



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

*Before*

Shahzad Afzal Khan, Director / Head of Department

*In the matter of*

Dar es Salaam Textile Mills Limited

Number and Date of SCN: CSD/ARN/234 /2015 – 206 dated July 12, 2023  
Dates of Hearing: September 04, 2023  
Hearing Attended By: Ms. Abida Mukhtar, Chief Executive Officer

## ORDER

### UNDER SECTION 199 OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings initiated against Dar es Salaam Textile Mills Limited (the “Company”) and its board of directors (collectively referred to as the “Respondents”) through Show Cause Notice (the “SCN”) dated July 12, 2023 issued under Section 199 of the Companies Act, 2017 (the “Act”).

2. Brief facts of the case are that the annual audited financial statements of the Company for the year ended June 30, 2022 (the “Accounts”) revealed that the auditor of the Company (Rizwan & Co., Chartered Accountants) highlighted that the Company had provided loan/advance, amounting to Rs.3.5 million, to its associated undertaking without seeking approval from shareholders, as disclosed in note 9.4 to the Accounts in contradiction with the requirements of Section 199 of the Act.

3. The Securities and Exchange Commission of Pakistan (the “Commission”) vide letter dated March 03, 2023 sought clarification from the Company to which the Company vide letter dated April 08, 2023 *inter alia* stated that:

*“The loan extended to the associated undertaking was approved by the Board bearing the applicable mark-up rate likewise the markup was charged on it. You would appreciate that no loss was caused by the transaction and the interest of the minority shareholders was not jeopardized. It may be noted that the company has not only charged interest of Rs. 46,532 (2021: Rupees 289,171) but it actually recovered the amount from associated company in accordance with the provisions of section 199 of Companies Act 2017.*”

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*Considering the nominal amount involved, it is urged that omission to seek approval from shareholders on part of Company may be condoned."*

4. The aforesaid stance of the Company revealed that *prima facie* the directors of the Company failed to obtain shareholders' approval for an investment in associate undertaking, through a special resolution, which is contrary to the requirements of Section 199 (1) of the Act, punishable under Section 199 (6) thereof.

5. In order to take cognizance of the aforesaid non-compliance, SCN dated July 12, 2023 was served on the Respondents for the contravention of Section 199 of the Act, requiring them to explain the reasons as to why action may not be taken against them for the aforesaid contravention.

6. In response to the SCN, the Company vide letter dated August 01, 2023, *inter alia* submitted that:

- *The loan was extended to associated undertaking duly approved by the Board of the Company and the markup was charged on the amount provided to associated undertaking in accordance with the provisions of Section 199 of the Companies Act, 2017. However, there was an omission/oversight on our part where specific approval from the shareholders was not sought.*
- *The financial statements for the year ended June 30, 2022 were presented to shareholders for their approval and no shareholder objected on the transaction in question. Therefore, despite the oversight, please note that no loss was caused by the transaction and the interest of the minority shareholders were not jeopardized.*
- *The Company has complied with the requirements of Section 199 of the Act, except for the slight omission. The amount advanced is not material and has caused no loss to the shareholders. Therefore, as requested to the Commission vide our letter dated April 8, 2023, please forgo this omission and to withdraw the show cause notice without any adverse action accordingly. The management of the Company will ensure meticulous compliance of the law in future.*

7. To provide opportunity of personal representation, hearing in the matter was fixed for September 04, 2023, wherein Ms. Abida Mukhtar, Chief Executive Officer, appeared before the undersigned on behalf of the Respondents as their Authorized Representative ("**Representative**") and submitted that:

- *Oversight from the management in missing out obtaining the shareholder's approval;*
- *Mark-up was charged;*
- *Subsequent approval was obtained in the AGM;*
- *The amount of loan / advance has been returned; and*
- *Will be careful in future and ensure compliance in future.*



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8. Furthermore, the Company also vide letter dated September 05, 2023, *inter alia* submitted that:

- *The loan was extended to the associate company for an emergency need. The loan extended to the associated undertaking was duly approved by the Company's Board. The interim loan would be charged at the prevailing market KIBOR rate of 15.5 percent. The associate company repaid the loan with interest to Dar es Salaam Textile Mills within a few months.*
- *Furthermore, it is crucial to highlight that despite the oversight, no loss was incurred by the transaction, and the interests of the minority shareholders were not jeopardized. Nevertheless, due to the omission/oversight on our part, the Company is now seeking approval from its shareholders at the upcoming Annual General Meeting (AGM) scheduled for September 30, 2023, copy of the notice is attached.*
- *Lastly, we would like to emphasize that the amount advanced is not material and has resulted in no loss to the shareholders. Therefore, as requested in our letter dated April 8, 2023, to the Commission, to kindly take a lenient view and close the proceedings without taking any adverse action. The Company's management is committed to ensuring meticulous compliance with the law in the future.*

9. Section 199 (1) of the Act is reproduced as hereunder:

*"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, amount of investment and terms and conditions attached thereto.*

*Explanation: The term investment shall include equity, loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company."*

Section 199 (6) of the Act is reproduced as hereunder:

*"Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 3 on the standard scale and in addition, 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 requirement of this section."*

10. I have gone through the facts of case and considered both the written and verbal submissions of the Representative in light of the relevant provisions of the law and state that:

- The requirements of Section 199 of the Act are explicit, requiring companies not to make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution. The Representative admitted that there has been an oversight and has acknowledged non-compliance of Section 199 of the Act.

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- The submission by the Company on non-objection on the transaction from the shareholders while presenting the financial statements before the AGM is not a valid excuse as the approval from shareholders only through a special resolution is imperative for compliance.
- The non-compliance of Section 199 was also highlighted in the auditor's report on the Accounts with the Emphasis of Matter paragraph, therefore, the same substantiates the relevance of compliance to the aforementioned provision.
- Lastly, the Representative requested to condone the negligence, and further added that non-compliance was not willful, hence, requested to condone the inadvertent omission.

11. Keeping in view the above, it is stated that the contravention of the provisions of Section 199 (1) of the Act, at the relevant point of time, has been established and same has been admitted by the Representatives as well. The Respondents are, therefore, liable for penalty under Section 199(6) of the Act. In view of foregoing, I hereby impose penalty of **Rs. 250,000/- (Rupees Two Hundred Fifty Thousand Only)** on the Company and Warn the remaining Respondents.

12. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

13. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondents in respect of any default, omission or violation thereof.

**Shahzad Afzal Khan**  
Director/ HOD  
Adjudication Department-I

**Announced:**  
October 16, 2023  
Islamabad