



Say No to Corruption

THROUGH COURIER

No. EMD/233/685/02/ 240

April 27, 2016

**Mr. Sohail Muzaffar
The Chairman**

Transparency International - Pakistan,
5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defence Housing Authority,
Karachi.
Tel: 021-35390408

Subject: Complaint against JS Bank Limited

Dear Sir,

This is with reference to your letter dated April 15, 2016 in the matter of JS Bank Limited (the "Bank"). You have referred to a complaint received by you on the captioned subject that has not been found attached with your letter. We would appreciate if original complaint is provided to the SECP.

2. In this connection, it has been observed that following issues have been raised in the above mentioned letter:

- a. According to SECP report on JSCL, enhancing paid up capital by the Bank for meeting minimum capital requirement is against the SBP Rules;
- b. In the AGM of the Bank held on March 29, 2013 total 196 shareholders participated out of which 162 participants were employees of JS Bank, holding one share each; and
- c. There is no representation of minority shareholders or institutional investors on the board of directors of the Bank.

3. The issues have been examined again and following is stated:

- a. With reference to the abstract purportedly reproduced in your letter from SECP's inspection report dated January 02, 2014; it is noted with concern that no such observation has been made in the said inspection report. Without prejudice to aforesaid, it is clarified that the matter of



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allowing increase in capital of the Bank to meet the Minimum Capital requirement as prescribed by State Bank of Pakistan (SBP) was approved on the basis of NOC from the SBP.

- b. With regard to the concerns about SBP letter communicating its observation to SECP, please note that notice of aforesaid annual general meeting was published in accordance with the legal requirements in newspapers having wide circulation on March 06, 2013. No complaint from any shareholder including institutional shareholders (NIT, NBP, Standard Chartered Intl USA Limited, Summit Bank, Habib Bank AG Zurich, Dubai etc. holding aggregate shareholding of 37.8 million shares) has been received by the SECP complaining about the conduct of AGM. Further law does not preclude employees from being a shareholder of a company. An employee who is a member of any company has all rights as that of any other member.

Notwithstanding the above, even if attendance of employee shareholders is not taken into account, the Bank was still in compliance with the quorum requirements of section 160 (2) of the Companies Ordinance 1984 in the said meeting.

Moreover Section 160A quoted below provides for circumstances in which proceedings of a general meeting may be declared invalid:

“the court may on a petition by members having not less than ten percent voting power in the company, that the proceedings of a general meeting be declared invalid by reason of a material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting. Provided that petition shall be made within thirty days of the impugned meeting”

- c. In regard to your submissions pertaining to the Code of Corporate Governance (the “Code”), it appears that you have confused the *mandatory* requirement of independent director with the *encouraged* representation of the minority shareholders on the board. It is pertinent to reproduce the relevant extract from your letter dated February 27.

Quote

“4. SBP has stated that SECP Code of Corporate Governance requires the banks to encourage the representation of minority shareholders on their boards.



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5. But in case of JS bank it is observed that the bank did not appear to have any representative of minority shareholders or institutional investors on its board, rather in arrangements of the above AGM provided the sufficient reasons to believe that bank has discouraged the participation of minority shareholders even in the AGM."

Unquote

The term "minority shareholders" has been used in your aforementioned letter, however, your subsequent submissions focus primarily on the independent director. It is reiterated that whilst the Code has encouraged the representation of minority shareholders on the board, it has made a mandatory requirement to have at least one independent director.

Further, it is disappointing that you have levelled unsubstantiated allegations against the officials of the Securities & Exchange Commission of Pakistan without accurate understanding of the requirements of the applicable regulatory framework.

In case you have any further queries, please do not hesitate to contact us.

Regards,

Haris Bin Mohsin
Deputy Director
Corporate Supervision Department