*Before*

**Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)**

*In the matter of*

**Miss. Arisha Mobeen Jumani**

| | |
|---|---|
| Number and date of Show Cause Notice (SCN) | 2(451)SMD/Adj-1/2024<br>Dated February 22, 2024 |
| Date(s) of Hearings: | April 18, 2024 |
| Present at the Hearings: | Mr. Ali Lakhani, Consultant<br>(*Authorized Representative*) |

**ORDER**

**UNDER SECTION 109(2) OF THE SECURITIES ACT, 2015 READ WITH REGULATION 4(1) OF THE LISTED COMPANIES (SUBSTANTIAL ACCQUISITION OF VOTING SHARES AND TAKEOVERS) REGULATIONS, 2017**

This Order shall dispose of the proceedings initiated against Miss. Arisha Mobeen Jumani (**the Respondent and/or the Acquirer**) through Show Cause Notice No.2(451)SMD/Adj-1/2024 dated February 22, 2024 (**the SCN**).

2. Khairpur Sugar Mills Limited (**the Target Company**) made announcement dated January 11, 2024 on Pakistan Stock Exchange (PSX) under clause 5.6.1(d) of the PSX Rulebook, wherein, the Target Company has disclosed that Miss. Arisha Mobeen Jumani (**the Acquirer**) who is a Chief Executive Officer of the Target Company has acquired **484,200** voting shares of the Target Company on January 09, 2024 via git from his father namely Mr. Muhammad Mubeen Jumani.

3. Brief facts of the case are that the Acquirer had breached the threshold of 10% as provided in Section 109 of the Securities Act, 2015 (**the Act**) and failed to comply with the disclosure requirements of Section 109(2) of the Act and regulation 4(1) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (**the Regulations**). As per pattern of shareholding provided in annual audited financial statements of the Target Company for the year ended September 30, 2023, the Acquirer was holding **1,600,000** voting shares constitution **9.99%** of the total outstanding voting shares of the Target Company i.e. **16,017,500** shares. Moreover, subsequent to acquisition of shares via gift on January 09, 2024 cumulative shareholding of the Acquirer in the Target Company increased from **9.99%** to **12.97%,** details tabulated as under:

| **Description** | **No. of Shares** | **Percentage** |
|---|---|---|
| Shareholding of the Acquirer as of September 30, 2023 | 1,600,000 | 9.99% |
| Shares Acquired via gift on January 09, 2024 | 476,847 | 2.98% |
| **Total Shareholding of the Acquirer subsequent to gift transactions** | **2,076,847** | **12.97%** |
| Total issued voting shares of the Target Company | 16,017,500 | 100.00% |

4. The aforesaid transactions executed on January 09, 2024 falls under the exempted transaction in terms of Section 109(1)(h)(i) of the Act i.e. acquisition pursuant to inter se transfer of shares amongst qualified persons, being relatives. Whereas, in terms of Section 108(g) of the Act, the term "relative" means spouse, real and half siblings and their children, and lineal ascendants and descendants. Section 109(1)(h)(i) of the Act is reproduced hereunder:

5. In terms of Section 109(2) of the Act read with regulation 4(1) of the Regulations, the Acquirer was required to make a disclosure of acquisition of voting shares pursuant to Section 109 of the Act to the Target Company, the Securities Exchange and the Securities and Exchange Commission of Pakistan (the Commission) containing the information as prescribed in Schedule II of the Regulations within two working days of such acquisition. However, it was observed that no such disclosure was made by the Acquirer after acquisition of **2,076,847 (12.97%)** voting shares of the Target Company on **January 09, 2024.**

6. The Commission vide letter dated January 17, 2024 sough clarification/ explanation from the Acquirer on the aforesaid non-compliance of the Act and the Regulations. In this regard, the Acquirer responded to the Department vide letter dated January 22, 2024, which may be summarized as under:

> *"The said acquisition was pursuant to an inter se transfer of shares amongst qualifying persons specifically relatives. The shares were not acquired through a purchase but were transferred as gift from Mohammad Mubeen Jumani. As per Section 109, the transactions falling under section 109 are exempted from the applicability of this Part of the Act. Therefore, there is no requirement of filing Schedule II of the Securities and Exchange Commission of Pakistan for the particular transactions."*

7. The aforementioned stance taken by the Acquirer was not tenable keeping in view the explicit requirements under Section 109(2) of the Act read with regulation 4(1) of the Regulations, wherein, the Acquirer was required to make a disclosure of acquisition of voting shares in terms of Section 109(2) of the Act and regulation 4(1) of the Regulations within two working days of such acquisition of the Target Company, the Securities Exchange and the Commission containing the information as prescribed in Schedule II of the Regulations, However, compliance with the afore-said provisions of the Act and the Regulations has not been made by the Acquirer after acquiring total of 2,076,847 (12.97%) voting shares of the Target Company on January 09, 2024.

8. Keeping in view the aforementioned facts, it is stated that the Acquirer has not complied with the requirements of Section 109(2) of the Act and regulation 4(1) of the Regulations by not disclosing its shareholding which was mandated to be disclosed after acquiring total of 2,076,847 (12.97%) voting shares of the Target Company on January 09, 2024. The contraventions of the stated provisions of the law attract penal provisions provided under Section 126(3)(c) of the Act.

9. Accordingly, the Commission while taking cognizance of the aforementioned non-compliance served the SCN upon the Respondent, requiring him to submit its written reply within 14 days of the date of the SCN. In response to SCN, Mr. Ali Lakhani of Reanda Haroon Zakaria Associates being the Authorized Representative on behalf of the Acquirer vide letter dated March 15, 2024 submitted on merits as under:

> *"Reference is made to your hearing notice dated 8th March 2024 read with SCN dated 22nd February 2024 [the "Notice"]. In this regard your learned authority is informed that our clients*

*have complied with the disclosure under section 109(2) of the Securities Act 2015 [the "Act"]. The copies of the submitted Schedule II under regulation 4(1) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 [the "Regulations"] are being enclosed as Annexure ...*

*It is also humbly submitted before your learned authority that the delay in compliance was not wilful and was due to misunderstanding of Section 109 Act on part of our client for which an apology has also been tendered by our client vide their letter dated 28th February 2024 [the "Client's Letter"]. It is further submitted that said oversight by our client was also condoned by the compliance department of the Pakistan Stock Exchange [the "PSX"] vide its letter dated 31st January 2024, a copy of which is attached as Annexure.... It is a settled matter in various case laws that where the mistake was not wilful and subsequent compliance was made, a lenient was taken.*

*In view of subsequent compliance made and the acceptance of oversight by our client, it is most respectfully prayed to your learned authority to please condone the same and a lenient view may please be taken. The prayer is made in the interest of justice and fair play."*

10. In order to provide an opportunity of personal representation to the Acquirer, hearing in the matter was fixed on April 18, 2024 on which date Mr. Ali Lakhani, Consultant, appeared before the undersigned on the behalf of the Acquirer as Authorized Representative **(the Representative)**. During the course of hearing, the Representative was advised to explain the reasons for the alleged non-compliances, as narrated in the SCN The Respondent reiterated the written arguments submitted earlier in response to SCN and admitted to the non-compliance made by the Acquirer. The Representative iterated misunderstanding of the law as the primary reason for the default and presented that the violation of the law not willful. In its justification, the Respondent also provided copy of disclosure filed under Section 109(2) of the Act dated March 14, 2024.

11. In view of the aforementioned stance of the Respondent, I have the following question posed before me to take a decision in the matter:

- **What is the requirement of the law in terms of Section 109(2) of the Act read with Regulation 4(1) of the Regulations?**

It is pertinent to understand that Section 109 of the Act particularly provides for the exempted transactions under the takeover laws. In the instant matter, these shares were transferred as gift from the father to the Acquirer which resulted in increase of shareholding of the Acquirer in the Target Company from 9.99% to 12.97%. Such transactions are exempted under Section 109(1)(h)(i) of the Act which provides for acquisition pursuant to inter se transfer of shares among the qualifying persons, being relatives. However, it is important to understand that exempted transactions under Section 109(1) of the Act does not absolve the Acquirer from making disclosure to the target company, the securities exchange and the Commission as prescribed under the relevant provisions of the law. It is imperative to understand that the transactions provided in Section 109 of the Act are exempted from the disclosure requirements prescribed under Section 110 of the Act and the requirement to make public offer in terms of Section 111 of the Act. In this regard, Section 109(2) explicitly provides that "*After the acquirer acquires voting shares pursuant to sub-section (1), the acquirer shall make a disclosure of the acquisition in the prescribed manner*". Therefore, the Acquirer was required to make disclosure

in terms of Section 109(2) of the Act read with Regulations 4(1) of the Regulations, even when the shares were acquired as a gift from the father.

- **What is the significance of the delayed disclosure made in the instant matter?**

  As provided in its response to the SCN, the Respondent admitted to the default and stated reasons such as misunderstanding of the law and oversight for the non-compliance of the disclosure requirements provided under the relevant provisions of the law. It is noted that the disclosure provided under Schedule II of the Regulations read with regulation 4(1) of the Regulations and Section 109(2) of the Act was made on March 14, 2024 i.e. subsequent to the issuance of the SCN to the Respondent and with a delay of approx. 70 days. Further, as evident from the Annual Report of the Target Company for the period ended September 30, 2023, the business is a family concern with more than 60% shareholding split between the members of the family, directors, CEO and their spouses. Therefore, it is safe to say that mere disclosure of an exempted transactions may not have a relatively significant impact on the other stakeholders of the Company. However, it does not mean that the Respondent is negligent of its responsibility under the relevant provisions of the law. The Respondent was required to make a disclosure as provided under disclosure provided under Schedule II of the Regulations read with regulation 4(1) of the Regulations and Section 109(2) of the Act within two working days after acquisition of 12.97% shareholding in the Target Company on January 09, 2024 and the same was not made within the timeline prescribed under the law. Therefore, contravention of Section 109(2) of the Act read with regulation 4(1) of the Regulations has been established against the Respondent.

12. In view of the foregoing and the verbal submission made by the Representative, non-compliance/ contravention of the provisions Section 109(2) of the Act read with regulation 4(1) of the Regulations has been established as the Acquirer. However, I have considered that the Respondent has admitted its default and also filed the requisite disclosure after the issuance of the SCN. Further, I have also assessed the relative impact of the delayed disclosure and the manner of exempted transactions as provided in Section 109(1)(h)(i) of the Act. Therefore, I, in terms of powers conferred upon me under Section 126(3)(c) of the Act, hereby, **warn** the Acquirer on account of the aforesaid established non-compliances of aforesaid provisions of the law.

13. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

**(Shahzad Afzal Khan)**
Director/Head of Department
(Adjudication Department-I)

**Announced:**
March 27, 2024
Islamabad