



Securities and Exchange Commission of Pakistan
Company Law Division
(Enforcement Department)

[Islamabad]

Before Dr. Sajid Qureshi, Executive Director (Company Law Division)

Order

In the matter of

ALTERN ENERGY LIMITED

(Under Rule 11 of the Companies (Issue of Capital) Rules, 1996 Read with Section 86 and Section 492 of the Companies Ordinance, 1984)

No and Date of Show Cause Notice:	EMD/233/390/02-11676-82 June 20, 2006
Date of final hearing:	August 8, 2006
Present:	-Sheikh Muhammad Iqbal, Chief Executive -Mr.Khawaja Ahmad Hosain, Advocate
Date of Order:	August 16, 2006

This order will dispose of the proceedings initiated against the Chief Executive and Directors of Altern Energy Limited (the Company) under Show Cause Notice dated June 20, 2006 issued under Rule 11 of the Companies (Issue of Capital) Rules, 1996 (the Rules) read with Section 86 and Section 492 of the Companies Ordinance, 1984 (the Ordinance).

2. The brief facts of the case are that while examining the announcement made by the Company on March 22, 2006 for the right issue @1,450% at par, it was observed by the Enforcement Department that the company had not provided to the Commission and the Stock Exchange as required under Sub-rule (ii) of Rule 5 of the Rules the purpose of right issue, benefits to the company, use of funds and financial projections for three years. The company had also not provided financial plan and projections signed by all the directors who were present in the meeting in which the right issue was approved.



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3. In this connection the Company was asked to provide the requisite information and documents vide Commission's letter No. EMD/233/480/03- 9436 dated March 29, 2006, In response, the information/documents provided by the Company on April 4, 2006 revealed that it intends to revamp and enhance its existing operating assets to gross ISO 29 MW and to acquire 60% equity stake in an independent Power Producer (IPP), IPPL, established under the 1994 power policy through special purpose vehicle Power Management Company (Pvt.) Limited "PMCL" which shall become a wholly owned subsidiary of the Company post transaction. It was observed from the information and documents provided that the name of the independent Power Producer in which the Company is to acquire 60% equity stake and other material information was not disclosed.

4. In this connection, a show cause notice (scn) dated June 20, 2006 was issued to the Directors of the Company calling upon them to show cause as to why penal action may not be taken against them as provided in Rule 11 of the Rules and Section 492 of the Ordinance for violating the statutory requirements of the law. A period of 14 days was given to respond to the aforesaid notice.

5. The aforesaid notice was responded by the former legal counsel of the Company M/s. Hassan & Hassan, Advocates vide letter dated July 1, 2006. The reply submitted by the Company against the scn is summarized as under:

- (i) The Counsel for the directors has taken the plea that there is no violation, by the Company or its directors, of any provision of the Ordinance particularly of Section 492 of the Ordinance or of Rule 5 of the Rules as the Company is yet to make an offer of right shares to its share holders. It is stated that the Company has sent draft letter of offer and circular under section 86(3) of the Ordinance to the KSE for approval, which makes full disclosure of all the material particulars relating to the right issue. It is emphasized that in relation to issuance of shares, section 492 is attracted when a false statement is made in an offer of shares, and since the Company has not still made offer of shares to its shares holders hence there is no violation of section 492 of the Ordinance.



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- (ii) It was contended that the information provided to the Commission and the KSE under Rule 5(ii) and (iii) of the Rules does not constitute an offer of shares to the shareholders. The Company has also complied with the Rule 5(ii) and (iii) of the Rules as the decision of right issue was communicated to the Commission on the same day and subsequently the Company has also furnished the requisite information.
- (iii) It is further emphasized that the rules are made pursuant to the Ordinance hence Rule 5(ii) relates to communication to the shareholders in terms of Section 86 (3) of the Ordinance and cannot be attributed to Rule 5(iii) which merely requires communication of the decision of right issue to the Commission and concerned stock exchange(s) on the same day.

6. Sheikh Muhammad Iqbal, Chief Executive and Mr. Khawaja Ahmad Hosain, Advocate, (newly appointed counsel to appear in this matter) appeared on behalf of the company at the time of hearing held on August 08, 2006 and agreed to disclose the required material information to the maximum in the Circular under Section 86(3) of the Ordinance, to be circulated among the shareholders with the offer letter for right issue. They agreed that the company did not provide the information to the Commission and the Stock Exchange as required under the Rules (although it was contended that it may have been a mistake or an overlook by the Company; there was no real intention to withhold the information). Further, they contended that the wrong committed under the purview of the Rules does not attract any penal action provided in the Ordinance as the two are independent. The Representatives of the Company has also assured that Company would ensure strict compliance of the provisions of the Ordinance in future.

7. The aforesaid submissions of the Company have been analyzed as follows:

- i. The Company was required to submit the information in terms of Rule 5(ii) & (iii) of the Rules along with communication of its decision of right issue at the time of making announcement. Since the Company has failed to submit the information as required under Rule 5(ii) along with the announcement of right issue, hence the Company has made contravention of Rule 5 of the Rules.



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ii. Besides, the omission of the aforesaid material information also constitutes the violation of Section 492 as the information provided to the Commission and Karachi Stock Exchange was incorrect and incomplete, therefore misleading as:

- It was observed from the minutes of the Company's meeting of the board of directors held on March 22, 2006 that the proceeds of the right issue would be utilized in order to revamp and enhance its existing operating capacity and to acquire 60% equity stake and the company entered into three agreements on September 19, 2005, with Siemens Project Ventures GmbH and Rousch Group of Companies. Moreover the letter of guarantee worth of Rs.156, 650,000/- provided by the Company shows that it was arranged and signed on October 3, 2005 by its Chief Executive, Mr. Sheikh Muhammad Iqbal, as a buyer from ABN Amro Bank, Lahore in favor of Siemens Project Ventures GmbH. The Company in its director's report dated October 8, 2005 to the shareholders, annexed with the annual accounts for the year ended June 30, 2005 or in these accounts, failed to mention or describe the above stated subsequent events to the period the balance sheet relates.
- Moreover, the auditor of company M/s. Yusaf Saeed & Co. Chartered Accountants vide their letter dated August 8, 2006, in reference to the audit report issued by them on October 08, 2005, has submitted to the Commission that:

"Indeed as auditors of AEL we were not informed or made aware of the transaction relating to the purchase of equity of Rousch (Pakistan) Power Limited, by any one....."

- The requisite information was disseminated to the Stock Exchange on June 19, 2006 after the book closure period of April 15-22, 2006 for this right issue.



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- In response to the Commission's letter dated March 29, 2006 the information/ documents provided by the Company on April 4, 2006 revealed that it intends to revamp and enhance its existing operating assets to gross ISO 29 MW and to acquire 60% equity stake in an independent Power Producer (IPP), IPPL, established under the 1994 power policy through special purpose vehicle Power Management Company (Pvt.) Limited "PMCL" which shall become a wholly owned subsidiary of the Company post transaction. It was observed from the information and documents provided that the name of the independent Power Producer in which the Company is to acquire 60% equity stake and other material information was not disclosed.
- iii. As regards the submission of the Counsel about the position of the Rules in the light of the Ordinance, it is stated that the Companies (Issue of Capital) Rules, 1996 were made under Section 506 of the Companies Ordinance, 1984((XLVII) of 1984)(read with Finance Division's Notification No. S. R. O. 698(I) 86, the 2nd July, 1986 and SRO 110(I)/96 dated February 8, 1996) which states that:

"Power of the Federal Government to make rules...(1)In exercise of the powers conferred by Section 506 of the Companies Ordinance, 1984 (XLVII of 1984), read with Finance Division's Notification No. S.R.O. 698(I)/86 dated the 2nd July, 1986, the Corporate Law Authority is pleased to make the following rules...."

Violation of any Rules under the Companies Ordinance attracts sub section (2) which states as:

"Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to (fifty) thousand rupees and, where the contravention is a continuing one, with a further fine which may extend to (five) hundred rupees for every day after the first during which such contravention continues".



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The question then arises; does the SECP fall under the purview of the Federal Government...? are any powers delegated under any law by the Federal Government to SECP.? The answer is enclosed in the SECP Act 1997 especially under section 20 (4) (o).

Therefore, in my opinion, the “Rules” are inherent part of the Companies Ordinance, 1984. I do not agree with the counsel’s contention that ‘Rules are not part of the Companies Ordinance 1984 and therefore penalties under the said Ordinance are not attracted’.

As to the violation of Rule 5, Rule 11 of the Rules allows for penalties. The latter states that:

“Whoever fails or refuses to comply with, or contravenes any provision of these rules, or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under the Ordinance, be also punishable with fine not exceeding two thousand rupees, and in case of continuing failure, refusal or contravention, to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues”

8. For the foregoing reasons, it is established that the Chief Executive and the Directors have violated the provisions of the Rule 5 of the Rules and of Section 492 of the Ordinance and have not exercised due care while making announcement on March 22, 2006 of the issue of right shares @1,450% at par. They failed to comply with the provisions of Rule 5.

9. As regarding Section 492, full information was not provided or indeed crucial explanations were also not provided although as stated above; the Company admitted that it was a mistake and it was simply overlooked. I find this extraordinary since this acquisition is of a large magnitude and to make careless mistake at this level is unbelievable and is mis-management by the Directors (doctrine of indoor management) and the Company. Section 492 states that:



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“Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding one hundred thousand rupees”. (My emphasis)

9. After having considered the admitted default of the Chief Executive and Counsel of the Company and the perusal of the documents and information placed on record, it is evident that the said announcement of right made by the company on March 22, 2006 did not meet the requirement of Sub-Rule (ii) of Rule 5 of the Rules and was made without stating the purpose of the right issue, benefits to the company, use of funds, and providing financial plan and projections in violation of the requirements of Rule 5 of the Rules. The information that was subsequently provided, inter alia, omitted the name of the Power Plant and its capacity.

10. In view of the above, instead of imposing maximum penalty of Rs. 100,000/- as prescribed by Section 492 of the Ordinance, although I do concede that s.506 was not part of the show cause notice however if the law is technically stretched violation of the Rules do infact violate the Companies Ordinance under s.506. This defeats the counsel's contention, which could lead me to impose a further penalty of Rs. 50,000/-. However, due to omission in the show cause notice, I will not pursue this path), I, therefore take a lenient view of the default and impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on each of the directors namely, M/s. Sheikh Muhammad Iqbal, Chaudhry Habib Ahmed, Faqir Hussain Khan, Muhammad Usman Malik. In addition to above, the violation of Rule 5 of the Rules attracts the penalty prescribed in Rule 11 of the Rules and here again I impose a nominal fine of Rs. 1,000/- (One thousand only) on each of the aforementioned directors. Thus, the total fine amounts to Rs. 51,000/- (Fifty One Thousand Only) on each director who are directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities & Exchange Commission of Pakistan in the Habib Bank Limited within 30 days of the date of this order and furnish a receipted challan to the Commission in this regard. Moreover the plea



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of the Representative of the Company to drop the proceedings against those director who were not present in the Board of directors meeting where the decision to issue the right issue was taken, has been considered and found cogent hence I have decided to drop these proceedings against the three directors of the Company namely M/s. Athar Mahmood, Muhammad Taloot, Mujeeb Arif Khan.

11. This Order is issued without prejudice to any other action that the Commission may initiate against the company and its directors in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Dr. Sajid Qureshi
Executive Director (CLD)

Announced

August 16, 2006

Islamabad