



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
COMPANY LAW DIVISION  
REGISTRATION DEPARTMENT

No. CLD/RD/Co.476 /56/2009-

Islamabad, the 30<sup>th</sup> December, 2010


1. Mr. Iskander Khan,  
Chairman,  
Pakistan Sugar Mills Association  
24-D, Rashid Plaza, Jinnah Avenue,  
Islamabad
2. Mr. Javed A Kayani,  
Acting Chairman,  
Pakistan Sugar Mills Association  
24-D, Rashid Plaza, Jinnah Avenue,  
Islamabad
3. Mr. Athar Minallah, Advocate,  
M/s. Afridi Shah & Minallah,  
Advocates & Legal Consultants,  
24, 1<sup>st</sup> Floor, Beverly Center,  
Blue Area,  
Islamabad. Cell # 0300-5001005

Subject:- Order under section 492, 173 read with Section 476 of the Companies Ordinance, 1984 (The Ordinance) in the matter of Pakistan Sugar Mills Association

Dear Sir,

Please find enclosed herewith a copy of order dated 30.12.2010, passed by Executive Director (Registration), on the subject noted above for compliance and further necessary action at your end.

Yours truly,

  
(Saila Masood)  
Deputy Registrar

Enclosed: Copy of Order dated 30.12.2010

Copy to:

Company Registration Office, Islamabad



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
(COMPANY LAW DIVISION)  
REGISTRATION DEPARTMENT

CLD/RD/Co.476/56/2009

December 30, 2010

*Before*

**Nazir Ahmad Shaheen**  
Executive Director (Registration)

Number and date of notice: CLD/RD/Co.476/56/2009/1956  
October 18, 2010

Dates of hearing: 03-11-2010, 08-12-2010, 21-12-2010

Present in the hearings: Mr. Athar Minallah Advocate,  
along with following members of  
the Pakistan Sugar Mills  
Association.

(1) Mr. Javed A.Kayani, Acting  
Chairman  
(2) Mr. Iskander Khan, Chairman

**ORDER**

Under Sections 492, 173 read with Section 476 of the Companies Ordinance, 1984  
in the matter of Pakistan Sugar Mills Association

This Order shall dispose of the proceedings initiated through show cause  
notice dated 18.10.2010 under sections 492 and 173 read with section 476 of the

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Companies Ordinance 1984 (the "Ordinance") in the matter of Pakistan Sugar Mills Association (the "PSMA" or the "Association").

2. The brief facts of the case are that the Honorable Supreme Court of Pakistan, vide its order dated 02.10.2009, passed in Constitutional Petition No. 1709 of 2009 titled M/s. Pakistan Sugar Mills Association vs. Federation of Pakistan through Secretary Finance & others, directed the Securities & Exchange Commission of Pakistan (the "SECP") to conduct an Inquiry and thereafter submit a report alongwith note of action on the matter with regard to the passing of so called resolution approved by the Central Executive Committee (the "CEC") of the Association in its meeting allegedly held on 09.09.2009. The Hon'ble Supreme Court also directed the SECP to proceed against the individuals or against the Association as the case may be.

3. The Constitutional petition was filed in the Hon'ble Supreme Court by PSMA on appeal from Judgment/Order dated 03.09.2009 passed by Hon'ble Lahore High Court, Lahore (LHC) in W.P No. 16096/2009 & W.P No. 15744-Suo Moto/2009. The petition was also accompanied by a resolution dated 09.09.2009 allegedly passed by the CEC of PSMA and was signed by the acting Chairman Mr. Javed A. Kayani and Mr. K. Ali Qazilbash, Secretary General of PSMA authorizing the Secretary General to file appeal against the order of LHC. On perusal of the aforesaid resolution and further from the contradictory statements made by Mr. Kayani and Mr. Qazilbash before the Hon'ble Supreme Court, it was observed by the Hon'ble Supreme Court that no meeting for passing of the said resolution was convened as neither any minutes of the said meeting were recorded as required under section 173 of the Ordinance nor any notices for attending the meeting was issued as required by law and an attempt has been made to misguide the Court by producing the fake and forged document and prima-facie committed a criminal offence.

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4. Accordingly, the SECP through its Additional Registrar of Companies, Islamabad conducted an inquiry into the matter and a report dated 15.10.2009 was submitted in the Hon'ble Supreme Court and concluded that no valid meeting of the CEC of the Association was held on 09.09.2009 at Lahore.

5. In order to proceed in the matter, a show cause notice dated 18.10.2010 under sections 492 and 173 read with section 476 of the Ordinance was issued to the Chairman and other members including the secretary of the PSMA advising to explain as to why action may not be taken and penalty as provided under the aforesaid provisions of the Ordinance may not be imposed for making a false statement before the Hon'ble Supreme Court and for non-complying with the mandatory requirements of section 173 of the Ordinance.

6. The Association is licensed by the Ministry of Commerce and was incorporated on November 13, 1964 in the Company Registration Office, Islamabad (the "CRO"). The main object of the Association as mentioned in its Memorandum of Association is to encourage friendly feeling and unanimity amongst sugar mill owners on all subjects connected with their common good and to act as a representative organization of all sugar mills of Pakistan in all matters concerning and incidental to the development and promotions of the sugar industry.

7. It may be pertinent to mention here that show cause notice dated 19.10.2009 on the aforesaid provisions was earlier issued by the then Registrar of Companies but remained inconclusive due to absence of Executive Director (Registration), being the lawful authority to dispose such matters under section 492 of the Ordinance, and therefore the instant fresh proceedings were initiated accordingly.

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8. Hearing proceedings in the matter were held on 3.11.2010, 8.12.2010 and again on 21.12.2010 when Mr. Athar Minallah, the legal Counsel (the "Counsel") along with Mr. Kayani and Mr. Iskander of the Association appeared before me and explained in detail the circumstances with regard to calling and holding of meeting of the CEC and passing of resolution for filing an appeal before the Apex Court.

9. During the hearing, the Counsel conceded that gathering of the office bearers of the Association at Lahore was in fact an irregular meeting because it lacked necessary ingredients for a valid meeting including circulation of notice, quorum and presentation of agenda of the meeting. He stated however that the Association had no intention of filing false information before the Apex Court and it was only due to emergent situation which forced the members to file an appeal and to authorize Mr. K. Ali Qazilbash, Secretary General for filing of an appeal against the Order of LHC. The Counsel also contended that Section 492 is concerned with filing of false information with knowing intent which is not the case as evident from the subsequent resolution of the CEC dated 12.10.2009. He stated that although procedural lapses occurred, however, there was neither any intention nor any motive behind it for deceiving the Court. The Counsel also emphasized that the proceedings under Section 492 are essentially of criminal nature, therefore, the word 'false' would be restricted to an intentional or negligent and untrue statement. He further stated that there was no *mens-rea* on the part of the Association to submit a fake document in the Apex Court and therefore no violation under Section 492 of the Ordinance could be construed given that there was unanimous concurrence of all the CEC members and therefore no motive to submit false documents before the Supreme Court is established.

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10. The Counsel also placed on record case law titled Muhammad Imtiaz Ahmad Sheikh vs. Principal and Chairman, Academic Council, Chandaka Medical College, Larkana wherein the petitioner got admission on the basis of false certificate issued to him by the respondent and on verification, it was revealed that the certificate was false, and his admission was cancelled. The appeal filed by the petitioner in the instant case was dismissed by the Court. As regards, false certificate, the Hon'ble Court after hearing the arguments observed the following:

"According to *Metropolitan Life Ins Co. v. Adams (2)* the word 'false' has two distinct and well-recognized meanings (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care, therefore the petitioner's case squarely falls under rule 15 and also falls under the mischief of rule 13 and therefore, the impugned action is in accordance therewith".

11. I, after hearing the arguments and perusal of the case law placed by the the legal Counsel and after perusal of Orders dated 1.10.2009 and 2.10.2009 of the Hon'ble Supreme Court and inspection report and other relevant documents prepared by the CRO and statements of the members with reference to CEC meeting observed a clear violation of Section 492 of the Ordinance. The record and statements of members with regard to passing of alleged resolution reflects that neither formal notice was issued to the members for any CEC meeting to be held on 09.09.2009 nor were proper minutes recorded and circulated to the members within the time period stipulated under section 173(1) of the Ordinance. Consequently, based on the failure of the CEC to observe procedural requirements laid down in the Articles of the Association and the provisions of

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the Ordinance prior to the presentation of the alleged CEC resolution dated 09.09.2009 before the Honorable Supreme Court, it is my view that no valid meeting was held on 09.09.2009 and consequently no valid resolution was passed and the resolution placed before the Hon'ble Court was filed fake.

12. I have also perused the statements of members of the CEC made before the Additional Registrar and observed that there is material contradiction in the statements regarding calling of the meeting as Mr. K. Ali Qazilbash, Secretary General in his statement has confirmed that the meeting held on 09.09.2009 was a Zonal Committee meeting and not a meeting of the CEC. Another member, Mr. Shahid Shafi, member CEC in his statement also confirmed that the meeting was convened by a Zonal Committee and was not a CEC meeting. Mr. Aftab Ahmad, member CEC submitted a copy of notice dated 07.09.2009 notifying meeting of Zonal Committee and CEC for 09.09.2009 at Lahore. Other members in their statements have admitted that they have consented on telephonic calls through their zonal heads/members. From all these statements, it is abundant clear that no proper notices or agenda was circulated nor proper meeting as contemplated under the law was conveyed and the directions to the Secretary General to prepare the resolution at Islamabad was passed in haste, without taking all the members and Secretary on board. As regards, *men rea*, the Vice Chairman and the Secretary of the Association are experienced businessmen and officers and are fully aware of the requirements of law and after having the knowledge of the requirements of calling and recording of minutes, no one cared to comply and rather aided deliberately in furnishing the false statement before the Court.

13. The first essential requisite of a valid meeting is that it should be called by a proper authority. In English case titled *Harben vs. Phillip* (1883) 23 Ch D 14: 48 LT 334: 31 WR 173, certain directors held a meeting of the board but they prevented some lawfully constituted directors from attending the meeting. A

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quorum was, however, present. It was held that as the meeting of the board was unlawful, the notice convening the general meeting also became invalid. Directors have to exercise their discretion and have to fix the time and place or whether the meeting should be held at all.

14. According to Article 39 (iii) and (iv) of Articles of Association, it is the duty of the Company Secretary to issue and give notices of all general meetings, and meetings of the Committees, standing committees and to keep and maintain accurate minutes of all meetings, wherein in the instant case, the Secretary confirmed that he has not attended and issued notices or maintained any minutes of the alleged meeting at the relevant time. It is the prerequisite of a valid meeting/resolution that proper notices of the meeting should be given to each member as deliberate omission to give notice to a single member may invalidate the meeting. The arguments of the Counsel that telephonic confirmations were received from the members of the Association also do not carry any weight as such practice is not supported by any law and may defeat the relevant provisions provided in the Articles and the mandatory provisions of law.

15. Accordingly, I have come to the conclusion that a false resolution was presented before the Court by deliberately concealing the material facts about the lapses in calling and convening of meeting which was material in nature and cannot be ignored and attract penal provisions as contained in section 492 read with section 476 of the Ordinance, however section 173 becomes irrelevant as no valid meeting was held.

16. The following officers are held liable and are directed to deposit the amount of penalty in the Commission's account maintained with MCB Bank

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Limited from their personal resources, within 30 days of the receipt of this Order and furnish original receipt/challan of the same to this department for record;

(a)	Mr. Javed A. kiyani, Acting Chairman, PSMA	Rs 500,000/-
(b)	Mr. K. Ali Qazlbash, Secretary General, PSMA	<u>Rs 100,000/-</u>
	<b>Total</b>	<b><u>Rs 600,000/-</u></b>

17. All other members of the Association are also advised to comply with the mandatory requirements of law in future.

Announced  
30<sup>th</sup> December, 2010

  
(Nazir Ahmed Shaheen)  
Executive Director (Registration)