



Corporate Supervision Department  
Company Law Division

Before Abid Hussain –Executive Director

*In the matter of*

**Ansari Sugar Mills Limited**

Number and date of notice: EMD/233/334/02-251 dated October 31, 2014  
Date of hearing: June 15, 2015, June 23, 2015, June 25, 2015, July 01, 2015, May 19, 2016, May 23, 2016, June 02, 2016, November 07, 2016

**ORDER**

**UNDER SECTION 208 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against following Directors including the Chief Executive (the "respondents") of Ansari Sugar Mills Limited (the "ASML") through show cause notice ("SCN") dated October 31, 2014 issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance"). Respondents mentioned below were reported as directors/chief executive of ASML for the year 2011, 2012 and 2013.

S No	Name of Respondent	S No	Name of Respondent
1	Mr. Rashid Ahmed Khan	6	Mr. Khawaja Ali Kamal Majid
2	Mr. Khawaja Anver Majid	7	Mr. Khawaja Nimr Majid
3	Mr. Khawaja Abdul Ghani Majid	8	Mr. Nihal Anwar
4	Mr. Khawaja Mustafa Zulqarnain Majid	9	Mr. Dawood Morkas
5	Mr. Aurangzeb Khan		

2. Brief facts of the case are that Pak Ethanol (Private) Limited ("PEPL") is an associated company of ASML under Section 2(2) of the Ordinance as Mr. Khawaja Abdul Ghani Majid and Mr. Khawaja Mustafa Zulqarnain Majid are directors in both ASML and PEPL. Examination of annual audited accounts of the ASML for the year ended September 30, 2013 revealed that the ASML provided trade credit to PEPL, associated company during last three years. Accumulated balance of trade credit as of September 30, 2013 was Rs. 439,966,204/-. It appears that, prima facie, abnormal trade credit has been extended by the Company without authority of special resolution in contravention of sub-section (1) of Section 208 of the Ordinance. Consequently, SCN was served upon the respondents on October 31, 2014 to show cause as to why penalty may not be imposed under Section 208 of the Ordinance.

*Abid*



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3. Reply to SCN was submitted through Mr. Nisar Ahmed, FCA of Rao & Co, Chartered Accountants vide letter dated March 19, 2015. Brief submissions with reference to contents of the SCN are as under:

- The ASML has not made any investment, including loan advances, equity or any amount which attracts provisions of section 208 of the Ordinance.
- The Commission's observation that accumulated balance of Rs 439 millions of trade credit allowed to PEPL does not appear to be normal trade credit may appear to be justified, however, the fact is that sales to PEPL by the Company increased from Rs 100 million in year 2011 to Rs 250 million in year 2012. The accumulated balance increase to Rs 439 million owing to pricing dispute that arise between the companies.
- The price dispute was resolved and receivable of Rs 41million of 2011 along with receivable of 2012 was received in the first quarter of 2014. Further the receivable of 2013 was also received in 2014 and in the first quarter of 2015. Hence, there is no violation of section 208.
- The directors of the Company have injected Rs 417 million as interest free subordinated loan in the year 2013 to overcome any shortfall due to slow recovery from PEPL.

4. The respondents were granted an opportunity of personal hearing on June 15, 2015, June 23, 2015 and June 25, 2015. Above mentioned hearing could not be held due to one reason or the other, the hearing was again fixed for July 01, 2015 and was adjourned on the request of the authorized representative of the ASML. To bring the matter to a logical conclusion another hearing was fixed for May 19, 2016. The hearing was re-fixed for May 23, 2016. The subject hearing was adjourned on the request of the authorized representative of the ASML. Final hearing opportunity was provided on June 02, 2016 and same was attended by Mr. Ghulam Shah Abbasi of Rao & Co, Chartered Accountants. During the hearing authorized representative was asked to provide:

- Certified copies of agreements of the Company with PEPL (copies of both sides),
- Certified copies of minutes of the BOD meetings in which agreements were approved along with the attendance sheet,
- Subsequent status of recovery of outstanding amounts from PEPL along with evidences (bank statements),
- Annual accounts of PEPL for the year 2013, 2014 and 2015.

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Hearing in the above matter was again fixed for November 07, 2016. Mr. Nisar Ahmed from Rao & Co appeared and reiterated the earlier stance already submitted through letter dated March 19, 2015. However, he could not produce the documents requested through last hearing held on June 02, 2016.

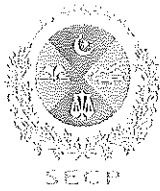
5. Before proceeding further, it is necessary to advert to the relevant provisions of law:

- Provisions of Sub-section (1) of Section 208 of the Ordinance provides that a company shall not make any investment in any of its associated companies or undertakings except under the authority of special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto provided that the return on investment in the form of loan shall not be less than the borrowing cost of the investing company;

Explanation: The expression "investment" shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit.

- Provisions of the than applicable Sub-section (3) of Section 208 of the Ordinance provides that if default is made in complying with the requirements of this Section, every director of a company who is knowingly and willfully in default shall be liable to fine which may extend to ten million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this Section;
- In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under Section 208 of the Ordinance have been delegated to Executive Director (Corporate Supervision).

It is important to highlight here that the Ordinance has been repealed while promulgating Companies Ordinance, 2016 ("Ordinance 2016"). However, provisions of Section 509(1)(f) of the Ordinance 2016 clearly provides that pending proceedings shall be concluded as provided in the Ordinance:



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**"509. Repeal and savings.** – (1) The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIII A consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIII A along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-Banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:

Provided that repeal of the repealed Ordinance shall not-

- (f) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed".

6. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the representative in writing and during the hearing and have observed that:

- PEPL is an associated company of ASML in term of Section 2 of the Ordinance which state that;

*"associated companies" and "associated undertakings" mean any two or more companies or undertakings, or a company and an undertaking, interconnected with each other in the following manner, namely: –*

- (ii) *If the companies or undertakings are under common management or control or one is the subsidiary of another.*

- It is pertinent to highlight the importance of the provision of Section 208 of the Ordinance and its importance viz-e-viz the protection of shareholders rights. Transactions with associated undertakings wherein more often directors are common suffer from an inherent limitation of a conflict of interest, whereby funds from public entity can be diverted to a private company. The law in order to mitigate this risk requires that such transaction should be made after approval from the shareholders in order to protect their interest. The law specifically requires to disclose complete details of the transaction with associate undertaking and terms and conditions attached thereto so that the shareholders can make an informed decision.



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- Sub-section (1) of section 208 specifically requires authority of special resolution for all investment by a company in its associated companies and undertakings. The expression investment has also been explicitly explained by the section 208 stating that it shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit. Accumulated balance of trade credit as of September 30, 2013 was Rs. 439,966,204/-.
- In financial year 2015 total sales of molasses were Rs. 118 million, receivable from PEPL was Rs. 318 million on account of purchase of molasses. In financial year 2014 total sale of ASML for molasses were only Rs. 153 million as compared to receivable from associated company PEPL stood at Rs. 251 million for purchase of molasses. In financial year 2013 total sale of ASML for molasses were only Rs. 138 million as compared to receivable from associated company PEPL stood at Rs. 439 million for purchase of molasses. This shows that ASML provided undue benefit by providing abnormal trade credit to PEPL due to which shareholders of ASML has suffered.
- Even if the events that led to inability of the associated company to pay the amounts due to the Company were beyond the control of the Company and its management, it was the responsibility of the directors and management of the Company to put in place appropriate controls and risk management procedures to avoid losses. They were required to including taking immediate steps to recover the due amounts, obtaining security, mortgage of property or go into litigation against them, but it was observed that respondents only provided undue benefit to PEPL on cost of shareholders of ASML. Further as per requirements of law they should have placed the matter before shareholders for their approval.
- Trade credit in normal course of business is a credit allowed on sale of goods in line with industry norms and best practices, has specific repayment dates and is not an open ended credit without specific repayment period. Whereas in the case under consideration, the credit allowed by the ASML to PEPL is extensive, has no specific repayment dates and is adjusted at the convenience of PEPL. The credit period allowed by the ASML is not only much more extensive as per industry best practices but is also more generous. It proves that the associated concern is given a preferential treatment.



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- The ASML is not justified in allowing extensive credit to PEPL in the instant case, the ASML and PEPL are two different legal entities, which are associated companies, as defined by the Ordinance. Any credit, allowed by the ASML to PEPL, which is not in nature of normal trade credit, is subject to the provisions of Section 208 of the Ordinance. It is also pertinent to mention that provisions of Section 208 of the Ordinance do not prohibit the companies from making investments in associated companies. Rather prior approval of shareholders of the companies has been made a pre-requisite before making such investments, so as to ensure transparency through adequate disclosure to all the shareholders of the Company. In cases where normal trade credit goes beyond normal the matter should be placed before shareholders for approval. Besides it has also been made mandatory for the investing companies to charge, on investments, a rate of return which is not less than the borrowing cost of the investing company.
- The amount due from associated company was partially recovered by the company with a delay of three years thus making the transaction abnormal trade credit.
- I am of the view that the common directors have more responsibility than the other directors as they are aware of the complete details of both the companies thus have more liability to safeguard the interest of shareholders. Their prudent approach should be to safeguard the interest of company where interest of general public is involved. This aspect of responsibility was found missing in the instant case.

7. For the foregoing reasons, I am of the opinion that the provision of Section 208 of the Ordinance has been violated by the respondents. Therefore, in exercise of the powers conferred by aforesaid provision of the Ordinance, I hereby impose a fine of Rs. 5.5 million (Rupees Five Million and Five Hundred Thousand only) in aggregate on respondents for contravening the provisions of Section 208 of the Ordinance. The respondents are directed to deposit the fine in the following manner:

S#	Name of Respondent	Amount Rs
1	Mr. Rashid Ahmed Khan	500,000/-
2	Mr. Khawaja Anver Majid	500,000/-
3	Mr. Khawaja Abdul Ghani Majid	1,000,000/-
4	Mr. Khawaja Mustafa Zulqarnain Majid	1,000,000/-

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5	Mr. Aurangzeb Khan	500,000/-
6	Mr. Khawaja Ali Kamal Majid	500,000/-
7	Mr. Khawaja Nimr Majid	500,000/-
8	Mr. Nihal Anwar	500,000/-
9	Mr. Dawood Morkas	500,000/-

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Before parting with the order, I hereby direct the chief executive of the Company to recover the return in a manner provided in the provisions of Section 208 of the Ordinance on the amount remained stuck up with the PEPL within 60 days from the date of this order. The amount so recovered should be certified by the statutory auditor of the Company. In case of failure to comply with this direction, proceedings for non-compliance shall be initiated under the relevant provisions of the law.

Abid Hussain  
Executive Director

**Announced:**  
December 8, 2016  
Islamabad