



Before the Director/HOD (MSRD)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Syed Khalid Siraj Subhani, Director of Engro Fertilizers Limited

Order

This Order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan ("**Commission**") through Show Cause No. SMD(B.O)C.O./14(149)14 dated 19/12/2014 ("**Notice**") issued to Syed Khalid Siraj Subhani ("**Respondent**"), Director of Engro Fertilizers Limited ("**Issuer Company**").

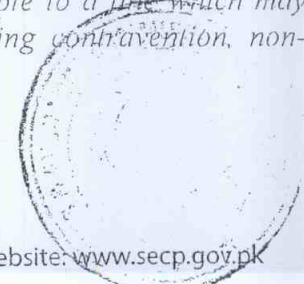
2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being its Director was required to file return of beneficial ownership on Form 31 within the period stipulated under Section 222 of the Ordinance. However, he failed to discharge the said obligation which attracts penal provision contained in Section 224(4) of the Ordinance.

3. Section 222(2)(b) of the Ordinance stipulates the period within which the Form 31 is required to be submitted as under:-

"in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be."

4. The Respondent, in response to this office letter dated 16/5/2014, filed Form 31 with this Commission on 27/05/2014. The said Form 31 showed that he acquired beneficial ownership in the Company on 07/01/2014 and 150,000 shares of the Company were beneficially owned by him. Thus, he was required to file the said return with this Commission latest by 06/02/2014, but the same was filed on 27/05/2014, with delay of 106 days, in contravention of Section 222(2)(b) of the Ordinance. The said contravention *prima facie* attracts penal provision of Section 224(4) of the Ordinance, which provides as under:-

"Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Registration Department (MSRD)

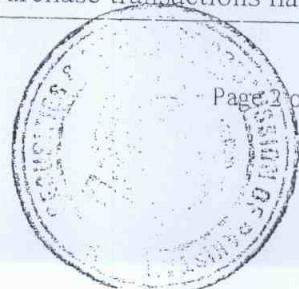
compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues."

5. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222 of the Ordinance. Furthermore, in order to provide an opportunity of being heard in person personal hearing in the matter was fixed on 05/01/2015 at Commission's Head Office, Islamabad.

6. Mr. Andalib Alavi, Vice President Legal, of the Issuer Company ("**Representative**") responded the Notice on behalf of the Respondent vide letter dated 23/12/2014, followed by e-mail dated 24/12/2014, wherein the Representative *inter alia* stated that he is not able to attend the hearing on behalf of the Respondent scheduled on 05/01/2015. He further stated that the submissions made in his earlier letter may be considered as main plea. The submissions made by the Representative in his aforesaid letter and e-mail be summarized as under:-

- a) *The Respondent has filed Form-31 electronically with the Company Registration Office (CRO), Karachi within the prescribed time, i.e. within one month of the listing of the Company at stock exchange.*
- b) *Hard copy of the said return could not be submitted to the Commission because, the Respondent at the time of on-line filing the above return was under the impression that SECP Islamabad had access to the online filings.*
- c) *Presently, it is mandatory for the listed companies to file all the documents, returns, accounts, applications, etc. through eServices.*
- d) *The Respondent upon receipt of letter dated 16/05/2014 from the Commission promptly filed hard copy of the Form 31.*
- e) *The Respondent requested for clarity on whether Form 31 /32 is required to be filed physically (hard copy) or electronically.*
- f) *The default has not been committed intentionally and requested to condone the delay.*

7. I have considered the aforesaid submissions made in writing by the Representative on behalf of the Respondent. The Respondent has admitted the default of late filing of the return of beneficial ownership with the Commission, with the contention that the said return was filed electronically, within the stipulated time limit, with the impression that the same would also be available to the Commission. He further stated that the default has not been committed willfully and knowingly. In order to arrive at decision, I have also reviewed the record of this office, which endorses the claim that the Respondent has filed Form 31 electronically, with the Company Registration Office, Karachi on 11/02/2014 and no sale/purchase transactions has been





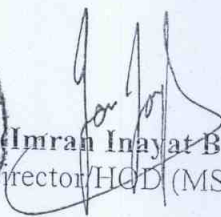
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Registration Department (MSRD)

made by him after acquiring aforesaid beneficial ownership in the Issuer Company. Considering the submissions made by the Respondent, I intend to agree with the contention of the Respondent and of the view that late filing of said return may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.

8. Furthermore, it is pointed out for clarification that pursuant to the provisions of Section 222 of the Ordinance, filing of returns of beneficial ownership is obligation of the director/beneficial owner rather than of the listed company. Moreover, the directors/officers/beneficial owners of listed companies are presently required to file hard copy of their returns of beneficial ownership with the Commission's Head Office, Islamabad, in addition to e-filing of the return with the concerned Company Registration Office:

9. This Order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.




Imran Inayat Butt
Director/HOD (MSRD)

Islamabad,
Announced on January 26, 2015