



**Before Mr. Tahir Mahmood, Executive Director (Enforcement)**

**In the matter of**

**M/S Bosicor Pakistan Limited**

**(Under Section 208 Read with Section 476 and 492 of the Companies Ordinance, 1984)**

No. and date of show cause notice	No. EMD/233/638/2002-2342-2349 dated December 12, 2007
Date of hearing	January 22, 2008
Present:	Mr. Hamid Imtiaz Hanfi, Vice Chairman Mr. Amir Waheed Ahmed, Company Secretary
Date of Order	March 3, 2008

**Order**

This order shall dispose of show cause proceedings in the matter of Show cause No. EMD/233/638/2002/2342-2349 dated December 12, 2007, under Section 208 of the Companies Ordinance, 1984 ("Ordinance") issued to the **M/S Bosicor Pakistan Limited (the "BPL")** and Directors of BPL namely :

1	Mr. Amir Abbassicy	Chairman
2	Mr. Hamid Imtiaz Hanfi	Vice Chairman
3	Mr. Muhammad Rashid Zahir	Director
4	Syed Arshad Raza	Director
5	Mr. Farooq Ahmed Yamin Zuberi	Director
6	Mr. Samia Roomi	Director
7	Mrs. Uzma Abbassicy	Director

2. Show cause notices were issued to the BPL and Directors of BPL required each of them to explain their position in writing on or before January 22, 2008 in respect of the long term investment of Rs.300 million as on June 30, 2007, advanced against future issuance of 15 million shares in each of the associated companies namely M/s Bosicor Chemicals Pakistan Limited (BCPL) and M/s Bosicor Oil Pakistan Limited (BOPL) amounting to Rs. 150 million.



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3. The aforesaid investment was made on the basis of the following special resolutions resolved in its Extra Ordinary General Meeting (EOGM) dated March 19, 2007;

- a. ***“Resolved that the consent of the Company in General Meeting be and is hereby accorded to invest an amount of up to Rs. 150,000,000 in Ordinary Shares of an affiliated company Bosicor Oil Pakistan Limited”***
- b. ***“Resolved that the consent of the Company in General Meeting be and is hereby accorded to invest an amount of up to Rs. 150,000,000 in Ordinary Shares of an affiliated company Bosicor Chemicals Pakistan Limited”***

Following additional disclosures were tabled before the shareholders under SRO 865 (I)/ 2000 in the respect of the above referred resolutions;

Name of associated undertaking	Nature, amount and extent of investment	Purpose of Investment in	Amount (Rs. in Million)
Bosicor Oil Pakistan Limited (BOPL)	Subscription of Rs. 150 million in Ordinary shares of BOPL	To Keep Strategic stake in BOPL	150
Bosicor Chemicals Pakistan Limited (BCPL)	Subscription of Rs. 150 million in Ordinary shares of BCPL	To Keep Strategic stake in BCPL	150

4. The Company started advancing the funds to BCPL and BOPL immediately after passing the special resolution and the total amount invested in the form of advance as at March 31, 2007 was Rs. 80 millions and Rs. 140 millions respectively. The Company continued to advance funds and the amount reached to Rs. 300 millions as on June 30, 2007.

5. BCPL and BOPL have paid up capital of Rs.500,000 divided into 50,000 shares @ Rs. 10 per share as on June 30, 2007. The following table would explain the shareholding structure:

No.	Name	Designation	No. of shares held	
			BOPL	BCL
1	Mr. Aamir A Abbasciy	Director	1	1
2	Mr. Hamid Imtiaz Hanfi	Director	1	1
3	Mr. Muhammad Wasi Khan	Director	1	1
4	Mr. Salman Talibuddin	Director	1	1
5	Mr. Farooq Ahmed Yamin	Director	1	1
6	Syed Arshad Raza	Director	1	1
7	Mr. Muhammad Javed Iqbal	Director	1	1
8	Mrs. Uzma Abbasciy	Director	1	1



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9	Mrs. Samia Roomi	Director	1	1
10	Bosicor Corporation Limited	Holding Company	49,991	49,991
	<b>Total Shares</b>		<b>50,000</b>	<b>50,000</b>

6. The investments of the Company in its associated undertakings were not in accordance with the resolutions approved by the shareholders. The Company invested an amount of Rs. 300 million as advance against future issuance of shares and till issuance of the SCN no shares were issued by the BPL. It was, therefore, considered necessary to ascertain the extent of violations committed by the Company and loss sustained as a consequence of these investments for which necessary proceeding were initiated under section 208 of the Ordinance. Show Cause Notice dated December 12, 2007 was, therefore, issued to the Company and its Directors highlighting the prima facie violations of Section 208 of the Ordinance.

7. In reply to the aforesaid show cause notice the Company stated that;

- a. The Company invested a sum of Rs.300 Million in the Group Companies namely Bosicor Oil Pakistan Limited (BOPL) and Bosicor Chemicals Pakistan Limited (BCPL) by way of long-term investment to acquire their shares at par, and all corporate and legal requirements were duly fulfilled. Additionally, there was a full disclosure as per items Nos. 4 & 5 of the Statement under Section 160 (1)(b) of the Companies Ordinance, 1984 emphasizing that these investments in their affiliated companies were prudent, productive and beneficial for the shareholders and that these investments are expected to yield good returns in the long-term by way of increased corporate profits.
- b. For the benefit of Shareholders, it was also highlighted that BCPL would be setting-up the first Aromatics Complex in Pakistan with an initial annual capacity of over 600,000 metric tons to produce petrochemical products, which would in long-term constitute good investment for BPL and its Shareholders. The above Statement was annexed with the EOGM notice to take the Shareholders into confidence by making disclosure including the fact that these are long-term investments in Projects expected to be completed in 2009-2010. It would than be evident that the Company has acted in a legitimate and bonafide manner taking its Shareholders in confidence.



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- c. As regard the timing of the issuance of new shares by the Investee Companies, it may please be appreciated that both the Investee Companies are wholly-owned Subsidiaries of a Foreign company, namely M/s. Bosicor Corporation Limited (BCL), which has made Foreign Equity investment of over US Dollars 150 million in form of Plant and Machinery in the Investee Companies Projects.
- d. Since, the Plant and Machinery is being supplied in installments, it is not possible for the Investee Companies to obtain the necessary Foreign Exchange Entitlement Certificate from the State Bank of Pakistan until complete Plant and Machinery has been received in Pakistan. Without, first obtaining the Foreign Exchange Entitlement Certificate from the SBP, foreign investment from BCL cannot be capitalized, nor can the shares be issued to foreign shareholder or such shares be registered with the State Bank of Pakistan on repatriable basis. Consequently, it may be appreciated that issuance of shares to its foreign shareholder has to be properly timed in order to ensure compliance with the Exchange Control Regulations.
- e. At the same time, considering the fact the Investee Companies were established with an initial Paid-up Capital of Rs.500,000 each, of the Investee Companies were to issue 2-4% of the final anticipated shares to BPL now, BPL would become their Holding Company. This would change the overall funding structure because the financial plan is for BPL to hold marginal shares in these companies, and majority of the equity is to remain with the foreign sponsor.
- f. In addition to above submissions, the Company also submitted in reply to queries raised in above referred Show Cause Notice, as follows:
- i) There is no violation of the Special Resolution passed by the shareholders as the amount invested in BCPL & BOPL is against future issue of shares. The time as to such issue of shares may not be considered as change in terms, etc.
- ii) As explained above the shareholders of the Company do not suffer any loss due to the time lag foreseen in issuance of shares or otherwise because both, BCPL & BOPL, are expected to commence commercial operations after around 2 years.



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- g. Based on above explanation, it was requested by the Company that the proceeding may please be dropped. In addition, in view of the Commission's concern on the issuance of shares, the company has submitted a proposal to the Board of Directors for their consideration to approve unwinding the transaction with appropriate return on the amount of investment, as the issuance of shares is expected to take a further one year.
- h. We have been advised by our auditors that the Company's board can approve the unwinding because there is no change in the nature or the terms and conditions of the transaction which was previously passed through a special resolution presented in the Extra Ordinary General Meeting of the Company.
8. Moreover, in order to provide an opportunity of personal hearing, the case was fixed for January 22, 2008. Mr. Hamid Imtiaz Hanfi, Vice Chairman and Mr. Amir Waheed Ahmed, Company Secretary of the Company appeared before me, they reiterated the submissions made in the written reply to the show cause notice.
9. I have gone through the facts of the case, record of the Company, relevant provisions of the Ordinance written submissions and representations made by the representatives of the directors during the hearing. The followings representation of the BPL, having significant implication on the case, needs to be considered to understand the background and outlook of the transaction:
- a) **The Company invested a sum of Rs.300 Million in the Group Companies namely Bosicor Oil Pakistan Limited (BOPL) and Bosicor Chemicals Pakistan Limited (BCPL) by way of long-term investment to acquire their shares at par, and all corporate and legal requirements were duly fulfilled. Additionally, there was a full disclosure as per items Nos. 4 & 5 of the Statement under Section 160 (1)(b) of the Companies Ordinance, 1984 emphasizing that these investments in their affiliated companies were prudent, productive and beneficial for the shareholders and that these investments are expected to yield good returns in the long-term by way of increased corporate profits.**
- b) **At the same time, considering the fact the Investee Companies were established with an initial Paid-up Capital of Rs.500,000 each, of the Investee Companies were to issue 2-4% of the final anticipated shares to BPL now, BPL would become their Holding Company. This would change the overall funding structure because the financial plan is for BPL to hold marginal shares in these companies, and majority of the equity is to remain with the foreign sponsor.**



- c) **Since, the Plant and Machinery is being supplied in installments, it is not possible for the Investee Companies to obtain the necessary Foreign Exchange Entitlement Certificate from the State Bank of Pakistan until complete Plant and Machinery has been received in Pakistan. Without, first obtaining the Foreign Exchange Entitlement Certificate from the SBP, foreign investment from BCL cannot be capitalized, nor can the shares be issued to foreign shareholder or such shares be registered with the State Bank of Pakistan on repatriable basis. Consequently, it may be appreciated that issuance of shares to its foreign shareholder has to be properly timed in order to ensure compliance with the Exchange Control Regulations.**

10. The aforesaid representation of the BPL demonstrates that the investments in BOPL and BCPL was made with the outlook and expectation to yield good returns in the long-term by way of increased corporate profits. However issuance of the shares, in accordance with the approval of the shareholders would have resulted in BOPL and BCPL becoming subsidiary of the BPL and this was never desired by the sponsors of these associated undertakings. Shares were never issued against these investments, as the emerging capital structure was not in interest of the Common directors and all this resulted in mandate of the shareholders not being honored and directors, used the public funds for their personal benefits.

11. The directors owe fiduciary duties to the Company they serve and its shareholders. They must discharge their statutory obligations in good faith with fairness and honesty. The directors have failed to exercise reasonable care to see that mandatory provisions of law were being violated and have not respected the mandate of the shareholders. Therefore, the directors have breached their fiduciary duties, which they owed to the Company and its shareholders. The Directors made unauthorized transactions out of the funds of the Company. In fact the Company has been acting as a financier by providing funds to the associated concerns to fulfill their financial requirements at the cost of the Company.

12. For the foregoing reasons, it is established that the Directors have violated the provisions of Section 208 of the Ordinance and have advanced funds in total disregard of the shareholders approval. The nature and terms of the investment have been changed to serve the directors interest rather than the shareholders. After analyzing the facts of the case and arguments put forward I am of a considered view that these do not carry rationalization and are not acceptable. Violation of section 208 of the Companies ordinance is established and all directors are responsible for the said violation. However, I, instead of imposing maximum penalty of Rs. 10,000,000 (Ten Million rupees) on each of the director as prescribed by Sub-section (3) of Section 208 of the Ordinance, take a lenient view of the default by imposing a fine as under on each of the following directors;



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Name	Designation	Amount in Rupees
Mr. Amir Abbassicy	Chairman	500,000
Mr. Hamid Imtiaz Hanfi	Vice Chairman.	500,000
Syed Arshad Raza	Director	500,000
Mr. Farooq Ahmed Yamin Zuberi	Director	500,000
Mrs. Samia Roomi	Director	500,000
Mrs. Uzma Abbassicy	Director	500,000
<b>Total</b>		<b>3,000,000</b>

13. Further, BPL has put forwarded they would unwind the transactions. We have not been provided with any arguments that supports that the shareholders interest is adversely effected with these transactions and right of the shareholders is protected by unwinding the transaction. The Chairman, Chief Executive and directors are directed to immediately get 15 million shares issued, each from the BCPL and BOPL, in line with the approval of the shareholders to safeguard the interest of the minority shareholders.

14. The Chairman, Chief Executive and the afore-named director are hereby directed to deposit the aforesaid fine totaling to Rs.3,000,000 (Rupees Three million only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act,1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other Directors in their personal capacity who are required to pay the said amount from their personal resources.

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**Tahir Mahmood**  
Executive Director (Enforcement)