SEC/Enforcement/2110/2014/ September , 2014

SEC/Enforcement/2110/2014/609 By Special Messenger
September 10 , 2014

Managing Director/CEO
First Securities Services Limited
Al-Raji Complex, Suite G - 702 & 703 (7th Floor)
166-167, Shaheed Syed Nazrul Islam Sarani
Purana Paltan, Dhaka-1000

Subject: Penalty Order: Non-compliance of securities related laws.

Dear Sir,

Commission's penalty order No. SEC/Enforcement/2110/2014/607 dated September 10, 2014 and Directive No. SEC/Enforcement/2110/2014/608 dated September 10, 2014 are enclosed herewith for your kind information and necessary action.

For Bangladesh Securities and Exchange Commission

Mustari Jahan
Deputy Director (Enforcement)

Distribution:
Chief Executive Officer, Dhaka Stock Exchange Limited
Chief Executive Officer, Chittagong Stock Exchange Limited

Copy for information:
P.O to Commissioner (Enforcement), BSEC
P.O to Executive Director (CI), BSEC
P.O to Executive Director (MIS), BSEC
Chairman's office, BSEC

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<u>Order</u>

Whereas, as per section 2 (cc) of the Securities and Exchange Ordinance, 1969 (ORDINANCE No. XVII of 1969) "Commission" means Bangladesh Securities and Exchange Commission constituted under Securities and Exchange Commission Act 1993;

Whereas, as per wewa 2(T) of the wmwKDwiwUR I G·‡PÄ Kwgkb (gv‡P›U e¨vsKvi I †cvU©‡dwjI g¨v‡bRvi) wewagvjv, 1996, First Securities Services Limited is an "issue manager Ó(here in after referred to as "issue manager").

Whereas, on the basis of the observation report of the Commission regarding land documents submitted by Dragon Sweater and Spinning Limited for IPO purpose, a show cause-cum-hearing notice No. SEC/Enforcement/2110/2014/300 dated June 26, 2014 was issued to First Securities Services Limited to appear at the hearing accusing for violating Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 by giving due diligence certificate on fake land document Hearing has been conducted with the accused. In the show cause-cum-hearing notice following have been mentioned among others;-

<u>Quote</u>

Whereas, as per Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006, "If any issuer or its representative violates any of the provisions of these Rules or furnishes false, incorrect, misleading information or suppresses any information, the Securities and Exchange Commission may take appropriate action under the Securities and Exchange Ordinance, 1969."

Whereas, it is stated in the due diligence certificates of issue manager;

Quote

'WE CONFIRM THAT

b) All the legal requirements connected with the said issue have been duly complied with'

Unquote;

Whereas, the IPO of Dragon Sweater and Spinning Limited is under process. They have proposed for issuing 6,00,00,000 (six crore) ordinary shares @Tk.10.00 totaling Tk. 60,00,00,000(sixty crore) .

Whereas, the Commission has observed from the submitted vendor agreement that the issuer company has acquired 38.00 and 133.00 decimal land from Fouzia Quamrun Tania and Mostafa Quamrus Sobhan against **17,10,000 ordinary shares for Tk.10.00 each and 77,34,000 ordinary shares for Tk.10.00 each** respectively. But it has been observed from the deeds No.2889/10 and 2888/10 that the issuer has acquired 38.00 and 133.00 decimal land from Fouzia Quamrun Tania and Mostafa Quamrus Sobhan against cash payment. After getting query from the Commission they have informed that the information in the vendor agreement is correct. Lateron they have submitted the rectified deed (first time). But it has been found that the date in the previous submitted deeds and in the rectified deeds is same. According to the Commission the rectified submitted document is fake. The issuer has confessed the allegation. Finally they have submitted another rectified document.

Whereas, Without checking and verifying the documents the issue manager has allowed Dragon Sweater and Spinning Limited to send fake land documents to the Commission. It appears to the Commission that the issue manager has not applied due diligence in this connection.

Whereas, it appears from the above that the issue manager has violated Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 by giving due diligence certificate on fake land document.

Unquote

Whereas, Mr. Reza Humayun Morshed Hayat (CEO, First Securities Services Limited) has attended the hearing. They have submitted an explanation letter to the Commission, wherein the following have been stated among others;

Quote

With regards to the aforementioned subject, it appears that at the time of submitting its IPO application the issuer submitted deed no. 2889/10 and 2888/10 which had stipulated that the

38.00 and 130.00 decimal land was acquired from Fouzia Qamrun Tania and Mostafa Quamrus Sobhan in cash. Since the land was actually purchased against shares through a vendor agreement, thereby it was essential to make necessary corrections of the said deeds. The issuer company, Dragon, then engaged a third party to make the corrections in the deeds. Upon understanding by issuer and us that the deeds which were provided by the third party were not correctly being made, the issuer company in person along with the advice of the legal professionals corrected the said deeds and submitted the same to BSEC on June 3, 2014. In this regard, it is mentionable that as an Issue Manager our company has certain limitation since we are highly dependent upon the information and documents provided to us by the Issuer Company, Dragon, even though the Issuer Company has a legal and contractual obligation to provide all relevant information and documents. In this regard, we would like to state that the due diligence certificate as per as per Clause 2 of Annexure C of the Securities and Exchange Commission (Public Issue Rules), 2006 as under: "On the basis of such examination and the discussions with the issuer company, it's directors and officers, and other agencies, independent verification of the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer company" which states the limitations of our due diligence, which is highly dependent upon the information and documents furnished by the Issuer Company. Notwithstanding this, we also carry out investigations to determine whether the Issuer Company has, intentionally or unintentionally, omitted any information or failed to provide any documents to ensure compliance with the BSEC laws and regulations. However, as you can understand it is virtually impossible for an issue manager to determine and ascertain whether a registered deed document submitted by them is a fake or not and as such it is sometimes difficult for us to identify the same.

Notwithstanding this, it is mentionable that the issuer company, Dragon, has already informed the BSEC of the mistake made by the third party deed writers in preparation of the documents which has led to the submission of wrongly prepared documents. We enclose the letter submitted by Dragon to the BSEC for your ready reference. Thereafter, the issuer company in person along with the advice of legal professionals correctly amended the said deed and submitted to BSEC the correctly amended documents dated on June 3, 2014.

Under the aforementioned facts and circumstances, we would humbly and earnestly request you to consider the fact that the document which was submitted to BSEC as fake was caused by the mistake of the deed writer (a third party) with no ill intention from the issuer or from us as the issuer manager caused by an unintentional oversight.

Unquote

Whereas, the Commission has observed from the submitted vendor agreement that the issuer company has acquired 38.00 and 133.00 decimal land from Fouzia Quamrun Tania and Mostafa Quamrus Sobhan against **17,10,000 ordinary shares for Tk.10.00 each and 77,34,000 ordinary shares for Tk.10.00 each** respectively. But it has been observed from the deeds No.2889/10 and 2888/10 that the issuer has acquired 38.00 and 133.00 decimal land from Fouzia Quamrun Tania and Mostafa Quamrus Sobhan against cash payment. After getting query from the Commission they have informed that the information in the vendor agreement is correct. Later on they have submitted the rectified deed (first time). But it has been found from the first time submitted rectified deeds that the rectification has been done on 26/12/2010 which is not true because they have rectified the deed in 2014 after getting query from the Commission. Finally they have submitted another rectified document where it is found that the rectification has been made on 02/06/2014.So,it is proved that the rectified deed they submitted first time to the Commission was fake.

Whereas, according to the aforesaid public issue rule and due diligence certificate, issue manager should check and verify the authenticity of all the required papers relating to IPO. First Securities Services Limited (Issue manager) has not checked and verified the authenticity of the documents from the registry office. They have even not seen the date of rectification of the deeds. Today's rectification can not be possible to make in four years back date. It is very easy to ascertain such type of fault for an issue manager. But in this connection the issue manager has not applied due diligence.

Whereas, in this connection they have stated the following among others;

" In this regard, it is mentionable that as an Issue Manager our company has certain limitation since we are highly dependent upon the information and documents provided to us by the Issuer Company, Dragon, even though the Issuer Company has a legal and contractual obligation to provide all relevant information and documents. In this regard, we would like to state that the due diligence certificate as per as per Clause 2 of Annexure C of the Securities and Exchange Commission (Public Issue Rules), 2006 as under: **"On the basis of such examination and the discussions with the issuer company, it's directors and officers, and other agencies, independent verification of the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer company"** which states the limitations of our due diligence, which is highly dependent upon the information and documents furnished by the Issuer Company. Notwithstanding this, we also carry out investigations to determine whether the Issuer Company has, intentionally or unintentionally, omitted any information or failed to provide any documents to ensure compliance with the BSEC laws and regulations. **However, as you can understand it is virtually impossible for an issue manager to determine and ascertain whether a registered deed document submitted by them is a fake or not and as such it is sometimes difficult for us to identify the same."**

Whereas, their explanation is completely dissatisfactory. They have misinterpreted the Clause 2 of Annexure C of the Securities and Exchange Commission (Public Issue Rules), 2006. According to the clause they required to verify independently the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer company. Without checking and verifying the documents they have allowed the issuer to send fake land documents to the Commission. Since the company is going to issue 6,00,00,000 (six crore) ordinary shares for Tk. 60,00,00,000 (sixty crore) . There is no way to submit any fake document for IPO purpose to the Commission.

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Whereas, the issue manager's aforesaid activities are tantamount to non-compliance of securities law that appears deliberate and clear contravention of Rule-19 of 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 its development the Commission deems it appropriate and necessary to impose penalty upon First Securities Services Limited (issue manager).

Now, therefore, Bangladesh 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.05.00 (Tk.Five) Lac upon First Securities Services Limited (issue manager) which is to be deposited to the Commission in the form of Bank Draft/Payorder favouring 'Bangladesh Securities and Exchange Commission' within 15 days from the date of issuance of this order.

By order of the Bangladesh Securities and Exchange Commission

Professor Dr. M. Khairul Hossain
Chairman

Distribution

Managing Director/CEO
First Securities Services Limited
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