



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 Amir Fine Exports (Pvt.) Limited, a more than ten percent shareholder of Fazal Cloth Mills Limited

Date of Hearing: 25/08/2011

Present at Hearing:

Representing the Respondent:

- (i) *Mr. Meraj-ud-din Kanwar,
Company Secretary,
Fazal Cloth Mills Limited*

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. No. S.M(B.O)C.O.222/ 4(593)2001 dated 19/07/2011 (“**Notice**”) issued to Amir Fine Exports (Pvt.) Limited (“**Respondent**”), a more than ten percent shareholder of Fazal Cloth 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 and the Respondent is holding its more than ten percent equity securities. It was further observed that the Respondent has made some purchase and sale transactions (detail given in para 6 of the Order) during the period from September 2010 to February 2011. Thus, pursuant to provisions of Section 222(2)(c) of the Ordinance, the Respondent was required to file its return of beneficial ownership on prescribed



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form, within the stipulated time period. But, it failed to discharge the 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 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 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



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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. As the Respondent failed to file the returns of beneficial ownership for the changes taken place in its shareholding from September 2010 to February 2011, the Company Secretary of the Respondent was, therefore, asked vide letter dated 30/03/2011 to file returns of beneficial ownership on behalf of the Respondent 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 three Forms 32 with this Commission showing therein the following 16 changes in its shareholding with the delay mentioned against each :-

Sr. No.	No. of Shares	Nature of Change	Date of change in shareholding	Due date for filing the return	Return filed on	Delay in days
1	617	Purchase	07/09/2010	22/09/2010	08/04/2011	198
2	140,663	Sale	13/10/2010	28/10/2010	08/04/2011	162
3	3,050	Purchase	03/11/2010	18/11/2010	08/04/2011	141
4	139,100	Purchase	04/11/2010	19/11/2010	08/04/2011	140
5	1,500	Purchase	08/11/2010	23/11/2010	08/04/2011	136
6	691	Purchase	03/12/2010	18/12/2010	08/04/2011	111
7	700	Purchase	06/12/2010	21/12/2010	08/04/2011	108
8	609	Purchase	07/12/2010	22/12/2010	08/04/2011	107
9	900	Purchase	08/12/2010	23/12/2010	08/04/2011	106
10	900	Purchase	09/12/2010	24/12/2010	08/04/2011	105
11	600	Purchase	10/12/2010	25/12/2010	08/04/2011	104
12	1,100	Purchase	13/12/2010	25/12/2010	08/04/2011	101
13	1,069	Purchase	08/02/2011	23/02/2011	08/04/2011	44
14	909	Purchase	14/02/2011	01/03/2011	08/04/2011	38
15	598	Purchase	15/02/2011	02/03/2011	08/04/2011	37
16	500	Purchase	18/02/2011	05/03/2011	08/04/2011	34



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Thus the aforementioned changes in shareholding were reported to the Commission with delay ranges from 34 days to 198 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 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)(c) of the Ordinance. The written reply in this regard was submitted by Chief Executive of the Respondent vide letter dated 23/08/2011. He, on behalf of the Respondent, stated that:-

“Form 32 could not be filed with your office due to an oversight and late receipt of necessary information from CDC. It is further stated that omission in late submitting Form 32 is not willful and is highly regretted. You are requested to condone the delay. We assure you that in future we will ensure promptly submission of returns on due dates”.

8. In order to provide an opportunity of being heard in person, hearing in the matter was fixed for 02/08/2011 at Commission’s Head Office, Islamabad, which on request of the Respondent was adjourned and re-fixed for 25/08/2011. On the given date Mr. Meraj-ud-din Kanwar, Company Secretary of the Issuer Company (**“Authorized Representative”**) appeared before me on behalf of the Respondent and made the following submissions that:-

- a) Usually the Respondent has been filing its returns of beneficial ownership timely, but the under reference transactions were not reported by the broker on time. Meanwhile, Company Secretary of the Respondent fell sick, resultantly, the



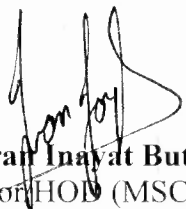
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returns for aforesaid changes in shareholding could not be submitted within the stipulated time limit.

- b) The delay in submission of the return of beneficial ownership was not willful. 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 written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Authorized Representatives during the course of personal hearing. The 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 returns of beneficial ownership regularly. 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.


(Imran Inayat Butt)
Director/HOD (MSCID)

Islamabad.
Announced on September 14, 2011