



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before Ali Azeem Ikram
Director (Enforcement)

In the matter of

Gillette Pakistan Ltd

Number and date of Show cause notice: CMD/233/598/2002-1428-34, December 5, 2008
Date of hearing: February 11, 2009
Present on behalf of the Company: Mr. Saad A. Khan, Chief Executive
Mr. Muhammad Noor-e-Arshi, Director
Mr. Mehmood Y. Mandviwalla, (Representative)
Mr. Taimur Mirza, (Representative)
Date of Order: March 6, 2009

ORDER

Under Section 196 read with Section 476 of the Companies Ordinance, 1984

This Order will dispose of the proceedings initiated against the directors of M/s Gillette Pakistan Limited (hereinafter referred to as the "Company") pertaining to contravention of the provisions of Section 196 of the Companies Ordinance, 1984 (the "Ordinance").

2. The Company is incorporated in Pakistan as public limited company under the Ordinance and is listed on Karachi and Lahore Stock Exchanges. Paid up capital of Company is Rs. 192,000,000 comprising of 19,200,000 ordinary shares of Rs. 10 each and the Company is engaged in the business of marketing and selling of blade and razors, personal care products, alkaline batteries, household appliances and oral care products.

3. The brief facts leading to this case are that the examination of the annual audited accounts of the Company for the year ended June 30, 2008 and December 31, 2006 ("Accounts") revealed that the Company sold following sizeable part of assets without obtaining prior approval of the shareholders as required under provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance.

- Impaired and then sold entire plant and machinery of Rs. 9,052,000.
- Sold entire furniture and fixture of Rs. 2,144,000.
- Sold office equipment and Computers of Rs. 10,711,000 out of total Rs. 10,828,000.

Therefore a show cause notice dated December 05, 2008 was issued to all the directors of the Company to show cause in writing within 14 days of the date of the notice.



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4. The reply to the show cause notice was received from Company Secretary on behalf of all the directors, vide letter dated January 06, 2009, in which following arguments, in brief, were put forth:

- Company is in the business of sale and marketing of various consumer products with some of its products being manufactured till 2006 under toll manufacturing arrangement by third parties.
- The assets referred to in paragraph 2(a) of the notice were not plant and machinery but actually moulds for tooth brushes that has been used by toll manufacturer in the toll manufacturing plant for manufacturing tooth brushes for Company. Manufacturing of tooth brushes has been discontinued by Company through toll manufacturing and it is for this reason moulds were sold as scrap. It may be clarified that the product to which such dyes and moulds pertained, being one of the tooth brushes of the Company, constitute only 1% of Company total sale.
- Company due to shifting of its office premises sold furniture and fixture, office equipment and computers.
- Assets referred in the show cause notice do not constitute substantial assets of Company and accordingly the Company was not required to seek the approval of the shareholders.

5. In order to provide an opportunity of personal hearing to the directors, the case was fixed for hearing on February 11, 2009. On the date of hearing, Mr. Saad Amanullah Khan, Chief Executive, Muhammad Noor-e-Arshi, Director and representatives (Mr. Mehmood Y. Mandviwalla and Mr. Taimur Mirza) appeared on behalf of all the directors of the Company and contended that although by definition it is a violation of Section 196 of Ordinance, however argued that it was not plant and machinery but moulds sold by the Company which otherwise would have been scraped and requested to decide by keeping into account of the overall operations of the Company in comparison with the value of assets sold.

6. I have analyzed the written submissions made by the Company, verbal submissions of the representative and read the relevant provisions of the law applicable to this case very carefully. For ease of reference, the relevant provisions, contained in Clause (a) of Sub-section (3) of Section 196 of the Ordinance is, to the extent relevant, reproduced as under:

"The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely:-

(a) Sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing";

The aforesaid provision restricts the power of directors of a public company or of a subsidiary of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of general meeting. The objective of this provision is that the directors must consult the shareholders when an undertaking or a sizeable part thereof intended to be sold. The prior approval of the shareholders, thereof, is a condition precedent for selling or disposing of the undertaking or sizeable part thereof. This has been

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given special significance by providing that default of this provision would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

7. Company sold entire plant and machinery of Rs. 9,052,000, entire furniture and fixture of Rs. 2,144,000 and office equipment and Computers of Rs. 10,711,000 out of total of Rs. 10,828,000. The aforesaid assets constitute approximately 99% of property, plant and equipment of the Company. Furthermore, Company does not have any other fixed asset. It is therefore evident that the property, plant and equipment sold by Company constitute sizeable part of the undertaking and its disposal required special resolution to be passed by the shareholders. Moreover, Company argument that moulds were not plant and machinery is not valid, because moulds were in fact part of plant and machinery as apparent from the Accounts of the Company.

8. From the above discussion, submissions of the Company and argument put forward by the representative, I am of the considered view that the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance have been violated and directors are liable for the penalties as defined in Sub-section (4) of the aforesaid provisions of the Ordinance. However, keeping in view the nature of the business of the Company, I instead of imposing maximum fine of Rs. 100,000 on each director, hereby impose penalty of Rs. 100,000 (Rupees one hundred thousand only) on Mr Saad Amanullah Khan, Chief Executive of the Company. Furthermore all the directors are hereby warned to be careful and vigilant in future and comply with the requirements of the law in letter and spirit.

9. The Chief Executive of the Company is directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

Ali Azeem Ikram
Director (Enforcement)