent**"), a more than ten percent shareholder of Wateen Telecom 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 a more than ten percent shareholder was required to file the return of beneficial ownership on Form 31, within the period stipulated under Section 222 of the Ordinance. However, the Respondent failed to discharge the said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222(2)(b) of the Ordinance stipulates the period within which the Form 31 is required to be submitted as under. For convenience, the provisions of the said Section are reproduced hereunder:-

"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"



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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 the return of beneficial ownership on Form 31. The Respondent was, therefore, asked vide letter dated 20/09/2011 to file return of beneficial ownership on Form 31 alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance. The Company Secretary of the Respondent vide letter dated 01/10/2011, filed a Form 31 with this Commission which showed that the Issuer Company was listed at Karachi Stock Exchange on 06/04/2010. Thus, the Respondent was required to file the Form 31 with this Commission latest by 05/05/2010, but the same was filed on 03/10/2011, with delay of 516 days, which is a contravention of Section 222(2)(b) 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".

6. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon it to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against it pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222(2)(b) of the Ordinance. The Chief Executive of the Respondent furnished written reply to the Notice vide letter dated 22/12/2011.

7. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed for 30/12/2011 at Commission's office, Karachi. On the given date, Mr. Hamid Ashraf, General Manager, Legal and Company Secretary of the Respondent ("**Authorized Representative**") appeared on behalf of the Respondent.

8. The submissions made on behalf of the Respondent by the Chief Executive in his aforesaid letter and arguments presented by the Authorized Representative during the course of hearing are summarized hereunder:-

- a) *The Respondent filed Form 31, within allowed period of 14 days on 30/09/2011 not on 03/10/2011, with the Joint Registrar of Companies, Lahore alongwith the Letter*



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No. LDN/HA/6391 dated 29/09/2011. A copy of the said letter alongwith the documents were sent to the Commission on 01/10/2011.

- b) The delay in filing of instant Form 31 within the stipulated time period after listing of the Issuer on Karachi Stock exchange was totally inadvertent and the Bank did not knowingly and willfully contravene the provisions of Section 222 of the Ordinance.
- c) The Authorized Representative requested to take lenient view of the matter and condone the delay.

9. I have considered the aforesaid submissions made on behalf of the Respondent and my findings in this regards are as under:-

- a) The Chief Executive of the Respondent has contended that the return was filed on 29/09/2011 rather than 03/10/2011. In the same letter, the Chief executive has also stated that the instant return was filed with the Company Registration Office, Lahore on 29/09/2011 and its copy was sent to the Commission on 01/10/2011. In this regard it is pointed out that pursuant to the provisions of the Section 222 of the Ordinance, the returns of beneficial ownership are required to be filed simultaneously with the respective Company Registration Office and the Commission, within the stipulated time limit. The available record of this office signifies that the under reference return was received in this office on 03/10/2011, with delay of 516 days. While, it may also be inferred from the written statement, filed by the Chief Executive in reply to the Notice, that the Respondent has also failed to file the said return with the respective Company Registration Office, within the stipulated time limit.
- b) Concerning the plea that the default in question was not willful, I am of the view that Sections 220 to 224 of the Ordinance speak about a Scheme. Under the said Scheme such beneficial owners/persons are required to report their shareholding as well as changes in shareholding at the same time to the Company, Registrar of Companies and the Commission. The said officers and more than ten percent shareholders of a listed company are required to fulfill their statutory requirements within the time period provided in the law. The inevitability of the filing of the return of beneficial ownership with the Commission may be adjudged from the fact, that it enables the Commission to monitor the trading activities of the returnee.
- c) It is worth mentioning that in order to engender awareness and provide an opportunity to the specified officers and more than ten percent shareholders of listed companies, for filing of overdue returns, the Commission carried out exercise twice mentioned in detail in para 4 of the Order, but the Respondent failed to discharge its liability entailed under Section 222 of the Ordinance, until, the same was pointed out by this office through letter dated 20/09/2011.



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10. In view of the foregoing discussion, it is evident that the Respondent has contravenes the provisions of Section 222 of the Ordinance. However, it has promptly acted on receipt of aforementioned letter and filed the Form 31. Moreover, the record of this office reveals that Respondent has made no purchase and sale transactions in the shares of the Issuer Company, since the Company was listed at Stock Exchange. 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, which may extend one thousand rupees per day for the default period of 516 days, is imposed.

11. 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, to the effect.

12. 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 January 31, 2012




(Imran Inayat Butt)
Director/HOD (MSCID)