



# 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 Mr. Asad Fayyaz Sheikh, Director of Kohinoor Mills Limited

**Date of Hearing:**

*June 26, 2012*

**Present at Hearing:**

*Representing the Respondent:*

*Mr. M. Javed Panni,  
Chief Executive,  
MJ Panni & Associates*

*Assisting the Director/HOD (MSCID):* (i) *Mr. Muhammad Farooq,  
Joint Director*

(ii) *Mr. Muhammad Sadiq Shah  
Deputy 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.222/4 (965)2003 dated 14/05/2012 (“**Notice**”) issued to Mr. Asad Fayyaz Sheikh (“**Respondent**”), Director of Kohinoor Mills 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 return of change in his beneficial ownership on Form 32, within the period stipulated under Section 222 of the Ordinance. However, he failed to discharge the said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222(2)(c) of the Ordinance stipulates the period within which the Form 32 is required to be submitted. For convenience, the provisions of the said Section are reproduced hereunder:-

*“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



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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 returns of changes in beneficial ownership on Form 32. The Respondent was, therefore, asked vide letter dated 13/03/2012 to file 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 the aforementioned letter, the Respondent filed Form 32 with this Commission on 19/03/2012 showing therein purchase of 800,000 ordinary shares of the Company on 12/07/2011. The Respondent was required to file the said return with this Commission latest by 27/07/2011, but the same has been filed on 19/03/2012, with delay of 240 days, in contravention of Section 222(2)(c) of the Ordinance. The said contravention 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 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(2)(c) of the Ordinance.

8. In order to provide an opportunity of being heard in person, hearing in the matter was fixed for 28/05/2012 at the Commission's Head Office, Islamabad. In response, Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates ("**Authorized Representative**") vide letter dated 22/05/2012 requested on behalf of the Respondent to adjourn the hearing and extend the time for filing of reply up to 11/06/2012. The request was accepted. The authorized Representative vide letter dated 11/06/2012 filed written submissions on behalf of the Respondent. The hearing in the matter was rescheduled for 26/06/2012. On the given date, the Authorized Representative appeared before me on behalf of the Respondent. The submissions made on behalf of the Respondent by the Authorized Representative in writing as well as verbally during the course of hearing be summarized as under:-



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- a) *The Respondent believes in timely filing of the statutory returns with the Commission as per requirement of Ordinance. He remained under the impression that Form-32 in respect of 800,000 ordinary shares purchased by him on 12/07/2011 had been filed with the Company Registration Office as well the Commission (Headquarters) in accordance with the legal requirement. However, the omission with respect to non filing with the Commission (Headquarters) was realized on receipt of Commission's letter dated 13/03/2012. The matter was immediately attended to and Form-32 in respect of 800,000 ordinary shares purchased on 12/7/2011 was filed with the Commission, within six days of the intimation.*
- b) *The default was inadvertent and was neither willful nor it was willingly authorizes or permitted. It was only a human error from which no undue benefit has been derived.*
- c) *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. I have considered the aforesaid submissions made on behalf of the Respondent. The main contention of the Respondent is that the under reference default was inadvertent. In this regard it is pointed out that the Respondent is on the Board of Directors of the Issuer Company since last nine years. He is supposed to be fully acquainted with the requirements of Section 222 of the Ordinance. But the Respondent failed to discharge his liability entailed under Section 222 of the Ordinance, until, the same was pointed out by this office through letter dated 13/03/2012. Moreover, 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.

10. In view of the foregoing discussion, it is evident that the Respondent was aware about his liability of filing of the returns of beneficial ownership, but he failed to do so within the stipulated time limit. In my opinion, the Respondent has contravenes the provisions of Section 222 of the Ordinance. However, on receipt of aforesaid letter from the Commission, the Respondent 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. 15,000 (fifteen thousand rupees only) on the Respondent and no further fine for continuous default is imposed.

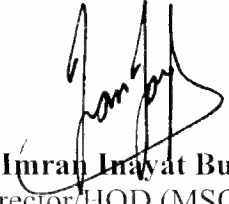


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11. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited, within 30 days of the date of this Order and furnish Original Deposit Challan to this office, to the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



  
(Imran Inayat Butt)  
Director/HOD (MSCID)

Islamabad.  
Announced on June 28, 2012