Before The Executive Director (Securities Market Division)

In the matter of
Recovery of Tenderable Gain
Under Section 224(2) of the Companies Ordinance, 1984
From
Hashoo Holdings (Pvt.) Limited,
a Beneficial Owner of
Pakistan Services Limited

Date of Hearing : 30/07/2009

Present at hearing :

Representing the Respondent:

Mr. Zahid F. Ebrahim — Advocate, Supreme Court of Pakistan
Ebrahim Hosain, Advocates and Corporate Counsel

Assisting the Executive Director (SMD) :

(i) Mr. Imran Inayat Butt — Director (SMD)
(ii) Mr. Muhammad Farooq — Joint Director (SMD)
(iii) Mr. Nazim Ali — Assistant Director (SMD)

Order

This order will dispose of the proceedings initiated under Section 224(2) of the Companies Ordinance, 1984 (the "**Ordinance**") by the Securities and Exchange Commission of Pakistan (the "**Commission**") through Show Cause Notice No. SM/BO/Co.222/18(524)2002 dated 14/07/2009 (the "**Notice**") against Hashoo Holdings (Pvt.) Limited (the "**Respondent**"), a more than ten percent shareholder of Pakistan Services Limited (the "**Issuer Company**").

2. Brief facts of the case are that:-

a) The Respondent made the following purchase and sale transactions as a more than ten percent share holder of the Issuer within the period of less than six months:-

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94,FAX: 0092-051-9218595

Sr. No.	Nature of Transaction	Date of Transaction	No. of Shares	Rate per Share (Rs.)
1	Purchase	25.08.2003	800,000	110.00
2	Purchase	16.09.2003	1,377,200	42.628
3	Sale	26.12.2003	1,377,200	42.628
4	Sale	19.01.2004	2,400,000	129.40

b) On account of the aforementioned transactions, the Respondent made gain of Rs. 135,019,644/- (one hundred thirty five million nineteen thousand six hundred forty four only). The amount of gain has been computed in the manner prescribed in Rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (the "**Rules**").

3. Section 224 of the Ordinance provides that where *inter alia* a more than ten percent shareholder of a listed equity securities makes any gain by purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such person is required to make a report and tender the amount of such gain to the company and simultaneously send an intimation to that effect to the Registrar of Companies and the Commission. The said Section further provides that where such person fails or neglects to tender or the company fails to recover, any such gain within a period of six months after its accrual, or within sixty days of a demand thereof, whichever is later, such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

4. Since neither the matter of accrual of the aforesaid gain was reported by the Respondent in Part-D of the prescribed returns of beneficial ownership filed by it with the Commission for the aforementioned transactions, nor its tendering or recovery was reported to the Commission, as provided in Section 224(2) of the Ordinance, therefore, the Respondent was intimated vide letter dated 20/10/2004 that as provided in Section 224 of the Ordinance, the amount of the aforementioned gain has now vested in favour of the Commission. The matter was responded on

08/11/2004 by Fakhruddin G. Ebrahim & Company, Advocates & Corporate Consultants (the "**Representative**") on behalf of the Respondent. The Representative stated that provisions of Section 224(2) of the Ordinance are not applicable in the instant matter on the following grounds that:-

a) The Respondent purchased 1,377,200 shares on 16.9.2003 from Common Development Corporation (The "**CDC**") in good faith in satisfaction of a debt previously contracted under Agreement titled as Loan & Share Subscription Agreement dated 23.9.1993 and Project Funds & Share Retention Agreement dated 23.9.1993 (the "**Agreements**").

b) The other purchase and sale transactions were made with group companies.

5. The Respondent vide its letter dated 09/12/2004 furnished copies of the Agreements containing more than one hundred pages without specifying the section(s)/clause(s) under which the Respondent was obliged to purchase the under reference shares from the CDC and copies of broker contract in respect of the aforementioned transactions. The Agreements were examined carefully and observed that the both Agreements apparently do not speak about the re-purchasing/buy-back liability of the Respondent for 1,377,200 shares from the CDC. The Respondent was intimated accordingly vide letter dated 27/12/2005 and was also asked to indicate the exact Section(s)/Clause(s) of the Agreements, under which the Respondent was liable to buy-back the 1,377,200 shares from the CDC. The Representative responded the matter vide letter dated 09.01.2006 that buy-back of 1,337,200 shares was made after extensive negotiations at the highest level between the parties and basis of this transaction was Section 3 and 4.2 of Project Funds & Share Retention Agreement dated 23.9.1993. The matter was re-examined thoroughly and observed that in term of Section 3 of the Project Funds and Share Retention Agreement at no time shareholding of Sadruddin Hashwani Group in the Issuer was to be less than 55% of the outstanding share capital of the Isuser. It was further observed that Clause 4.2 of the said Agreements provided that in contravention of any provisions of Section 3, Mr. Saddruddin Hashwani, immediately upon receipt of notice sent by CDC, shall purchase or, at his option, cause the sale of all or any part of the CDC shares as CDC shall determine, at least at

the same price (calculated on an average basis, if applicable) at which any of the aforesaid shares were sold to any third parties. Thus, in order to arrive at a conclusion, the Respondent was requested vide letter dated 18/05/2006 to provide inter alia the following information:-

a. Did the shareholding of the Sadruddin Hashwani Group fall so as to bring the Group's aggregate shareholding in Issuer below the 55% threshold?

b. The details of when the CDC loan was paid off by the Issuer.

c. What is the basis for stating that Rule 16 of the Rules is ultra vires of section 506 of the Companies Ordinance, 1984?

The matter was responded by the Respondent on 24/05/2006 as under that:-

a. At no time during the term of the Loan & Share Subscription Agreement dated 23.9.93 and a Project Funds & Share Retention Agreement dated 23.9.93 did the shareholding of the Sadruddin Hashwani Group fall below the 55% threshold.

b. The last installment of the CDC loan was paid on 15.9.2002.

c. The basis for asserting that Rule 16 of Rules is ultra vires of section 506 of the Companies Ordinance, 1984 is that the said rule seeks to enlarge the scope of Section 224 of the Ordinance.

The aforementioned both the Agreements specifically Section 3 and 4 of Project Funds & Share Retention Agreement and other relevant documents were examined carefully and observed that plea of the Representative that the shares in question were acquired in satisfaction of debt previously contracted is untenable (discussed in detail in para 9(a) of the Order).

6. The matter was placed before me, when I took the charge of the post of Executive Director (SMD) in February 2009. I have thoroughly gone through the record and observed that for its logical conclusion proceedings under Section 224(2) of the Ordinance were required to be

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595

initiated. Thus, for the purpose of concluding the matter, Show Cause Notice was served upon the Respondent on 17/07/2009, in continuation of letter dated 20/10/2004 and subsequent correspondence. The personal hearing in the matter was fixed for 30/07/2009. Mr. Ebrahim Hosain Advocate filed written submissions on behalf of the Respondent on 28/07/2009.

7. On the given date Mr. Zahid F. Ebrahim Advocate, Ebrahim Hosain, Advocates and Corporate Counsel (the "**Counsel**") appeared before me. At the out set of the verbal submissions, the Counsel reiterated earlier viewpoint that *Provisions of the Section 224(1) of the Ordinance are not attracted in the instant case. He further stated that the same matter was also raised by the Commission in 2004 and was responded in detail".*

8. The written arguments submitted by the Representative of the Respondent in correspondence resting with it since 2004 and verbal contentions presented by the Counsel during the course of hearing in support of aforementioned viewpoint concerning non-accrual of tenderable gain may be summarized as under:-

a) **Statutory exemption under Section 224 of the Ordinance**: *The Respondent purchased 1,377,200 shares from Common Development Corporation on 16.9.2003 in good faith in satisfaction of a debt previously contracted. The said shares were acquired by the CDC as part of Loan & Share Subscription Agreement dated 23.9.1993 and a Project Funds & Share Retention Agreement dated 23.9.1993. Thus in the light of proviso given in section 224(1) of the Ordinance the transaction does not attract provisions of tenderable of the Ordinance*

b) **Inter-Group transaction**: *The Respondent made purchase and sale transactions (other than the purchase of 1,377,200 shares with its group companies namely Associated Builders (Pvt.) Limited ("**ABL**") and Bagh-e-Korangi (Pvt.) Limited ("**BKL**"). Both the purchaser and seller companies are owned and controlled by Mr. Sadruddin Hashwani and his immediate family member. The transactions were merely a fictional parking of the shares from one Sadruddin Hashwani Group Company to other and a strategic move of the shares within the Group.*

c) **The sold and purchased shares were not same**: *800,000 shares purchased on 25/08/2003 were never part of the 2,400,000 shares allegedly sold on 19/01/2004.*

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94,FAX: 0092-051-9218595

The 2,400,000 shares sold on 19/01/2004 had been acquired by our client long before the threshold set forth in Section 224 of the Ordinance. Moreover, *the so-called purchase and sale of 1,227,200 shares on 10/09/2003 and 26/12/2003 respectively at the price of Rs. 42.628 did not incur any profit whatsoever as the so called purchase and sale price was the same.*

d) **State Bank of Pakistan's Regulations and Companies Ordinance, 1984**: *The Respondent made the sale transaction in view of Regulation No R-6, 1.A(d) of Prudential Regulations issued by State Bank of Pakistan which prohibits the banks and DFI's from taking exposure on any listed company against the shares or TFC's of that company or its group companies. Thus the banks would be restricted to advance finance to the Respondent against the shares of Pakistan Services Limited, being a group company.*

e) **Rule 16 of the Rules is ultra vires**: *The Rule 16 of the companies (General Provisions and Forms) Rules 1985, relied upon which the demand for recovery of the gain has been made is ultra vires of section 506 of the Ordinance, as it seeks to enlarge scope of Section 224 of the Ordinance.*

f) **Applicability of the provisions of Section 222-224 of the Ordinance**: *A company does not fall within the purview of Sections 222 and 224 of the Ordinance, as in pursuance of Section 222 of the Ordinance only "persons" are liable to file the returns of beneficial ownership.*

g) **The same matter was also raised in 2004**: *It is matter of record that another Show Cause Notice was issued to our client vide SECP letter dated 20/10/2004, which was responded comprehensively vide counsel's letter dated 08/11/2004, 09/12/2004, 09/01/2005 and 24/05/2006. Moreover, your predecessor had assured our client that the file in this matter stood closed.*

9. I have considered the aforementioned assertions submitted on behalf of the Respondent and the same are addressed point-wise hereunder:-

a) **Statutory exemption under Section 224 of the Ordinance**: In connection with the plea that the *Respondent purchased 1,377,200 shares from Common Development Corporation (CDC) on 16.9.2003 in good faith in satisfaction of a debt previously contracted* it is stated that the Counsel argued that *basis of buy-back of 1,377,200 shares by the Respondent was clauses 3 and 4.2 of the Funds & Share Retention Agreement dated 23.9.1993.* The study of both the Agreements, therefore, in general and Section 3 and 4 of the Purchase of Project Funds & Share Retention Agreement

dated 23.9.1993 in particular seems necessitated. The Perusal of the said Agreements reveals that:-

(i) Agreement titled "Loan and Shares subscription Agreement" dated September 23, 1993 has been made between the Issuer and the CDC, while, agreement titled "Project Funds and Shares Retention Agreement" dated September 23, 1993 has been made among Issuer, Mr. Saddruddin Hashwani and the CDC.

(ii) The Respondent is not a party to either of the Agreements.

(iii) The loan was from CDC to the Issuer.

(iv) The purpose of both the Agreements as evident from the recitals was to finance the cost of expansion of the Pearl Continental Hotel in Lahore. The manner in which the cost was to be financed was through a combination of an increase in the share capital of the company through a rights issue together with loans from various financial institutions including CDC.

(v) Mr. Sadruddin Hashwani who along with the Hashwani Group, at that time owned 65% of Issuer, had agreed to renounce his rights in the rights issue. International Finance Corporation, DEG and CDC were to take up said shares renounced in the rights issue.

(vi) The Loan and Share Subscription Agreement provided for payment in cash by CDC for an aggregated 1,252,000 shares as well as a loan to the Respondent of £ 4,300,000.

(vii) Section 3.1.1 of the Project Funds & Share Retention Agreement provides that Mr. Sadruddin Hashwani directly controls all of the entities enumerated in part-A of the Schedule 3 (hereinafter referred to as the "Sadruddin Hashwani Group", and which for the purpose of Agreement , shall include members of his family.

(viii) Section 3.2.2 of the Project Funds and Share Retention Agreement was that Mr. Sadruddin Hashwani was to retain and would take all necessary and appropriate steps to ensure that the Hashwani Group would retain, their respective shareholdings in the Respondent till the outstanding of loan of CDC to the extent of 55% of the issued share capital of the Issuer.

(ix) S ection 4.2 of the Project Funds and Share Retention Agreement provides that in the event that any Share, whether belonging to Mr. Sadruddin Hashwani or any member of the Sadruddin Hashwani Group, shall be sold or otherwise disposed of in contravention of any provisions of section 3, Mr. Sadruddin Hashwani

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94,FAX: 0092-051-9218595

immediately upon receipt of the notice sent by CDC, shall purchase or, at his option, cause the sale of all or any part of the CDC shares as CDC shall determine, at least at the same price at which any of the aforesaid Shares were sold to any third parties.

After going through both the Agreements, specifically Sections 3 and 4 of the Project Funds & Share Retention Agreement and correspondence exchanged with the Respondent, I am of the view that the under reference purchase transaction does not enjoy exemption provided in proviso to Section 224(2) of the Ordinance on the following grounds:-

II. The loan facility was availed by the Issuer not by the Respondent.

III. The Respondent is not a party to either of the Agreements. It has been brought within the ambit of the Agreements, to a limited degree, as a part of the "Sadruddin Hashwani Group". The impact of including the Respondent within the Sadruddin Haswani Group is only that Mr. Sadruddin Hashwani and his group was required to maintain a certain shareholding in the Issuer under the Agreement. This incorporation does not confer any further obligation or right on the Respondent under the Agreements.

IV. Even if the Sadruddin Hashwani Group companies including the Respondent were parties to the Agreements, Section 4.2 of the Project Funds and Share Retention Agreement imposed an obligation on Mr. Sadruddin Hashwani, personally, and not on the Hashwani Group, to purchase the shares.

V. During the term of the aforementioned agreements shareholding of the Sadruddin Hashwani Group never fell below the 55% threshold, as given in Section 3.2.2 of the Project Funds and Shares Retention Agreement, therefore, buy-back section/clause of the Agreement did not come into force. I am therefore, of the view that as such, at no time was Mr. Sadruddin Hashwani was under any obligation to purchase shares from CDC.

VI. The last installment of the CDC loan was paid on 15/09/2002, while, the shares in question were purchased on 16/09/2003. Thus, the under reference transaction was carried out after the expiry of the Loan Agreement, hence it does not have any correlation with the Agreements.

In view of the foregoing, it is difficult, to accept that the purchase of 1,377,200 shares from CDC, by Hashoo Holdings, was a purchase made in good faith in satisfaction of a previously contracted debt, because the debt was owed to CDC by the Issuer and not by Respondent. Moreover, the Respondents has not pointed out any provision of the CDC

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595

documents which obliged any of party of the Agreements to re-purchase the shares other than Section 4.2 of the Project Funds and Share Retention Agreement which did not come into effect because during the term of the Agreement, Sadruddin Hashwani Group always maintained its holding at 55% or above in the Issuer as confirmed by Representative of the respondents in its letter dated 24/05/2006.

b) **Inter-Group transactions**: In connection with the plea of the Counsel that *transactions made by the Respondent with its group companies do not fall in the ambit of Section 224 of the Ordinance*, attention is invited to Section 224(1) of the Ordinance, which for ease of reference is reproduced hereunder:-

> *Where any director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company or any person who is directly or indirectly the beneficial owner of more than ten per cent of its listed equity securities makes any gain by the purchase and sale, or the sale and purchase, of any such security, within a period of less than six months, such director, chief executive, managing agent, chief accountant, secretary or auditor or person who is beneficial owner shall make a report and tender the amount of such gain --------.*

The above-mentioned Section postulates two prerequisites for accrual of tenderable gain i.e. the listed securities involved in the transactions must be beneficially owned by the person specified in Section 224 ibid and the transactions must be made within period of less than six months. It is pointed out that the Respondent is a juridical person, registered under the Ordinance. It has a separate legal entity from its shareholders and management. The securities involved in the transactions were beneficially owned by it not by its management or shareholders. The transactions in question were made within the period of less than six months. Thus, the instant case meets both conditions laid down in Section 224 of the Ordinance for accrual of tenderable gain.

In addition to above it is also pointed out that the other companies namely ABL and BKL, which took part in the transactions are also registered under the Ordinance. Thus, being registered entities and juridical persons, the companies have separate legal entity from their shareholders and Board of Directors etc. Moreover, the parties to the transactions had made and received due consideration, which signifies that each and every party/company which took part in the transactions have different entity. The movement of securities and funds in this respect complete the cycle of transaction. Hence I do not agree with the contention of the Counsel that the transactions were merely a fictional parking of

the shares from one Sadruddin Hashwani Group Company to other and a strategic move of the shares within the Group.

Furthermore, it is stated that although ABL, BKL and the Respondent are part of Sadruddin Hashwani Group, but the shareholding pattern of the said companies is different from each other. In case of common members, the extent of interest of said members in the companies is different. As such, it is difficult to accept that the beneficial ownership of the shares remained the same throughout and the transactions were merely a repositioning of shares within the Sadruddin Hashwani Group which did not impact on the beneficial ownership of the shares. It is worth mentioning, that if there were no change in the beneficial ownership of the shares in question, then there was no need to effect transactions, making and receiving of payment by the parties to the transactions and even involvement of broker for completion of cycle of the transactions. In the presence of all these factors, I have no option except to adduce that the plea of the Counsel does not have any merit. Moreover, the aforementioned contention of the Counsel is also belied by the fact that the returns under section 222 were filed on behalf of Respondent instead of Mr. Sadruddin Hashwani or his group, which clearly designates that the securities in question were beneficially owned by the Respondent

Moreover, there is no proviso under Section 224 of the Ordinance, which provides for exemption of inter-group transactions from the applicability of the said section. Therefore, the plea that the transactions made with group-companies do not attract provisions of Section 224 of the Ordinance does not have no merit, as no such exception exist in the stated law.

c) **The sold and purchased shares were not same:** In connection with the plea of the Counsel that *800,000 shares purchased on 25/08/2003 do not attract provisions of Section 224 of the Ordinance as the same were never part of the 2,400,000 shares allegedly sold on 19/01/2004,* it is stated that securities are fungible, therefore, I do not agree with the plea of the Respondent. It is pointed out that due to fungibility of the securities, the Law and Rule available on the subject matter do not allow to make any distinction between the securities newly purchased and previously held. In this regard attention is invited to Section 224 of the Ordinance which provides that;-

> "Where any director, ... of its listed equity securities makes any gain by the purchase and sale, or the **sale and purchase**, of any such security within a period of less than six months ....."

Thus, the words "***or the sale and purchase***" appear in Section 224 of the Ordinance itself suggest that the securities of the same class are fungible. And this concept has explicitly expressed in Rule 16(1)(b) of the Rules, which states that;-

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595

> *"the purchases and sales shall be matched as aforesaid so long as the securities involved in the purchase and sale are of the same class and of the same listed company and for this purpose the shares shall be deemed as fungibles"*

Hence in terms of above-mentioned Rule purchase and sale transactions shall be matched so long as the securities involved are of the same class and of the same listed company. If both these conditions are met, the shares shall be deemed fungible. In the instant case 800,000 shares purchased on 25/08/2003 and 2,400,000 sold on 19/01/2004 are of same class of the same listed company and both the purchase and sale transactions fall within the period of six month, therefore, the under reference matching of transaction, for the purpose of calculation of tenderable gain was made in the light of Rule 16(1)(a) of the Rules, which provides as under:-

> *"the purchase at lowest rates shall be matched against the sales at highest rates prevailing within the six months, and the recoverable amount calculated with respect to every individual transaction by reference to the difference between the purchase price and the sale price of any purchase and sale, or sale and purchase disregarding any other transactions, that is to say, the lowest in rate and highest out rate of the purchases and sales or the sales and purchases shall be matched; and"*

I am, therefore, of the view that the aforementioned contentions of the Representative/Counsel do not have any merit.

d) **State Bank of Pakistan's Regulations and Companies Ordinance, 1984**: In connection with the plea that *the Respondent made the sale transaction in view of Regulation No R-6, 1.A(d) of Prudential Regulations issued by State Bank of Pakistan which prohibits the banks and DFI's not to take exposure on any listed company against the shares or TFC's of that company or its group companies* I am of the view that the argument does not have any merit. It is worth mentioning that the under reference Regulation deals with advancing finance by banks/DFI while, Section 224(2) of the Ordinance deals with recovery of the gain made by inter alia a more than percent shareholder of a listed company. Thus, the sale in question does not have any nexus with said Prudential Regulation. Moreover, the major law always overrides the regulation.

e) **Rule 16 of the Rules is ultra vires:** With reference to the argument that *Rule 16 of the Rules is ultra vires of Section 506 of the Ordinance,* at the outset, I may mention that although I do not find any merit in the contention of the Counsel as discussed

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595

hereunder, it is only for court of competent jurisdiction to judge the vires of the Rule 16 of the Rules, to declare the same as such.

It has been contended by the Counsel that the Rule has enlarged the scope of Section 224 of the Ordinance. In this connection it is stated that if the Ordinance is examined, one finds that Section 224 of the Ordinance provides that the gain made on transactions carried out within the period of less than six months must be tendered, without specifying how that gain is to be computed. While, Section 506 of the Ordinance provides that rules may be framed *inter alia* to carry out the purpose of the Ordinance. In-fact, similar to other rules, the Rule 16 of the Rules merely carries out one of the purposes of the Ordinance. It provides only the manner of calculation of tenderable gain. Hence, plea of he Counsel does not have any legal ground.

Moreover, Rule 16 of the Rules is not the basis for the demand of gain from the Respondent. Proceedings for recovery of tenderable gain have been initiated under Section 224(2) of the Ordinance. Rule 16 of the Rules simply lays out the manner of calculation of tenderable gain and this method of calculation of tenderable gain has not been challenged by the Respondent.

f) **Applicability of the provisions of Section 222-224 of the Ordinance:** In connection with the argument that "*a company does not fall within the purview of Section 222-224 of the Ordinance*" I am of the view that it is a established principle that the term "person" includes both natural and juridical persons. The term "person" has been defined in Securities and Exchange Ordinance, 1969 (from-where the requirements of filing of returns of beneficial ownership and allied matters including recovery of tenderable gain were shifted in the Ordinance at the time of its promulgation as Section 222 and 224),, which inter alia include "*a company and every other artificial juridical person*". Thus, the said definition specifically treats a company as person. While the term "company has been defined in Section 2(1)(7) of the Ordinance as under:-

> "*company means a company formed and registered under this Ordinance or an existing company*".

Since, the Respondent is a registered company/entity under the Ordinance, therefore, provisions of Sections 222-224 will be applicable on it, as and when it will become more than ten percent shareholder of a listed company. Admittedly, during the period of aforementioned transactions, the Respondent was more than ten percent shareholder of the Issuer.

Moreover, the companies are juridical persons and in case of having shares of other listed company, the companies avail the voting rights through their

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94,FAX: 0092-051-9218595

representatives, therefore, the companies also fall within the definition of person, used in section 222 and 224 of the Ordinance and are liable to file returns of beneficial ownership and tendering of gain, if accrued. In addition to above, from the language of return of beneficial ownership i.e. Form & form 32, it is very clear, that the companies are also liable to file the returns of beneficial ownership. Note (3) given in the return of beneficial ownership specifies that "*the statement must be signed by the beneficial owner himself, and in case of a company by its Chief Executive, Director or Secretary*".

In view of foregoing, I am of the view that the plea of the Counsel does not have any substance.

g) **The same matter was also raised in 2004:** In connection with the plea that *it is matter of record that another Show Cause Notice was issued to our client vide SECP letter dated 20/10/2004* it is stated as and when the beneficial owner neglects to tender or the issuer company fails to recover the amount of gain, within the stipulated time limit, the amount of gain vests in favour of the Commission by operation of the provisions of Section 224 of the Ordinance. After that the Commission has to initiate the process of recovery of tenderable gain. As per practice in vogue, the Respondent was intimated in 2004 that as per available record the amount of gain has neither been tendered by you to the Issuer nor the Issuer has recovered it, therefore, the same has now vested in favour of the Commission, and is recoverable as an arrear of land revenue. Hence, the letter was issued to invite attention of the Respondent towards the matter of accrual of tenderable gain and to know as to whether the same had already been tendered to the Issuer or not. If not what were the basis of not doing so. Thus, the letter dated 20/10/2004 was a simple letter rather than a Show Cause Notice. This aspect is evident from the fact that on the basis of said letter neither any personal hearing was conducted nor any order was passed against the Respondent. The Show Cause Notice sent on 14/07/2009 is based on the correspondence exchanged subsequent to the above mentioned letter and this correspondence has also been referred in the Notice. This aspect was clarified to the Counsel during the course of personal hearing.

Concerning the assertion of the Respondent *that your predecessor had assured our client that the file in this matter stood closed*, the Respondent was asked during the course of hearing to indicate the name of the my said predecessor and to substantiate the claim with documentary evidence, if any. But, neither he mentioned the name of the officer nor he presented any documentary evidence in this regard. In order to check the validity of the claim, I have gone through the relevant file and found nothing on record in this concern.

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595

10. In view of the foregoing, I am of the considered opinion that the arguments presented by the Counsel and Representative of the Respondent do not have any merit and substance. Hence, the request of the Representative to withdraw the Notice is rejected and the Respondent is, hereby, directed to tender Rs. 135,019,644/- (one hundred thirty five million nineteen thousand six hundred forty four only) to the Securities and Exchange Commission of Pakistan as provided in section 224(2) of the Companies Ordinance, 1984, through a demand draft in favour of the Commission, within thirty days of the issue of this order.

(Akif Saeed)
Executive Director (SM)

Islamabad.
Announced on 09/02/10

NIC Building, Jinnah Avenue, Blue Area, Islamabad, Pakistan PABX: 0092-51-9207091-94 FAX: 0092-051-9218595