



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
**Securities Market Division**  
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**Before the Commissioner (Securities Market Division)**

**In the matter of Show Cause Notice No.SMD/TO/22/2005 dated August 16, 2006 issued to  
Mr. Rehan Ahmed under Section 26 read with Section 25 of the Listed Companies  
(Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 in the matter of  
acquisition of shares of Mubarak Textile Mills Limited.**

**Date of Hearing:**

**September 06, 2006**

**Present at Hearing:**

Representing the Acquirer:

1. Mr. Faisal Latif, ACA,  
Tariq Ayub, Anwar & Co., Chartered Accountants;
2. Ms. Sofia Akhtar, Advocate,  
Tariq Ayub, Anwar & Co., Chartered Accountants;
3. Mr. Shahid Iqbal,  
CFO, Mubarak Textile Mills Ltd.

Assisting the Commissioner (SMD):

1. Mr. Imran Inayat Butt,  
Director (MSW);
2. Mr. Sajid Imran,  
Deputy Director (CI).

**ORDER**

1. The matter arises from a show cause notice No. SMD/TO/22/2005 dated August 16, 2006 issued by the Securities and Exchange Commission of Pakistan (the "Commission") to Mr. Rehan Ahmed (the "Acquirer"), Chief Executive Officer, Mubarak Textile Mills Ltd.

2. The facts of the case are that the Commission received a letter dated September 23, 2005 from Hameed Majeed Associates (Pvt.) Ltd. (the “Consultant”) who sought relaxation of the Commission under Rule 7 of the Balloters, Transfer Agents and Underwriters Rules, 2001 to allow the Sponsor/Director of Mubarak Textile Mills Ltd. (the “Target Company”) to underwrite the proposed Right Issue of shares by the Target Company. During the process of examination it was observed that the Acquirer’s shareholding has been increased from 599,000 (22.19%) shares as on 30.06.2004 to 839,500 (31.09%) shares as on 30.06.2005 thus attracting applicability of Section 5 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 (“Takeovers Ordinance”). The Commission vide letter dated November 17, 2005 requested the Consultant to intimate whether the Acquirer has complied with the provisions of the Takeovers Ordinance.

3. The Consultant vide letter dated December 05, 2005 intimated that the transactions which caused increase in shareholding of the Acquirer were purchase of 240,500 (8.9%) shares on 14.01.2005 from his brother Mr. Ahmed Faraz and receipt of 439,000 (16.26%) shares from his parents as gift during the year 2003. The Consultant further stated that these were all inter family transactions/arrangements and no general public acquisition or takeover has taken place. The Consultant stated that the percentage of major sponsor/promoter has almost remained the same so public offer announcement was not made by the Company. The Consultant further stated that they were looking for relaxation of the provisions of rules under Section 28 of the said rules as it was not practicable to comply with the requirement and the Company has not made any non compliance intentionally.

4. The justifications provided by the Consultant on behalf of the Acquirer for increase in Acquirer’s shareholding without complying with the provisions of the Takeovers Ordinance were found to be unsatisfactory. The Takeovers Ordinance provides a threshold of shareholding in a company for the applicability of its provisions. It does not matter how the acquirer reaches that threshold. Section 4 and 5 of the Takeovers Ordinance do not differentiate between the shares acquired from general public and the shares acquired through gifts from parents or through purchase from a brother. If the Acquirer has not complied with the requirements of section 4 and 5 of the Takeovers Ordinance, he has acted in violation of the Takeovers Ordinance. There is no provision in the Takeovers Ordinance which excludes the acquisition of shares through a gift from the ambit of the Ordinance, since the Ordinance is only concerned

about the percentage of shares acquired and not with the source from which the shares were acquired.

5. The failure of the Acquirer to comply with the following Sections of the Takeovers Ordinance necessitated action against the Acquirer in terms of Section 25 & 26 of the Ordinance:

- a. Under Section 4 of the Takeovers Ordinance, the Acquirer was required to disclose the aggregate of his shareholding to the Target Company and to the stock exchange on which the voting shares of the Target Company are listed;
- b. Under Section 5 of the Takeovers Ordinance, the Acquirer was required to make a public announcement of offer to acquire voting shares of the Company;
- c. Under sub section (1) of Section 7 of the Takeovers Ordinance, the Acquirer was required to appoint a bank, financial institution or a member of a stock exchange as Manager to the Offer before making a public announcement;
- d. Under sub section (3) of Section 9 of the Takeovers Ordinance the acquirer was required to submit to the Commission, a copy of the public announcement through the Manager to the Offer at least two working days before its issuance;
- e. Under sub section (1) of Section 13 of the Ordinance the Acquirer was required to send a copy of the proposed offer letter within two working days of the announcement to the Target Company at its registered office address, all the Stock Exchanges where the voting shares of the company are listed and the Commission;
- f. Under sub section (8) of Section 13 of the Ordinance the Acquirer was required to create a security as provided in the Ordinance on or before the date of issue of public announcement;

6. Consequently, a Show Cause Notice dated August 16, 2006 was served upon the Acquirer calling upon him to show cause in writing within fourteen days (14) days of the date of the notice and explain as to why action should not be taken against the Acquirer under Section 25 and sub-section (1) & (3) of Section 26 of the Takeovers Ordinance for the aforesaid contraventions/violations. It was further stated that in case the Acquirer wished to be heard in

person or through a duly authorized representative, he may inform the undersigned in writing within a week of the date of this notice.

7. The Acquirer vide Power of Attorney dated August 21, 2006 nominated Mr. Faisal Latif of Tariq Ayub, Anwar & Co., Chartered Accountants to appear before the undersigned and present the case of the Acquirer. The Commission vide notice dated August 29, 2006 fixed the date of hearing on September 06, 2006 on which date Mr. Faisal Latif, ACA, Ms. Sofia Akhtar, Advocate of Tariq Ayub, Anwar & Co., Chartered Accountants and Mr. Shahid Iqbal, CFO, Mubarak Textile Mills Ltd. (the “representatives”) appeared before the undersigned.

8. During the course of hearing held on September 06, 2006, the representatives stated that the shareholding of the Acquirer was increased by 439,000 (16.25%) shares due to transfer of shares as gift from his parents pursuant to a gift deed. The representatives claimed that the said transaction fall under Section 3(e) of the Takeovers Ordinance which exempts acquisition of voting shares by succession or inheritance. The representatives further informed that the 2<sup>nd</sup> transfer of shares was occurred in January 2005 when the Acquirer purchased 240,500 (8.19%) shares from his brother at a price of Rs. 10/- each. The representatives stated that although acquisition of shares by the Acquirer from his brother has increased his shareholding to more than 25% in the Target Company but it was all family transactions and that the intention of the Acquirer is not to takeover the Target Company since the Acquirer is already a promoter / director of the Target Company. The representatives informed that the Target Company is in crisis since 1999 due too which it has closed down its various business activities and involved mainly in dyeing operations since 2001. Concluding their remarks the representatives stated that they have no intention to violate the Takeovers Ordinance.

9. I have considered the arguments presented before me by the representatives quite carefully. Before proceeding further I consider it important to point out that the purpose of the Takeovers Ordinance is “to provide a fair and equal treatment to all the investors as well as a transparent and efficient system for substantial acquisition of voting shares and takeovers of listed companies”.

10. Chapter III of the Takeovers Ordinance deals with **substantial acquisition of voting shares and acquisition of control of a listed Company**. A plain reading of Section 5 would reveal that the trigger of substantial acquisition will start once an acquirer crosses the threshold of 25% and once any person(s) cross the threshold, he has to make a public announcement of offer to acquire voting shares. Section 5 of the Ordinance clearly states that

*“No person shall, directly or indirectly, acquire—*

*a) voting shares, which (taken together with voting shares, if any, held by such person) would entitle such person to more than twenty five per cent voting shares in a listed company; or*

*b) control of a listed company,*

*unless such person makes a public announcement of offer to acquire voting shares or control of such company in accordance with this Ordinance.”*

11. The plain reading of Section 4 & 5 make the intention of the Legislature sufficiently clear. The interpretation of the representatives that the transaction fall under Section 3(e) is incorrect since Section 3(e) is applicable only where the acquisition of voting shares were made by succession or inheritance. Since the shares in question were transferred as gift during the life of the parents of the Acquirer, therefore the said Section is inapplicable. I have, therefore, no doubt in my mind about the applicability of Section 4 & 5 in the instant case. The Acquirer was required to make a disclosure to the stock exchange and to the Target Company as required under section 4 of the Takeovers Ordinance upon acquisition of more than 10% shares of the Target Company and was required to make a public announcement of offer under Section 5 of the Takeovers Ordinance upon acquisition of more than 25% shares of the Target Company. Therefore, the argument by the representatives that the Acquirer crossed the threshold of 10% and 25% due to inter family transactions is not tenable.

12. The arguments of the representatives that these were all family transaction and no takeover was occurred were also considered. Section 3 of the Takeovers Ordinance list down various transactions which are exempt under the Takeovers Ordinance. Inter family transactions do not fall under any of these exempted transactions. Further Section 4 & 5 clearly states about

acquisition of voting shares beyond specified threshold. Therefore, the interpretation of the Acquirer that the Ordinance is not applicable in this case is incorrect.

13. In view of the facts stated above, I have no doubt in my mind that the default on the part of the Acquirer is willful. However, taking a lenient view, I hereby impose a penalty of Rs. 100,000 only under Section 26 (3) of the Takeovers Ordinance on the Acquirer for the aforesaid contraventions.

14. The Acquirer is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this Order and furnish receipted challans to the Commission failing which proceedings for recovery of the fine as arrears of land revenue will be initiated.

15. The Order is being issued without prejudice to any or all actions that may be required to be taken under the law against individual director(s)/officers(s) or any other person involved in violation of any other securities laws which may have been committed.

**Rashid I. Malik**

**Commissioner (Securities Market Division)**

***Announced:***  
*November 10, 2006*  
**Islamabad**