



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 Syeda Sitwat Mohsin, a more than ten percent shareholder of Mitchell's Fruit Farms Limited

Date of Hearing: 11/08/2011

Present at Hearing:

Representing the Respondent:

- (i) *Mr. Muhammad Ali,
Accounts Executive (Northern Area)
Mitchell's Fruit Farms 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. S.M(B.O)C.O.222/18(1505)93 dated 19/07/2011 ("**Notice**") issued to Syeda Sitwat Mohsin ("**Respondent**"), a more than ten percent shareholder of Mitchell's Fruit Farms 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 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 July 2009 to January 2011. Thus, pursuant to provisions of Section 222(2)(c) of the Ordinance, she was required to file her returns of beneficial ownership on prescribed form,



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within the stipulated time period. But, she 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 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



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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. Since the Respondent failed to file the returns of beneficial ownership for the aforesaid changes in shareholding, therefore, she was asked vide letter dated 04/04/2011 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.	Date of change in shareholding	Purchase/sale	No. of Shares	Due date for filing the return	Return received on	Delay in days
1	20/07/2009	Purchase	500	04/08/2009	07/05/2011	641
2	25/08/2009	Purchase	390	09/09/2009	07/05/2011	605
3	09/12/2009	Purchase	29	24/12/2009	07/05/2011	499
4	10/12/2009	Purchase	1,051	25/12/2009	07/05/2011	498
5	11/12/2009	Purchase	1,399	26/12/2009	07/05/2011	497
6	09/03/2010	Purchase	242	24/04/2010	07/05/2011	409
7	12/03/2010	Purchase	1,879	27/03/2010	07/05/2011	406
8	15/03/2010	Purchase	100	30/03/2010	07/05/2011	403
9	29/07/2010	Purchase	73	13/08/2010	07/05/2011	329
10	04/08/2010	Purchase	100	19/08/2010	07/05/2011	323
11	04/08/2010	Purchase	922	19/08/2010	07/05/2011	323
12	05/08/2010	Purchase	1,000	20/08/2010	07/05/2011	322
13	06/08/2010	Purchase	489	21/08/2010	07/05/2011	321
14	04/11/2010	Purchase	120,300	19/11/2010	07/05/2011	231
15	08/11/2010	Sale	120,300	23/11/2010	07/05/2011	227
16	07/01/2011	Purchase	101,573	22/01/2010	07/05/2011	105

Thus the aforementioned changes in shareholding were reported to the Commission with delay ranges from 105 days to 641 days, in contravention of Section 222(2)(c) of the Ordinance. The



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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 her to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against her 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. Atif Fayyaz, Company Secretary of the Issuer Company vide letter dated 09/08/2011. He, on behalf of the Respondent, stated that:-

“The return of beneficial ownership of CDC transactions could not be filed on time due to late reporting of transactions and were filed only after receipt of your notice. The default of non-filing was not willful therefore you are humbly requested to please condone the default”.

8. Furthermore, 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 was re-fixed for 11/08/2011, as on one appeared on the said date. Mr. Muhammad Ali, Accounts Executive (Northern Area) of the Issuer Company (“**Authorized Representative**”) appeared before me on behalf of the Respondent and reiterated the submissions as made in written reply by Company Secretary of the Issuer Company. Furthermore, the Authorized Representative made the following submissions:-

- a) Failure to file the required return within the stipulated period was unintentional and it was never the intention of the Respondent to conceal the facts. Therefore, on receiving the notice, the Respondent filed the required return.
- b) The Respondent would be more vigilant and careful for filing of the returns of beneficial ownership in future.

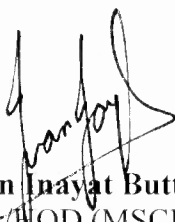


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- c) The Commission is requested to take a lenient view of the matter in light of above explanation.

9. I have considered written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Representative 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. 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.


(Imran Inayat Butt)
Director/ROD (MSCID)

Islamabad.
Announced on September 14, 2011