

2012 CLD 1952

(Securities and Exchange Commission of Pakistan]

Before Imran Inayat Butt, Director/HOD (MSCID)

KAMRAN SHAHID, DIRECTOR OF KOHINOOR

MILLS LIMITED: In the matter of

Show Cause Notice No. S.M.(B.O.) C.O.222/4 (998)2012, dated 14-5-2012. decided on 28th June, 2012.

Companies Ordinance (XLVII of 1984)—

—Ss 222 & 224(4)---Failure to file returns of beneficial ownership—Director of Hated company was required to file return of change in his beneficial ownership on Form 32 within the period stipulated under 8.222 of the Companies Ordinaries, 1994, but he failed to discharge his obligation-Director of the Company thus had contravened the provisions of S.222 of the Companies Ordinance, 1984 but on receipt of letter from the Commission, he had filed Form 32—Taking a lenient view of the default, a fine of Rs Fifteen thousand was imposed on the Director Under S.224(4) of the Companies Ordinance, 1984 and no further fine for continuous default was imposed, [pp. 1953, 1956] A & B

M. Javed Panni, Chief Executive representing the Respondent.

Muhammad Farooq, Joint Director and Muhammad Sadiq Shah, Deputy Director assisting the Director/HOD (MSCID).

Date of hearing: 26th June, 2012.

ORDER

IMRAN INAYAT BUTT, DIRECTOR/HOD (MSCID),— 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.0.222/4 (998)2012 dated 14-5-2012 ("**Notice**") issued to Mr. Kamran Shahid rHwaponent¹¹), Director of Kohinoor Mills Limited ("**issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that the issuer Company is a public listed company and the Respondent being its Director was required to file return of change in his beneficial ownership on Form 32, within the period stipulated under section 222 of the Ordinance. However, he failed to discharge the said obligation which attracts penal provisions contained in section 224(4) of the Ordinance.

3. Section 222(2)(c) of the Ordinance stipulates the period within which the Form 32 is required to be submitted. For convenience, the provisions of the said Section are reproduced hereunder:-

"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."

4. It is worth mentioning that in order to provide an opportunity to directors /beneficial owners of listed companies to file their overdue returns of beneficial ownership without facing penal action, the Commission through Notices dated 7-9-2009 and 21-9-2010 asked them to 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. On account of scrutiny of record of this office, it was observed that the Respondent has failed to file returns of changes in beneficial ownership on Form 32. The Respondent was-, therefore, asked vide letter dated 13-3-2012 to file returns of beneficial ownership on

Form 32, along with reasons for non-filing of the same, within the period stipulated In section 222 of the Ordinance.

6. In response to the aforesaid letter, the Respondent filed six Forms 32, for the following changes in beneficial ownership:—

Sr. No.	No. of shares	Date of Change in Shareholding	Nature of Change	Due Date for filling the Return	Return Filed	Delay in Days
1.	1.500	8-3-2011	Purchased	23-3-2011	19-3-2012	362
2.	2,000	8-4-2011	Purchased	23-4-2011	19-3-2012	331
3.	500	28-4-2011	Purchased	13-5-2011	19-3 2012	311
4.	20.600	39-4-2011	Purchased	14-5-2011	19-3-2012	310
5.	1,400	2-5-2011	Purchased	17-5-2011	19-3-2012	307
6.	35.500	1-6-2011	Purchased	18-6-2011	19-3-2012	277
T.	100	19-7-2011	Purchased	3-8-2011	19-3-2012	229
8.	10.000	20-7-2011	Purchased	4-8-2011	19-3-2012	228
9.	9,900	22-7-2011	Purchased	6-8-2011	19-3,2012	226
10.	35.000	25-7-2011	Purchased	9-8-2011	19-3-2012T	223
11.	222	26-7-2011	Purchased	10-8-2011	19-3-2012	222
12.	46.060	1-8-2011	Purchased	-16-8-2011	19-3*2012	216
13.	4.513	2-8-2011	Purchased	17-8-2011	19 3-3012	215
14.	122.500	3-8-2011	Purchased	.18-8-2011	19-3-2012	214
IS.	5.000	3-8-2011	Purchased	20-8-2011	19-3-2012"	212
16.	400	5-10-2011	Purchased	20-10-2011	19-3-2012	151
17-	77,800	•10-10-2011	Purchased	25-10-2011	19-3-2012	146
18-	36.000	12-10-2011	Purchased	27-10-2011	19-3-2012	144
19.	325	13-10-2011	Purchased	28-10-2011	19-3-2013	143
20	678	18-10-2011	Purchased	2-11-2011	19-3-2012	138

7 The aforesaid twenty changes In beneficial ownership have been reported to the Commission on 19-3-2012 with delay ranging from 362 days to 138 days In contravention of section 222(2)(c) of the Ordinance.

"Whoever knowingly and willfully 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."

8. The Commission took cognizance of the aforesaid default and Issued Notice to the Respondent under section 224(4) of the Ordinance, calling upon him to explain through written reply along with documentary evidence, If any as to why action may not be taken against him pursuant to section 224(4) of the Ordinance, for aforesaid contravention of section 222(2)(c) of the Ordinance.

9. In order to provide an opportunity of being heard in person, hearing in the matter was faced for 28-5-2012 at the Commission's Head Office, Islamabad. In response, Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates Authorized Representative") vide letter dated 22-5-2012 requested on behalf of the Respondent to adjourn the hearing and extend the time for filing of reply up to 11-6-2012. The request -was accepted. The authorized Representative vide letter dated 11-6-2012 filed written submissions on behalf of the Respondent. The hearing in the matter was rescheduled for 26-6-2012. On the given date, the Authorized Representative appeared before me on behalf of the Respondent. The submissions made on behalf of the Respondent by the Authorized Representative in writing as well as verbally during the course of hearing be summarized as under:--

(a) The Respondent believes in timely filing of the statutory returns with the Commission as per requirement of Ordinance. He remained under the impression that Form-32 in respect of 800,000 ordinary shares purchased by him on 12-7-2011 had been filed with the Company Registration Office as well the Commission (Headquarters) in accordance with the legal requirement However, the omission with respect to non-filing with the Commission (Headquarters) was realized on receipt of Commission's letter dated 13-3-2012. The matter was immediately attended to and Form-32 in respect of 400,000 ordinary shares purchased on 12-7-2011 was filed with the Commission, within six days of the intimation.

(b) The default was inadvertent and was neither willful nor it was willingly authorizes or

permitted. It was only a human error from which no undue benefit has been derived.

- (c) *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.*

10. I have considered the aforesaid submissions made on behalf of the Respondent. The main contention of the Respondent is that the under reference default was inadvertent. In this regard it is pointed out that the Respondent is on the Board of Directors of the Issuer Company since last 2010. He is supposed to be fully acquainted with the requirements of section 222 of the Ordinance. The Respondent purchased 400,000 shares of the Issuer Company from 8-3-2011 to 18-10-2011, but he failed to discharge his liability entailed under section 222 of the Ordinance, until, the same was pointed out by this office through letter dated 13-3-2012. Moreover, I am of the view that sections 220 to 224 of the Ordinance speak about a Scheme. Under the said Scheme such beneficial owners/persons are required to report their shareholding as well as changes in shareholding at the same time to the Company, Registrar of Companies and the Commission. The said officers and more than ten percent shareholders of a listed company are required to fulfill their statutory requirements within the time period provided in the law. The Inevitability of the filing of the return of beneficial ownership with the Commission may be adjudged from the fact, that it enables the Commission to monitor the trading activities of the returnee.

11. In view of the foregoing discussion, it is evident that the Respondent was aware about his liability of filing of the returns of beneficial ownership, but he failed to do so within the stipulated time limit. In my opinion, the Respondent has contravenes the provisions of section 222 of the Ordinance. However, on receipt of aforesaid letter from the Commission, the Respondent has filed the Form 32. Taking lenient view of the default, in exercise of powers conferred under section 224(4) of the Ordinance, I hereby impose a fine of Rs. 15,000 (fifteen thousand rupees only) on the Respondent and no further fine for continuous default is imposed.

12. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited, within 30 days of the date of this Order and furnish Original Deposit Challan to this office, to the effect.

13. 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.

HBT/43/SEC

Order accordingly