



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

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**Before Tahir Mahmood
Executive Director (Enforcement)**

In the matter of

Shahpur Textile Mills Limited

Number & date of the notice: EMD/TO/19/2008/1709, dated January 06, 2009

Date of hearing: February 25, 2009

Present: Mirza Aurenzeib Baig
Director, Shahpur Textile Mills Limited

Mirza Jehanzeb Baig
Director, Shahpur Textile Mills Limited

ORDER

Under Section 26 read with Section 25 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance 2002

This Order shall dispose of proceedings initiated vide Show Cause Notice No. EMD/TO/19/2008, dated January 06, 2009, issued to the following individuals in their capacity as Acquirers of Shahpur Textile Mills Limited (“Target Company”) pursuant to provisions of Section 26 read with Section 25 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance 2002 (“Takeovers Ordinance”):

1. Mr. Mirza Aurenzeb Baig
2. Mrs. Yasmin Naz
3. Mrs. Asma Alamgir
4. Mr. Mirza Jehanzeb Baig
5. Mr. Mirza Asber Baig
6. Mr. Fehmida Begum

2. The facts of the case are that it transpired from the examination of the annual accounts of the Target Company for the year ended June 30, 2008 that the management of the target company had changed. Mr. Mirza Jahanzeb Baig and Mr. Amir Zaidi had been appointed as Company Secretary and as



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Chief Financial Officer of the Target Company, with effect from July 07, 2008, respectively. Initial probe revealed that a new Board of Director, comprising of the above named acquireres, was appointed with effect from July 07, 2008. The previous directors sold their respective shares in the Target Company to the aforesaid group of acquirers and transferred control thereof to them. As per the Commission's record the acquirers acquired controlling interest of the company by acquiring voting shares from the following ex-directors of the target company:

S. No.	Name of Transferors
1.	Mr. Nazir Ahmed Peracha
2.	Mrs. Qamar Nazir Peracha
3.	Mrs. Uzma Asif Amin
4.	Mrs. Cyma Fazal Peracha
5.	Mr. Arshad Iqbal Peracha
6.	Mr. Hafiz Laeeq Ahmed
7.	Mr. Muhammad Ayub

3. In view the aforesaid Securities and Exchange Commission of Pakistan ("the Commission") advised the Target Company and the Acquirers to provide details of the acquisition of substantial shareholding and documentary evidence of compliance with the requirements of the Takeovers Ordinance. However, despite repeated correspondence the acquirers failed to provide details regarding the acquisition of the Target Company including the number of shares acquired, mode of acquisition, consideration paid for the acquisition and documentary evidence of compliance with the Takeover Ordinance.

7. The available information/ documents indicated that the Acquirers had failed to comply with the provisions of the Takeover Ordinance. In absence of submission/evidence on the contrary by the acquirers the Commission issued a show cause notice pursuant to Section 26 read with Section 25 of the listed Take-overs Ordinance for their prima facie, failure to comply with the requirements of Section 4, 5, 6, 8, 9 and 13 of the Takeovers Ordinance.

8. The acquirers submitted their response to the aforesaid show cause notice through Akhter Mahmood Mian, Chartered Accountant, Advisor to the Target Company vide letter dated January 22, 2009. It was stated that the shares of the Target Company were sold and transferred by the Directors to



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different people however the said transfer was fully in compliant to the requirements of Takeovers Ordinance. Following is the detail of the shares acquired as disclosed by the acquirers:

S.No.	Name of Acquirer	Number of shares acquired
1.	Mirza Aurengzeb Baig, Chief Executive	948,000
2.	Yasmin Naz, Director	947,200
3.	Asma Alamgir, Director	947,200
4.	Mirza Jehanzeb Baig, Director	947,200
5.	Mirza Asber Baig, Director	2,500
6.	Fehmida Begum, Director	2,500

9. The counsel of acquirers declared that as each individual acquirer had acquired shareholding below the 10% threshold, therefore, the provisions of the Takeover Ordinance were not applicable. In any case the requirements of Section 4 of the Takeovers Ordinance have been duly complied by disclosing their shareholding to the Commission through their aforementioned letter. Further each acquirer acted as an independent person/ party and became Director of the target company independently and no one cooperated with the acquirer to acquire voting shares or control of the target company therefore Section 2(1) (h), Section 5, 7, 8 and 13 of the Takeovers Ordinance is not applicable.

10. Hearing in the matter was fixed on February 25, 2009 to provide the opportunity of personal representation to the Acquirers. Mirza Aurengzeb Baig and Mirza Jehanzeb Baig, director, representing the Acquirers, appeared before me. Contrary to written submission to the Commission, the respondents conceded their default in complying with the requirements of Takeovers Ordinance for the acquisition of the voting shares and control of the Target Company. They were of the view that the acquirers were not aware of the relevant legal requirements of the Takeovers Ordinance and the default was committed owing to flawed legal advice. The target company is principally engaged in the manufacture and sale of yarn and allied products. The acquirers also had a false perception about the future prospects of the Company however their expectations did not materialize rather the operations of the Company are at the verge suspension of operations. They emphasized that the acquirers made their utmost efforts for arranging financing through loans by Banks. However, the same have not been materialized due to operational inefficiency and have resulted in physical deterioration of assets particularly the machines.



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However, the Acquirers are committed to turn the target company into going concern/profit oriented project. They concluded that ignorance of the Takeovers Ordinance and absence of proper legal advice resulted in default by the acquirers to comply with the Takeover Ordinance.

11. The acquirers have, repeated, been advised to provide the Share Purchase Agreement / Memorandum of Understanding for acquisition of voting of the Company. However, despite repeated reminders and the representatives failed to provide the same even at the time of hearing. Although during the hearing the representatives agreed to provide the same within two days of the date of the hearing still the said agreement has not been provided. Therefore, an independent verification of the facts relating to the percentage of voting shares acquired by the acquirers could not be made.

12. I have heard the representatives of the Acquirers and reviewed their written submission. It is pertinent to mention here the relevant provisions of Takeover Ordinance which prescribe the requirements to be fulfilled while acquiring majority shares / control in a listed company:

- (i) Under sub section (1) of Section 4 of the Takeovers Ordinance, the Acquirers were required to intimate the Target Company and the Stock Exchanges regarding acquisition of voting shares;
- (ii) Under sub section (1) of Section 5 of the Takeovers Ordinance, the Acquirers were required to make a public announcement of offer to acquire voting shares of the Target Company;
- (iii) Under sub section (1) of Section 7 of the Takeovers Ordinance, the Acquirers were required to appoint a bank, financial institution or a member of a stock exchange as Manager to the Offer before making any public announcement;
- (iv) Under sub section (1) of Section 8 of the Takeovers Ordinance, before acquisition of voting shares beyond the threshold specified in section 5 or section 6, the acquirer shall, after giving notice to the Commission as required by sub-section (3) of section 9, make a public announcement of such an intention forthwith;
- (v) Under sub section (1) of Section 9 of the Takeovers Ordinance, the Acquirers were required to make a public announcement to be published in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the province or provinces in which the stock exchange, on which the target company is listed, is situated;
- (vi) Under sub section (3) of Section 9 of the Takeovers Ordinance, the Acquirers were required to submit to the Commission a copy of the public announcement through the Manager to the Offer at least two working days before its issuance;
- (vii) Under sub section (4) of Section 9 of the Takeovers Ordinance, the Acquirers were also required to send the public announcement shall be sent to all the stock exchanges on which the



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voting shares of the target company are listed for being notified on the notice board and on the automated information system thereof, and to the target company at its registered office for being placed before the board of directors of such company;

- (viii) Under sub section (1) of Section 13 of the Takeovers Ordinance, the Acquirers were required to send a copy of the proposed offer letter within two working days of the announcement to the Target Company at its registered office address, all the Stock Exchanges where the voting shares of the company are listed and the Commission;
- (ix) Under sub-section (2) of Section 13 of the Takeovers Ordinance, the Acquirers were required to specify in the public announcement the entitlement of shareholders for receiving the offer letter;
- (x) Under sub section (8) of Section 13 of the Takeovers Ordinance the Acquirers were required to create a security as provided in the Ordinance on or before the date of issue of public announcement;
- (xi) Under sub section (9) of Section 13 of the Takeovers Ordinance the Acquirers were required to ensure that firm financial arrangement for fulfillment of obligations under the public announcement and disclosure to this effect should have been made in the announcement.

13. The Acquirers have failed to provide any information / documents evidencing compliance with any of the aforesaid requirements the Takeovers Ordinance and have made themselves liable for penal action against the Acquirers in terms of Section 26 of the Ordinance.

14. Provisions of Section 25 of the Takeover Ordinance stipulates that :

“The Commission may, in the interests of the securities market, give such directions as it deems fit including—

- (a) directing the person concerned not to further deal in securities;*
- (b) prohibiting the person concerned from disposing of any of the securities acquired in violation of provisions of this Ordinance;*
- (c) directing the person concerned to sell the voting shares acquired in violation of the provisions of this Ordinance; and*
- (d) taking such action against the person concerned as may be necessary.*

Whereas provisions of the than applicable Section 26 of the Ordinance states that:

(1) In the event of withdrawal of public offer, except as provided in section 18, or contravention of any provision of this Ordinance, the acquirer and any person acting in concert shall stand debarred as acquirers for the next three years.



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(2) *In case the board of directors or management of the target company contravenes any provision of this Ordinance, the directors, the chief executive and the company and secretary, on a finding by the Commission, shall stand disqualified to hold any such office in a listed company for the next two years.*

(3) *If any person—*

- (a) *refuses or fails to furnish any document, paper or information which he is required to furnish by, or under, this Ordinance;*
- (b) *refuses or fails to comply with any order or direction of the Commission made or issued under this Ordinance; or*
- (c) *contravenes or otherwise fails to comply with the provisions of this Ordinance, the Commission may, if satisfied, after giving the person an opportunity of being heard, that the refusal, failure or contravention was willful, impose penalty which may extend to One million rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of two thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.*

(4) *Any sum directed to be paid under sub-section (3) may be recoverable as an arrear of land revenue.*

15. The respondents have accepted default in complying with the requirements of Takeover Ordinance. They have also failed to provide evidence verifying the number and respective percentage of shares acquired by the acquirers. Irrespective of the non-provision of the share purchase agreement it is an established fact that acquisition of the Target Company's share by the acquirers resulted in breach of the mandatory public offer threshold prescribed in the Takeover Ordinance. It has, however, been emphasized that non-compliance with the legal provisions was not willful rather was due to ignorance of law. It is pertinent to note that the Acquirers have failed to comply with any of the requirements of the Takeover Ordinance as motioned in Para 11 of this order.

16. It is imperative here to revisit the primary objective of the Takeovers Ordinance that is to provide for a fair and equitable treatment to all the investors and to provide a transparent and efficient system for substantial acquisition of voting shares and control of listed companies. In this particular case, the Acquirers have failed to comply with any of the provisions of the Takeovers Ordinance. For the above stated purpose the statute provides wide ranging powers to the Commission to issue directions and impose penalties on the Acquirers who have failed to execute their responsibility to comply with the prescribed



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legal requirements. However, I am of the firm view that judicious use of these powers must be ensured while making a decision keeping in view the specific circumstances of each case.

17. I am convinced that the Acquirers have violated the provisions of the Takeovers Ordinance and as such they could be directed under the provisions of Section 25 of the Takeover Ordinance to sell the voting shares acquired in violation of the provisions of the Ordinance. However, the target company is a loss making entity in an already troubled textile sector of the country. Moreover, in the present circumstances any bid to divest the shares would not attract any eager buyers. It is viewed such a direction would be detrimental to the interest of the target company and its minority shareholders. The Acquirers have a firm commitment to manage the state of the affairs of the target company in such a manner so as to turn it into a profitable entity. Therefore, keeping in view the circumstances of the case, the submission made by the acquirers and history of the Company I direct the acquirers not to dispose off their shareholding in the target company for a period of five years and hereby impose a collective penalty of Rs.3,500,000 (Rupees 3.50 million only) under Section 26(3) of the Ordinance on the acquirers in proportion to the voting shares acquired by them in violation of the provisions of the Takeover Ordinance: in proportion to the voting shares acquired by them in violation of the provisions of the Takeover Ordinance in the following manner:

S. N.	Name of Acquirer	Number of shares acquired	Amount of Penalty (Rs.)
1.	Mirza Aurengzeb Baig, Chief Executive	948000	875000
2.	Yasmin Naz, Director	947200	873400
3.	Asma Alamgir, Director	947200	873400
4.	Mirza Jehanzeb Baig, Director	947200	873400
5.	Mirza Asber Baig, Director	2500	2400
6.	Fehmida Begum, Director	2500	2400
	Total	3,794,600	3,500,000

18. The Acquirers are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited



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within thirty days from the receipt of this Order and furnish receipted challans to the Commission failing which proceedings for recovery of the fine as arrears of land revenue will be initiated.

Tahir Mahmood
Executive Director

Announced:
March 19, 2009
ISLAMABAD