BEFORE THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN ISLAMABAD

IN THE MATTER OF JAHANGIR SIDDIQUI INVESTMENT BANK LIMITED AND JAHANGIR SIDDIQUI AND COMPANY LIMITED FOR SEEKING DE-LISTING FROM THE ISLAMABAD AND LAHORE STOCK EXCHANGES

Present:

On behalf of the Petitioners:	Mr. Abdul Hameed Dagia, Chief Executive, Jahangir Siddiqui Investment Bank Limited Mr. Munaf Ibrahim, Chief Executive, Jahangir Siddiqui and Company Limited Mr. Habib-ur-Rehman
On behalf of Respondents:	Mr. Amer Zareef, Deputy Secretary, Legal LSE Mr. Yousaf Makhdoom, Company Secretary, ISE Mr. Ahmed Noman, ISE Mr. Abdul Rasheed Awan, Advocate ISE
On behalf of KSE:	Mr. Muhammad Yacoob Memon, Acting Managing Director, KSE

Date of hearing: 13 May, 2002

ORDER

1. The matter before us arises from two separate petitions filed by M/s Jahangir Siddiqui Investment Bank Limited ("Petitioner 1") and M/s Jahangir Siddiqui and Company Limited ("Petitioner 2") (collectively referred to as the "Petitioners") under Section 9(6) of the Securities and Exchange Ordinance, 1969 ("Ordinance") against the Islamabad Stock Exchange ("Respondent 1") and Lahore Stock Exchange ("Respondent 2") (Respondent 1 and Respondent 2 are collectively referred to as the "Respondents"). The Petitioners have prayed that the SEC direct the Respondents to de-list the Petitioners' securities from their respective exchanges.

2. Mr. Abdul Hameed Dagia, Chief Executive of Petitioner No.1, while giving a brief background of the company, stated that the Petitioner 1 formerly known as Citicorp Investment Bank Limited was sponsored and incorporated by Citicorp Overseas Investment Corporation, USA in 1992 and, subsequently, was listed on all the three

stock exchanges in Pakistan in 1993. In 1999, as a result of change of management, the company's name was also changed from Citicorp Investment Bank Limited to Jahangir Siddiqui Investment Bank Limited .

3. He further submitted that their decisions to de-list from the Respondents' stock exchanges was with the objective to reduce their operational expenses. In this respect, it was contended that the retention of listing at more than one stock exchange serves no economic purpose to a company and, as such, is not advantageous to its business. In addition to the above, he said that the following are the grounds for seeking de-listing:

   (a) The percentage of shareholders residents in and around Islamabad and Lahore were minimal;

   (b) Trading volumes at the said Exchanges were very small;

   (c) Requirement to submit many copies of annual accounts and half yearly accounts placed an extra burden on the Petitioners;

   (d) Requirement to submit quarterly accounts to the Respondents exchanges pursuant to the instructions of the SEC has further increased the burden;

   (e) Listing fees are relatively high and disproportionate to the volume of transactions that actually take place in the Respondents Exchanges;

4. With regard to points (a) and (b) above, it was pointed out that, during the period 1998 to 2001 2.5 million shares of Petitioner 1 were traded at the KSE, whereas only 32, 000 shares were traded at Respondent 2 during the same period. The number of shares traded at Respondent 1 during the same period were even less than that traded in Respondent 2. Thus a plea was taken that such small quantity of trade did not justify the listing fee.

5. It was also elaborated on points (c) and (d) above by explaining that the total expenses in providing 300 copies of annual and half yearly accounts amounted to Rs. 300, 000.

6. The Petitioners contended that with the advent of the Central Depository Company of Pakistan Limited ("CDC") and the National Clearing Company ("NCC") (the latter not having begun its operations as yet) and the consequential automation of trading (effectively ending the need for shares in physical form) supported the idea of a company being listed only on one stock exchange.

7. It was alleged that the Respondents misinterpreted their own listing regulations, firstly, in a manner so as to unjustly giving themselves exclusive prerogatives (in the absence of any corresponding right to the companies) to de-list. This interpretation, was *ultra vires* the Ordinance and the Constitution of Pakistan.

Secondly, the provisions of voluntary de-listing were also misinterpreted by Respondent 1 so as to mean that a company could not de-list until and unless it de-listed from all the exchanges in Pakistan.

8. Mr. Munaf Ibrahim submitted on behalf of Petitioner 2, that trading in its shares at the Respondents Stock Exchanges over the years has remained nominal due to its public shareholders' inclination towards retaining their shareholdings which has been motivated by Petitioner 2's sustained growth and high payouts in the form of dividends and bonuses. Owing to such inclination exhibited by Petitioner 2's public shareholders, trading in its shares over the last few years has only been minimal. Presently, 0.31% shares of Petitioner 2 are being held by persons residing in or near Islamabad and, therefore, trading volumes at Respondent 1 are not significant.

9. Respondent No.1 had rejected the application of Petitioner No. 1 *vide* its letter dated 6 March, 2002 primarily on the ground that there was no provision in its Listing Regulations by which a company can be de-listed at its own request. Petitioner No. 1 alleged that the aforesaid ground for rejection was misconceived, arbitrary and based on an ignorance of law. In this regard, it was stated, on behalf of Petitioner No. 1 that Respondent 1 has failed to appreciate Section 9(5) of the Ordinance which specifically provides that "A listed security may be de-listed on application by the issuer to the Stock Exchange…". It was further argued that the prime consideration of a Stock Exchange while de-listing is the security of investors. However, Respondent 1 failed to raise any such concern.

10. Respondent 1, in its reply, had stated that Section 9(5) of the Ordinance gave the necessary powers to a Stock Exchange to either grant or deny the de-listing of a company. Regulations 31-A to C, it was submitted, were in consonance with the provisions of Section 9(5) *ibid*. It was contended on behalf of the Respondent that the Listing Regulations, having been drafted by Respondent 1 and approved by the SEC, were quite clear as to the procedure to be followed in the case of a voluntary de-listing. By virtue of listing, it is mandatory for the Petitioners to comply with the said Regulations. Furthermore, it was contended that the reasons put forward in the Petitioners' respective applications were not in conformity with the Listing Regulations. Thus the petitions were premature. Also that such de-listing would necessarily entail de-listing from all the stock exchanges.

11. Mr. Amir Zareef, on behalf of Respondent 2, first argued that there was no relief being sought against it by the Petitioners. As such, the Petitions were not maintainable. However, it has been noted, that Respondent 2 has admitted, in its own reply, to have rejected the application for de-listing of Petitioner 1.

13. The representative of Respondent 2 went on to argue that Petitioner 1 had come before the SEC with unclean hands as it had not, as yet, paid their listing fees for 2001 and 2002. It was also alleged that Petitioner 2 had failed to comply with Regulation 21(2) of the listing Regulations for the past few years and was, thus, liable to be fined Rs. 1000 for every day of such failure. It was further submitted

that Petitioner 1 was attempting to curtail its own operational expenses at the cost of small investors. It was alleged that, after having taken the benefit of acquiring equity through investors in Lahore, Petitioner 1 was now seeking de-listing with utter disregard to those same investors. In this respect, Mr. Amir Zareef argued that Petitioner 1's de-listing from Respondent No. 2 would firstly, deprive 70% of the population of potential investors residing in the Punjab, NWFP and Northern Areas and secondly, force investors to trade through the KSE which, in turn, would increase the small investors transaction costs. Furthermore, as the majority of expenses arose from listing at the KSE, then prudence would dictate that Petitioner 1 should seek de-listing from there.

14. It was also submitted that Petitioner 1 had taken into account misleading accounting calculations in support of its petition by adding up the sponsored shares. Mr. Amir Zareef did not, however, elaborate on this point. Nevertheless, Respondent No. 2, in its petition, did emphasize the fact that when Petitioner 1's shares were first offered, the same were oversubscribed in Lahore.

15. Having heard the parties carefully, we are of the considered view that the cardinal issue that needs to be examined and considered is whether by acceding to petitioners request for de-listing, is there a defect or disability that investors will suffer and what is it that the investors stand to gain or lose substantially. In our view it is not the marginal benefits and demerits viz a viz the rights of investors which need to be taken into account, what is to be seen is whether investors do not stand to gain or lose substantially. The major grounds taken by the petitioners are that proportional cost of listing is much more than the volume of trade taking place on these Exchanges. Thus listing with the Respondents is not economically viable and cost effective. It has also been emphasized that the percentage of shareholders of petitioner No.1 residing in Islamabad and Lahore is 0.6% and 3.9% respectively whereas in case of petitioner No.2 it is 0.31% and 0.68% respectively. The trading that has taken place on Islamabad Stock Exchange and Lahore Stock Exchange over the last few years has only been minimal as compared to the trading of 2.5 million shares of petitioner No.1 at the Karachi Stock Exchange. Against these arguments, we do not find merit in the objections raised by Respondents. The arguments of Respondent No.1 that there is no provision in Listing Regulations by which a company can be de-listed on its own request and therefore, de-listing cannot be allowed, is not sustainable in the presence of an express and clear provision in the Ordinance. In this regard Section 9(5) of the Ordinance for ease of reference is reproduced hereunder:

(5) A listed security may be delisted on application by the issuer to the Stock Exchange which may deny the application or grant it on such conditions as appear necessary or appropriate for the protection of investors.

(6) Where a Stock Exchange refuses to delist a security the Commission may, on petition by the applicant made within the prescribed time, direct the Stock Exchange to delist the security.

16. Following the well-settled principle that law must be construed and given its plain and ordinary meaning, from the above, it is clear that listing of a company is not mandatory and companies can apply for de-listing from any of the stock exchanges. We are of the view that one cannot read into a statute restrictions and limitations which are otherwise not provided. A number of objections have been raised by Respondent No.2 (LSE). However, the plea that may have some relevance for deciding this issue is that de-listing from Respondent No.2 would deprive 70% of the population of potential investors residing in Punjab, NWFP and Northern Area and that it will force investors to trade through KSE thereby adversely affecting small investors to incur additional cost for the purpose of trading in the Petitioners' shares. In this regard, the Petitioners have contended that with the advent of Central Depository System and the consequential automation of trading which has effectively ended the need for shares in physical form and given rise to a centralized structure. Shares can now be transferred electronically by people throughout Pakistan *via* brokers' branch offices. Therefore, the geographical aspect has become inconsequential. Furthermore, it has also been mentioned that Karachi Stock Exchange has its brokers operating in various cities including Islamabad and Lahore, therefore, question of access to the Exchange is not an issue and incurring of additional cost is an option which an investor may or may not choose to adopt. The argument on behalf of Respondent No. 2 that Petitioner No.1 has come with unclean hands as they have not paid listing fees for the last two years appears to be in contradiction to the statement made by Respondent No.2 in its letter dated 10 April, 2002 in response to the de-listing request, wherein Respondent No.2 referred to Petitioner No. 2 as *"one of the esteemed listed companies of Lahore Stock Exchange, which is complying with the Listing Regulations of the Exchange, regularly"*. Notwithstanding such observation, if LSE has any lawful claim against Petitioner 2, recovery of the same cannot be made a ground for rejecting the Petitioner's request for de-listing.

17. With respect to the objection raised by Lahore Stock Exchange that the regulations do not envisage de-listing, the answer is simple and clear i.e. in such an event we will revert to what the Ordinance provides and proceed in accordance with law. As for the Listing Regulation of Islamabad Stock Exchange, it has been emphasized that the voluntary de-listing under the regulations is only possible if a company de-lists itself from all exchanges. The relevant Regulations in this regard are Regulations No. 31-A-B & C which contemplates a specific procedure which essentially entails a formal request, shareholders approval and, more importantly, buying back of shares without exception from all the other share/security holders. We have reviewed the said Regulations and are of the considered view that when it comes to buying back arrangement with respect to shares the question where the members reside is of no relevance due to free mobility of shares from one exchange to another. Members can trade the shares at any of the stock exchanges. Therefore, keeping in view the Regulations pertaining to voluntary de-listing we can appreciate Respondents' plea and its basis that de-listing is only possible when it takes place on all exchanges and it is not optional for a company to remain listed

with any one of the exchanges. In our view the scope of de-listing as contemplated in the Regulations in fact is too restrictive, as it does not envisage de-listing from a particular exchange. The law clearly envisages more than one Stock Exchange in operation and it is not mandatory for a company to de-list itself from all Stock Exchanges simultaneously. Therefore, in order to avoid any conflict and to give harmonious interpretation to both the Ordinance and the Listing Regulations of ISE, the Listing Regulations of ISE relating to voluntary de-listing can only be invoked when a company de-lists itself from all exchanges. Whereas when a company opts to remain listed on at least one of the exchanges, the ISE Regulations being silent in this regard, provisions of the Ordinance would directly apply. The discretion of Stock Exchange to de-list a company has to be exercised in terms of the provisions of subsection (5) of section 9 of the Ordinance. The focal point for exercising such discretion is to safeguard investors' interest. It cannot be argued that exchanges have an unfettered discretion and prerogative to keep an issuer listed on its Stock Exchange as long as it wishes or desires. Such a position as rightly argued by the petitioners would be misconceived, unfair and devoid of any merit. A different focus may be required. *Laissez faire* right of a company has to be considered.

18. With regard to the objection relating to the undertaking being provided by the company that LSE would never be bound by the petitioners' request to de-list, in light of the provisions of the Ordinance, it is clear that the SEC is not bound by such an undertaking. In any event, we consider that the said undertaking is in consonance with the provisions of sub-section (5) of Section 9 of the Ordinance which empowers the exchanges to allow or reject such an application. However, what must be borne in mind is that the undertaking cannot be construed to confer absolute powers as it would be against the spirit of law.

19. In the present case we are fully convinced that there is nothing available on record which could justify forcing a company to remain listed with the Respondents as, we are of the opinion, that the Respondents have failed to show as to how de-listing of the Petitioners would in any manner adversely effect the rights of the investors. The SEC is concerned only with the fact that an adequate trading platform is available to the investors and, if this is ensured, as a matter of public policy, the Stock Exchanges and the SEC should not interfere and insist on listing of a particular company. In this regard it is, however, relevant to note that the Petitioners admittedly published in the prospectus that the shares of the respective companies would be listed at the LSE and ISE. Therefore, any variation in the terms referred to in the prospectus or a statement in lieu of the prospectus pursuant to Section 58 of the Companies Ordinance, 1984 can only be made subject to the approval of or authority given by the company in general meeting. Accordingly, subject to the

compliance of Section 58 of the Companies Ordinance, 1984, the Respondents are hereby directed to de-list the Petitioners from their respective exchanges within 15 days from the date of the approval by its shareholders.

Shahid Ghaffar
Commissioner (SM)

N. K. Shahani
Commissioner (Insurance)

Zafar-ul-Haq Hijazi
Commissioner (Company Law)

Abdul Rehman Qureshi
Commissioner (Enforcement)

Khalid A. Mirza
Chairman

Date : May 14,2002.