SEC/Enforcement/921/2011/ **September , 2011**

Order

Whereas, as per section 2(T) of the wmwKDwiwUR I G·‡PÄ Kwgkb (gv‡P›U e¨vsKvi I †cvU‡dwjI g¨v‡bRvi) we‡agvjv, 1996, Alliance Financial Services Limited is a Merchant Banker.

Whereas, the Securities and Exchange Commission issued Merchant Banker Registration Certificate to Alliance Financial Services Limited under wmwKDwiwUR I G·‡PÄ Kwgkb AvBb, 1993 (1993 m‡bi 15 bs AvBb), read with we‡a 7 of wmwKDwiwUR I G·‡PÄ Kwgkb (gv‡P›U e¨vsKvi I †cvU‡dwjI g¨v‡bRvi) we‡agvjv, 1996 to conduct functions of issue manager/underwriter/portfolio manager under certain terms & conditions stipulated in the said certificate;

Whereas, an enquiry was conducted by SEC on Alliance Financial Services Limited (Issue Manager) for furnishing misleading "Due Diligence" in respect of IPO proposal of Modern Poly Industries Limited.

Whereas, on the basis of the enquiry report, a show cause-cum-hearing notice No. SEC/Enforcement/921/2011/221 dated April 19, 2011 was issued to Alliance Financial Services Limited to appear at the hearing. In the show cause-cum-hearing notice among others following were mentioned;-

"Whereas, record shows that Alliance Financial Services Limited was the issue manager of Modern Poly Industries Limited. As per Rule 18(9) of Securities and Exchange Commission (Public Issue) Rules, 2006, issue manager is required to provide Due Diligence Certificate as per format mentioned in Annexure C of Securities and Exchange Commission (Public Issue) Rules, 2006.As per requirement they provided Due Diligence Certificate regarding public offer of Modern Poly Industries Limited.

Whereas, the enquiry committee stated that "The proceeds from IPO of Modern Poly Industries Limited was proposed to acquire 5,06,300 ordinary shares of "Modern Fibre Industries Limited @ Tk. 3,880.00 per share as declared under Rule 8(B)(4) of the Securities and Exchange Commission (Public Issue) Rules, 2006, statement of which is signed by the CEO and CFO of the issuer company".

Whereas, as per SEC's Order No.SEC/CMRRCD/2001-18/343/02-04 dated August 19, 2004 , all private limited companies are required to obtain SEC's approval to make total capital more than Tk.10.00 crore by making an issue of capital. Enquiry committee stated that Modern Fibre Industries Limited did not take permission from the Commission for raising its paid-up capital up to Tk. 60.90 crore. Modern Fibre Industries Limited violated SEC's Order No.SEC/CMRRCD/2001-18/343/02-04 dated August 19, 2004 by not obtaining SEC's approval for raising it's paid-up capital up to Tk. 60.90 crore.

Whereas, among others enquiry committee's findings are as follows:
"The issue manager in its due diligence certificate stated, among others that-
Quote
We, while finalizing the draft prospectus pertaining to the said issue, have examined various documents and other materials as relevant for adequate disclosures to the investors.

Unquote
But it appears to us that they have not examined the matters related with the raising of capital of Modern Fibre Industries Limited, wherein IPO proceeds will be used as disclosed in the prospectus of Modern Poly Industries Limited, for adequate disclosures to the investors.

Further, the issue manger in its due diligence certificate confirmed, among others that

Quote
All the legal requirements connected with the said issue have been duly complied with.

Unquote

But it appears to us that all the legal requirements in respect of raising of paid up capital of Modern Fibre Industries Limited have not been duly complied. The company wherein IPO proceeds will be used as disclosed in the prospectus by the issuer company appears to be connected with the said issue. Therefore, it appears to us that all the legal requirements connected with the said issue have not been duly complied with."

"Alliance Financial Services Limited stated that the use of IPO proceeds is a proposed utilization plan and they (Alliance Financial Services Limited) were not in a position to confirm the validity of the assets and liabilities of third parties like Modern Fibre Industries Limited and Modern Hatchery Limited.

But it appears to us that the issue manager, Alliance Financial Services Limited has not examined the documents relevant for adequate disclosures to the investors and also all the legal requirements connected with the said issue have not been duly complied with as stated in their due diligence certificate, which was provided by them to the Commission as per requirement under Rule 18(9) of Securities and Exchange Commission (Public Issue) Rules, 2006."

Hearing was conducted on June 22, 2011. Mr. Tapan Kumar Podder (M.D) attended the hearing on behalf of Alliance Financial Services Limited and submitted a reply letter no. AFSL/369/2011 dated June 22, 2011 to the Commission .In the letter among others they stated that

"we did not furnish any misleading 'Due Diligence' nor did any deliberate violation/contravention of the Rule-18(9), Annexure-C of the Securities and Exchange Commission (Public Issue) Rules 2006. At this opportunity we would like to further explain as under for your kind consideration:

1) Rule 8B (4) of the Securities & Exchange Commission (Public Issue) Rules 2006 stipulates that prospectus should include information relating to use of proceeds of the offer. Information includes purpose, amount, and time schedule for implementation and required to be signed by the CEO & CFO of the issuer. It also stipulates filing copies of all contracts relating to proposed utilization of proceeds to the Commission.

2) In compliance to (1) the issuer proposed for utilization through acquisition of 506,300 shares (par value of Tk 1,000) of Modern Fibre Industries Limited (MFIL) at an agreed price of Tk 3,880/- per share and the balance amount for the necessary working capital. The statement showed the implementation schedule, jointly signed by the CEO and CFO of the company and was provided to the Commission along with the prospectus. Furthermore the contract between the issuer and the Modern Hatchery Limited (shareholder of MFIL) for acquisition of the said shares was provided with the Commission. As such we do not find any non-compliance/violation of Rule-8B (4) of the Public Issue Rules is done by us as an Issue Manager.

3) As part of our due diligence, in capacity as Issue Manager of MPIL, we confirmed the following records/documents in support of MPIL's proposal for the acquisition of shares of Modern Fibre Industries Limited:

i) The Board of Directors of Modern Poly on 04 April 2010 approved the acquisition of shares of MFIL from its major sponsor Modern Hatchery Limited based on the independent valuation and the prospects of MFIL. They agreed to acquire 506,300 shares owned by Modern Hatchery Limited (MHL) at a negotiated price of Tk 3,880 per share for shares of Tk 1,000 each. We have obtained the board resolution as evidence and verified the contents.

ii) To determine the fair purchase price the issuer company accepted the valuation report of M/S Syful Shamsul Alam & Co, an independent Chartered Accountant firm, who assessed the fair value of shares of the MFIL. Based on the report dated 4 April 2010 fair value per share stands at Tk 3,887. We have also reviewed the valuation report for confirmation of the assessed value of shares.

iii) Based on said decision of the Board an agreement was signed between MPIL and Modern Hatchery Limited for acquisition of shares subject to availability of fund from the proposed public issue. We have obtained and reviewed the agreement signed for our confirmation.

iv) Latest audit report of MFIL was available for the year ended 31 December 2009 showing paid up capital of Tk 609 million and Modern Hatchery Limited (MHL) was clearly shown as the owner of 83.14% shares. The share valuation was also done based on this report and we have reviewed the audit report that confirms MHL's shareholding.

4) We have submitted all the aforesaid documents noted in 3(i), 3(ii), 3(iii), 3(iv) to the Commission during its review of the prospectus.

5) In our best judgment examination of aforesaid records/documents were adequate in support of the issuer's disclosure of the statement under" Use of Proceeds" in the prospectus.

6) We believe our responsibility as an issue manager of MPIL and scope of our due diligence for issuance of Due Diligence Certificate under Rule-18(9) of the Securities & Exchange Commission (Public Issue) Rules 2006 does not include review the process of raising capital of MFIL and MHL.

7) The Securities & Exchange Commission (Public Issue) Rules 2006 nor any other rules relevant to the public issue stipulates any guideline (except the Rule-8B(4)) regarding the scope of due diligence of the issue Manager regarding the Use of proceeds of the IPO.

8) We did not leave any action undone at our best judgment within the aforesaid scope to confirm the declaration of the issuer relating to the use of proceeds.

9) Subsequently the management of MFIL in its letter to SEC (no- MFIL/SEC/2011/01 dated 14 February 2011) agreed that while increasing its paid up capital upto Tk 60.90 crore all the procedures of raising capital like Board Resolution, Call of share money, Allotment of shares, Filing of Return of allotment with RJSC were done perfectly. But due to ignorance the concerned official of the company did not submit the application with the SEC for its consent which was necessary in pursuant to Order no. SEC/CMRRCD/2001-18/343/02-05 SEC/CMRRCD/2001 18/343/02-05.

   Management of MFIL also expressed sorry for the aforesaid lapse and agreed to regularize the matter by obtaining necessary approval from the SEC which is usually allowed.

10) From all the above it appears that it was a mere procedural mistake and lapse in the indoor management of MFIL and it was beyond the knowledge of the issuer. And the lapse in raising of capital of MFIL can not be treated as a deliberate attempt of the issue manager.

In the backdrop of above and in absence of any guideline relating to the due diligence for acquisition of shares we believe you will treat the lapse completely unintentional and hence excuse us from the allegation. However we are sorry for the situation developed due to the lapse of MFIL that was identified by SEC.

We take the opportunity to note here that since inception of the company we have been doing the issue management activities and all our managed companies were listed smoothly. Most of them are treated as blue chip stocks in the capital market. We are always cautious in complying the rules, regulations and practices in processing the IPOs and never faced the question on our standard of due diligence. However we assure you to be more cautious in future regarding the compliances."

Whereas, from the enquiry report and the written statement of Alliance Financial Services Limited it is proved that Alliance Financial Services Limited violated Rule 18(9) of Securities and Exchange Commission (Public Issue) Rules, 2006 in respect of IPO proposal of Modern Poly Industries Limited by furnishing misleading "Due Diligence Certificate". Their explanation is not acceptable to the Commission.

Whereas, the aforesaid activities are tantamount to non-compliance of securities law that appears deliberate and clear contravention of rule 18(9), annexure C of the 'Securities and Exchange Commission' (Public Issue) Rules, 2006 attracting penal provision of section 22 of the Securities and Exchange Ordinance, 1969;

Whereas, to protect the discipline and transparency of the capital market along with it's development the Commission deems it appropriate and necessary to impose penalty upon Alliance Financial Services Limited for the stated violations.

Now, therefore, Securities and Exchange Commission, in exercise of the power conferred by section 22 (amended by the Securities and Exchange (Amendment) Act, 2000) of the Securities and Exchange Ordinance, 1969 (XVII of 1969) hereby imposes penalty for Tk.2 (Tk.Two) Lac upon Alliance Financial Services Limited which is to be deposited to the Commission in the form of Bank Draft/Payorder favouring 'Securities and Exchange Commission' within 15 days from the date of issuance of this order.

By order of the Securities and Exchange Commission

Professor Dr. M. Khairul Hossain
Chairman

Distribution:

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