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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

[Islamabad]

Before Tahir Mahmood
Executive Director (Enforcement)

In the matter of

Asim Textile Mills Limited

Order under Section 208 read with Section 476 of the Companies Ordinance, 1984

Show Cause Notice No. and Date: EMD/233/446/2006-3800
Dated June 25, 2009

Date of final hearing: August 20, 2009

Present: Mr. Allah Datta
CFO

Mr. Ajmal Shabab
Attorney

Date of Order: August 24, 2009

This Order will dispose of the proceedings initiated against the Chief Executive and Directors of Asim Textile Mills Limited ("Company") for making unauthorized investments in its associated company in violation of the provisions of Section 208 of the Companies Ordinance, 1984 ("Ordinance").

2. The brief facts of the case are that examination of the annual audited accounts of the Company for the year ended June 30, 2008 ("accounts"), revealed that Note 18-Advances include an amount of Rs.2.854 million (2007: 2.854 million) provided to Zeeshan Energy Limited ("ZEL") . an associated undertaking as advance against supply of electricity. The Company was advised to provide the copies of ledger accounts for the above mentioned associated company for the financial years ended June 30, 2007 and June 30, 2008. The Company submitted the copies of relevant ledger accounts. The copies of these ledger accounts were examined and it was observed that the Company had made said advance to ZEL prior to July 1, 2006 and the advance was outstanding for both of the above referred financial years. It appeared that the balance was not falling in the nature of normal trade credit as per Section 208 of the Ordinance, therefore, a Show Cause Notice ("SCN") dated June 25, 2009 was issued to the Chief Executive and all the Directors of the Company



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calling upon them to show cause as to why penal action may not be taken against them under Sub-section (3) of Section 208 read with Section 476 of the Ordinance for violating the statutory requirements of the Ordinance. The SCN was responded vide reply dated July 28, 2009. Their submissions are summarized as under:

- The power project setup by ZEL was a sort of captive power project. It has been supplying electricity to the Company on credit.
- Supply of electricity from ZEL in the past is as tabulated below:

<u>Year ended</u>	<u>Purchase of electricity from ZEL</u> <u>(Rupees in thousands)</u>
30 th Sep. 1999	47,226.
30 th Sep. 2000	39,109.
30 th Sep. 2001	43,468.
30 th Sep. 2002	48,959.
30 th Sep. 2003	48,485.
30 th Sep. 2004	53,338.
30 th Jun. 2005	36,821.
30 th Jun. 2006	30,302.
30 th Jun. 2007	303.
30 th Jun. 2009	532.

- It is evident from the above data that the nature of transactions with ZEL is clearly on account of trading activities in normal circumstances.
- In years 2004/5 due to huge increase in furnace oil prices, electricity from ZEL became highly uneconomical when compared with sui gas generators/WAPDA. Therefore Company management decided to obtain electricity from sui gas generators on rent rather than from ZEL. It was also decided to keep the captive power project of ZEL intact and ready for the supply of electricity in case of sui gas from SNGPL was not available due to any reason. This was all done as a prudent business approach to run the business of our textile mills in the most competitive manner without any interruption due to non-availability of electricity.



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- The balance stands in the name of ZEL is purely a trade balance. The only reason of outstanding balance as on June 30, 2008 is the difference in the prices of furnace oil and the electricity rate fixed by the NEPRA.
- In view of the above factual position there is no doubt that the balance is entirely on account of normal trade credit based on commercial expediency.
- Without conceding the factual and legal position as elaborated above, the debit balance of ZEL was not at all created through any interest bearing funds rather it was provided out of interest free loans from directors apparent from financial statements of the Company. So no financial burden was imposed on the Company.
- Currently there is no balance standing in the name of ZEL as on the consent of Ms. Noor-ul-Ain Zahid (Director), the Board of Directors of the Company has approved to adjust the remaining balance of ZEL from the account of Ms. Noor-ul-Ain Zahid as on April 27, 2009.

3. The aforesaid submissions and information available in the ledger accounts of the associated company has been examined. It is evident that said advance was adjusted on April 27, 2009 after passage of about 2 years and 10 months and such a long period of time cannot be regarded under normal trade credit as envisaged in Section 208 of the Ordinance.

4. In order to provide an opportunity of personal hearing, the case was fixed for hearing on August 20, 2009. On the date of hearing Mr. Allah Datta, CFO of the Company and Mr. Ajmal Shabab, Attorney represented the Chief Executive and Directors of the Company. They presented same arguments as were given in the written submissions. The case was discussed in detail and the default was admitted. It was however requested by the representatives of the Company that a lenient view may be taken considering that the amount of advance has already been adjusted by the Company.

5. After having considered the admitted default of the Chief Executive and Directors of the Company and the perusal of the documents and information placed on record, it is established that said advance given to the associated company cannot be termed as a normal trade credit and therefore falls under the ambit of Section 208 of the Ordinance. Advance provided to the associated company was without a prior approval from the shareholders through a special resolution and without charging any return on such credit given which is in violation of the requirements of Section 208 of the Ordinance. For the foregoing reasons, it is established that the Chief Executive and the Directors have not exercised due care while extending this credit to the associated company. I have, however, noted that the default has been admitted and the relevant amount has already been recovered. Moreover, the representatives of the Company have also assured that Company would ensure strict compliance of the provisions of the Ordinance in future.



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6. In view of the above, I, instead of imposing maximum penalty of Rs.10,000,000 as prescribed by Sub-section (3) of Section 208 of the Ordinance, take a lenient view of the default and impose a token fine of Rs.200,000 (Rupees two hundred thousand only) on Mr. Zahid Anwar, Chief Executive of the Company.

7. The Chief Executive of the Company is hereby directed to deposit within thirty days of the date of the receipt of this Order the aforesaid fine of Rs.200,000 (Rupees two hundred thousand only) in the designated bank account maintained in the name of Securities & Exchange Commission of Pakistan with MCB Bank Limited and furnish a receipted challan to the Commission. In case of non-deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as an arrear of land revenue. It may also be noted that said penalty is imposed on Mr. Zahid Anwar, Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

Tahir Mahmood
Executive Director (Enforcement)

Announced
August 24, 2009
Islamabad