

ORDER

1. The matter before me arises from the fact that the Lahore Stock Exchange (G) Limited (“LSE”) listed preference shares of Pak Electron Limited (“PEL”) and Masood Textile Mills Limited (“MTML”) in violation of its Listing Regulations. These preference shares have been issued to banks and financial institutions and no portion has been offered / issued to the general public.

2. The facts of the case are as follows:

(a) The Securities and Exchange Commission of Pakistan (“Commission”) took cognizance of the matter keeping in view the provisions of the Securities and Exchange Ordinance, 1969 and the Lahore Stock Exchange Listing Regulations approved by the Commission.

(b) In order to provide an opportunity of hearing, notices were sent to the management of these companies and the LSE on December 1, 2005 under Sections 22 and 9(4) of the Securities and Exchange Ordinance, 1969. A hearing was held in Islamabad on December 16, 2005.

3. The Managing Director - LSE argued that these preference shares have been listed in accordance with Listing Regulation V 8 of the Listing Regulations which reads as follows:

8. (1) No company will be listed unless it is registered under the Ordinance as a public limited company or has been setup under a statute and its minimum paid-up capital is Rs.20 million.

(2) Companies registered in Northern Areas and Azad Jammu and Kashmir will be eligible for listing and will be treated at par with companies registered in Pakistan.

(3) Despite receiving the application for listing and any preliminary actions thereon, no company shall be listed unless it has made a public issue which is subscribed by not less than 500 applications.

(4) The requirements of sub-section (1) or (3) shall not apply to listing of securities other than shares of companies unless any law so requires or the Federal Government in the exercise of its powers under the Securities & Exchange Ordinance so directs.

The MD LSE argued that, Listing Regulation V 8(4) allows waiver of Listing Regulation V 8(3) to listed securities other than shares.

Further, he submitted that the ordinary shares of these companies are already listed on the Exchange in compliance with Listing Regulation V 8(3). He added that the ordinary shareholders of the said companies had passed special resolutions in their Extra-ordinary General Meetings waiving off their rights under Section 86(1) of Companies Ordinance, 1984 (“Ordinance”) to issue preference shares at par value without issuance of right shares subject to Commission’s approvals.

Furthermore, the LSE stated that it had consulted the Commission on the matter and referred to a letter of Mr. Abid Hussain, Joint Director Enforcement Department No. (13)19927 dated May 24, 2005 and the verbal approval obtained from the Enforcement Department of the Commission.

In addition, the representatives of the LSE mentioned that under Listing Regulation 3(4), the LSE Board has the power to grant, defer or refuse permission and may for that purpose, relax any of these Listing Regulations, however this power was not exercised by the LSE Board.

4. The representatives of PEL, during the hearing explained that PEL obtained the approval of the Commission for issuance of 62,500,000 preference shares to certain institutional investors and that at that point in time they had disclosed to the Commission that these shares were being offered directly to institutional investors and were to be listed

on LSE. Accordingly, based on the approval granted by the Commission and in compliance with the procedure set out in the Listing Regulations, PEL got its preference shares formally listed on LSE with effect from January 18, 2005.

It was further argued that if the Commission had intended that Listing Regulation 8(3) (requiring that at least 500 preferential shares be issued to the general public) be applicable to the PEL, then it would have clearly included a direction to this effect in its letter dated November 19, 2004 authorizing the approval of preference shares by PEL. The fact that no such instruction was issued to PEL in the letter clearly indicates that the Commission did not intend that Listing Regulation V 8(3) were to be applicable to the PEL.

Further PEL argued that Listing Regulation V 8(3) deals with the listing of a company and not its securities. Thus, as the initial listing of PEL with LSE was undertaken in compliance with Listing Regulation 8(3) the same cannot be said to be applicable in the present case with regard to the listing of security of PEL in the form of preference shares.

5. The representatives of MTML stated that the Board of Directors of MTML passed a special resolution in its Extra Ordinary General Meeting held on May 28, 2005 to issue preference shares by way of further issue of capital in terms of proviso to section 86 of the Ordinance. The special resolution contained the detailed terms and conditions as to the quantum of the issue, the allotment to financial institutions without issue of rights and the listing of the issue on LSE subject to the approval of the Commission.

It was further stated that after the passing of the special resolution MTML made an application to the Commission under proviso to section 86 of the Ordinance for granting permission to issue preference shares. Subsequently, the Commission vide its letter of June 28, 2005 allowed MTML to issue preference share to banks and financial institutions, otherwise than as a right issue. Furthermore, while granting the said approval the Commission in its aforementioned letter specifically mentioned that *“It may also be noted that these preference shares shall be governed by the terms and conditions as approved by the shareholders in the aforesaid EGM”*.

The representatives of MTML read out the relevant clause which is reproduced below:

“Resolved that, subject to approval of Securities and Exchange Commission of Pakistan (“SECP”) to the extent required under law, for the purpose of raising finance funding to meet the working capital requirement of the Company and for funding the fixed assets acquisition cost and for any other purpose as allowed in the Memorandum and Articles of the Company, the directors of the Company be and are hereby authorized to issue upto 60,000,000 (sixty million) preference shares of the face value of Rs. 10 each to financial /institutional investors/ companies /associations/trusts/ entities with the permission of the Federal Government in terms of the proviso to Section 86(1) of the Companies Ordinance, 1984 by way of further issue of capital without issue of right shares, to be listed on the Lahore Stock Exchange (Guarantee) Limited”.

MTML argued that, in view of the above it is evident that the Commission issued the directions to govern the preference shares by the terms and conditions approved by the shareholders, which terms also included the condition of listing of the preference shares on the LSE.

Furthermore, referring to Listing Regulations 8(3), MTML argued that the provisions of the said Regulation provide for certain conditions relevant to the listing of a company on LSE and not of a listed company’s securities. It was argued that MTML is already a listed company with more than 500 subscribers hence it was not a fresh case of listing of a company and accordingly Listing Regulation 8(3) was not applicable.

In view of the above arguments it was reiterated by MTML that there was no violation of Listing Regulations in terms of Listing Regulations II 3(2) and V 8(3) since it was not a new company.

6. Having heard the parties carefully and looking into the arguments put forward by the representatives, I am of the view that the listing of preference shares on the LSE by

PEL and MTML issued to financial institutions and banks is in violation of the Listing Regulation II (3) which reads as follows:

3 (1) No dealings in securities of a company shall be allowed on the Exchange, either on the Ready Quotation Board or Cleared List, unless the company or the securities have been listed and permission for such dealing has been granted in accordance with the Regulations.

*(2) The permission under sub-regulation (1) may be granted upon an application being made by the company or in respect of the securities in the manner prescribed. The Exchange in granting such permission will consider among other things, **sufficiency of public interest** in the company or the securities.*

(4) The Board will be the sole authority to grant, defer or refuse such permission and may for that purpose, relax any of these regulations subject only to two third majority of the directors present at such meeting of the Board and so resolving.

7. Listing Regulation II 3(2) requires that LSE in granting permission of listing at the Exchange, shall consider among other things sufficiency of public interest in the company or the securities. In the case of PEL and MTML however, preference shares have been privately placed with institutional investors without any offer to the general public. Therefore, there is no sufficient public interest in the listing of preference shares of these companies and therefore the listing of these shares is contrary to the requirements of Listing Regulation II 3(2).

8. The LSE Board has been empowered under Listing Regulation II 3(4) to relax any of the Listing Regulations subject to two third majority of the directors present at such meeting of the Board and so resolving. However, upon an enquiry during the hearing it was confirmed by the LSE Managing Director that no such relaxation was granted by the LSE Board of Directors in the case of PEL and MTML.

9. As regards, the approval of the Commission under Sub-section (1) of Section 86 of the Ordinance and Rule 5(i) of Companies Share Capital (Variation in Rights and Privileges) Rules, 2000, the same relates merely to the issuance of further share capital on the basis of special resolution passed by the ordinary shareholders in an Extra Ordinary General Meeting

and does not in any way relate to the listing of such shares on a stock exchange. I may further accentuate that, as confirmed by Mr. Mr. Abid Hussain Joint Director Enforcement, no verbal approval was granted by the Commission to the LSE for listing of such shares in violation of LSE's own Listing Regulations.

10. In addition, it is emphasized that matters relating to listing of securities on stock exchanges are handled by the stock exchanges themselves and which are required to be strictly in accordance with their respective Listing Regulations. In this context, it is vital that all the three stock exchanges adopt similar guiding principles for handling issues of listings thereby ensuring uniformity in their regulatory framework.

11. Further, in this context, the Karachi Stock Exchange ("KSE") has confirmed to the Commission that in the past, similar requests for listing of preference shares issued to financial institutions and banks (with no public offer) had been received. However, these were refused for the reason that there would be no public interest in listing of such securities and therefore would not be in line with the KSE Listing Regulations, approved by the Commission.

12. As regards, the contention of MTML that the Commission in its letter dated June 28, 2005, mentioned that *"these preference shares shall be governed by the terms and conditions as approved by the shareholders in the aforesaid EGM"* and whereas, the special resolution passed by the ordinary shareholders stipulated that these preference shares are to be listed on the LSE. However, in this regard it needs to be borne in mind that, it is the prime responsibility of a listed company to remain informed of its duties and responsibilities under the relevant securities laws, in particular the Listing Regulations. Accordingly, the plea taken by MTML that the Commission in its aforementioned letter did not inform MTML that it was required to comply with the requirements of LSE Listing Regulations is unacceptable.

13. In the present cases I am fully convinced that the insufficiency of public interest in the listings of preference shares of PEL and MTML is a material deficiency since it is a

violation of the requirements of II (3) (2) of the LSE Listing Regulations. Therefore, in exercise of the powers conferred by sub-section (4) of section 9 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), I hereby order the LSE to de-list the preference shares issues of PEL and MTML with immediate effect.

14. As mentioned in para 8 above although, the LSE Board has been empowered under Listing Regulation 3(4) to relax any of the Listing regulations subject to two third majority of the directors present at such meeting of the Board and so resolving. However, no such relaxation was granted by the LSE Board of directors in the case of PEL and MTML as informed by the Managing Director of LSE. Accordingly, in light of the deliberations noted in the previous paragraphs, LSE management clearly appears to have acted in an irresponsible manner, in complete violation of its Listing Regulations II (3) (2) as approved by the Commission and in disregard to the interests of the investors. Therefore, in exercise of the powers conferred by sub-section (c) of section 22 of the Securities and Exchange Ordinance 1969 (XVII of 1969), I hereby impose a penalty of Rs. 100,000/- (Rupees one hundred thousand only) on the Managing Director of LSE.

M. Arif Mian
Executive Director (Securities Market Division)

Announced
April 26, 2006
Islamabad.