



Before Abid Hussain –Executive Director

In the matter of

Byco Petroleum Pakistan Limited

Number and date of notice: CSD/ARN/92/2015-1194-1201 dated October 6 , 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 Byco Petroleum Pakistan Limited (*the "Company"*) through show cause notice ("*SCN*") dated October 6, 2016 issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

S#	Muhammad Raza Hasnani	S#	Mr. Philip Harris
1	Mr. Hamid Imtiaz Hanfi	5	Ms. Diana Brush
2	Muhammad Mujtaba Jafarey	6	Mr. Richard Legrand
3	Ovais Mansoor Naqvi	7	Mr. Javed Akbar
4	Muhammad Raza Hasnani	8	Mr. Philip Harris

2. Brief facts of the case are that K-Electric Limited ("*KEL*") and Byco Oil Pakistan Limited ("*BOPL*") are both associated companies of the Company as per definition provided in sub-section (2) of section 2 of the Ordinance. Review of annual audited financial statements of the Company for the year ended June 30, 2015 (*the "Accounts"*) and analysis of information subsequently provided by the Company revealed that the following amounts receivable by the Company from its associated companies KEL and BOPL are not in the nature of normal trade credit and hence tantamount to



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'investment' made by the Company without the authority of a special resolution of its shareholders;

- a. trade debts from the associated companies KEL (2012 to 2015) and BOPL (2013) as the average collection period for such receivables was substantially higher than that allowed by the Company to other unrelated customers in case of:

(Rs. in millions)

	Un-Related Parties	Associate		Un-Related Parties	Associate		Un-Related Parties	Associate		Un-Related Parties	Associate	
		KEL	BO PL		KEL	BO PL		KEL	BOPL		KEL	BOP L
		2015		2014		2013		2012				
Sales	83,290	7,791	3,726	82,243	9,711	591	52,326	12,025	1,836	15,770	3,683	-
Trade Debts	7,985	1,364	-	7,783	2,462	-	8,098	3,275	750	7,146	2,583	-
Debtor Days	35	64	-	34	93	-	56	99	149	165	256	-

- b. rental income receivable from BOPL against the land sub-leased to BOPL that are not being recovered by the Company and has piled up over the years:

(Rs. in 000)

Nature of receivables	2015	2014	2013	2012
Receivable from BOPL against lease rental	268,255	215,318	164,786	116,661
Lease rental Income from BOPL	52,937	50,531	48,125	48,125

- c. Mark-up of Rs. 18.9 million is receivable from BOPL since before the year 2012 that is not being recovered by the Company periodically in contravention of clause (c) of regulation 7 of the Companies (Investments in Associated Companies or Associated Undertakings) Regulations, 2012 (*the "Regulations"*) promulgated under section 208 of the Ordinance.

3. A show cause notice (*the "SCN"*) was issued to the directors for prima facie contravention of the section 208 of the Ordinance and regulation 7 made thereunder. The Company submitted its



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reply vide its letter dated November 3, 2016, and submitted that;

a. **Receivable from K-Electric Limited during 2012 - 2015:**

With respect to our petroleum sales, we normally allow 30 days credit period to all of our customers, including K-Electric, hence the terms of sales for associated company i.e. KEL are similar to that being offered to non-associated companies. However, in case of delayed payment by K-Electric beyond the credit period allowed, markup at the rate of one month KIBOR + 2% is charged for period of 31-45 days and one month KIBOR + 3% is charged on the balance overdue for more than 45 days. The markup charged on overdue balances is appropriately disclosed in transaction with related parties note of the relevant years. All the receivables at the end of the financial years under observation represent sales amount of the end of financial years which were recovered subsequently along with the accrued markup thereon.

Further, in your subject show cause notice, debtor days have been calculated assuming evenly sales during the year, however, as discussed above sales to K-Electric were more concentrated towards the end of the financial year.

b. **Rent and Markup receivable from Byco Oil Pakistan Limited during 2012 - 2015:**

BOPL being the largest refinery, commenced its commercial operations in June 2015. The Company had an ample space of land in its premises at Mouza Kund Plant, where the BOPL's refinery has been setup for which Company charges land lease rentals. Since BOPL was in installation phase during the years mentioned in SCN, therefore the amounts receivable from BOPL could not be recovered in due course. As of June 30, 2015, the Company's receivables i.e. Markup- Rs. 18.9 million and Lease rentals – Rs. 268.255 million become payable to BOPL in the amount of Rs. 1,093 million (Note 36.2 to the financial statements) when BOPL sold certain quantity of imported crude to the Company. The Company reported above balances separately in its financials as fair presentation to its users.

Furthermore, the proposed merger of BOPL and Byco Terminals Pakistan Limited (BTPL) with and into the Company that is filed in Honorable High Court on 24th June 2016 will result in the



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knocking off the intercompany balances.

We understand that the amounts receivable from BOPL should have been timely recovered as required under the Regulations. Since all the amounts stand recovered in the year ended 30th June 2015, therefore it is respectfully submitted that proceedings initiated through subject show cause notice under Section 208 of the Companies Ordinance, 1984 may kindly be dropped and any contravention may kindly be condoned.

Please note that recently election of directors was held whereby new directors have been appointed on the Board and hence, former directors are not available. Accordingly, the above response is being submitted on behalf of all the directors, to whom the subject show cause notice has been issued.

4. The respondents conveyed that they do not require opportunity of personal hearing and that the subject proceedings may be concluded based on their written submission.

5. Before proceeding further, it is necessary to advert to the relevant provisions of law: Sub-section (1) of section 208 of the Ordinance provides that'

"Subject to sub-section (2A) a company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto. Moreover the return on investment in the form of loan shall not be less than the borrowing cost of 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." (Emphasis added)

• 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, or the regulations, 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



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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."

- Clause (c) of regulation 7 of the 208 Regulations requires that;

"(Interest, mark up, profit, fees or commission etc., as the case may be, shall be recovered periodically by the investing company in line with the standard terms normally applied by the commercial banks or the Islamic Financial Institutions on similar facilities extended to the borrowers;"

- 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).

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 observed that:

- KEL and BOPL are associates of the Company 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 associated companies. 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 associated undertaking and terms and conditions attached thereto so that the shareholders can make an informed decision. This ensures that the terms of the transactions are duly supervised by the shareholders in view of the sensitivity involved due to investee being an associate, and



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exposure of the Company is secured. Any return paid to the Company on such outstanding balance receivables does not absolve the directors from the requisite compliance of section 208 of the Ordinance

- 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. Company has extended loans to its associate i.e. KEL and BOPL, CPL in the form of abnormal trade debts and lease rental/markup accrued receivables, which are abnormally delayed.
- The respondents have admitted that the Company's receivables i.e. Markup - Rs. 18.9 million (*due since before 2012*) and Lease rentals – Rs. 268,255 (*piled up since 2012*) million were recovered in 2015. This shows that the Company provided undue benefit by providing abnormal trade credit to its associates due to which shareholders of the Company suffered.
- From above it is established that the trade credits and lease rental/markup accrued provided to associated companies were abnormal trade credit and fall under expression investment as per Section 208 of the Ordinance.

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. However, considering the circumstances of the case, the return recovered by the investee companies on over-due trade debts outstanding on market rate and subsequent settlement of lease rentals and markup accrued along with the impending merger BOPL and the company, I take a lenient view and conclude these proceedings with a warning to the directors of the Company to observe strict compliance of the Law in future.

Abid Hussain
Executive Director

Announced:

November 11, 2016, Islamabad