



Corporate Supervision Department
Company Law Division

Before Tahir Mahmood – Commissioner CSD

In the matter of

Dost Steels Limited

Number and date of notice: CSD/ARN/434/2017-617 dated October 10, 2017
Date of hearing: March 28, 2018
Present: Mr. Jamal Iftikhar (CEO), Mr. Zahid Iftikhar (Director)
Mr. Iqbal L Bawaney, Mr. Salman I. Bawaney and Mr. Akbar
Naqi (Authorized Representatives).

ORDER

UNDER SECTION 492, 196 AND 208 READ WITH SECTION 476 OF THE
COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the Directors (*the "Respondents"*) of Dost Steels Limited (*the "Company"*) through Show Cause Notice (*the "SCN"*) dated October 10, 2017 issued under the provisions of Section 492 and 196 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the Commission under the provisions of Section 265 of the Ordinance issued investigation order dated May 11, 2016. The inspector appointed by the Commission submitted the Investigation Report, wherein it was reported that the Inspector identified advances amounting to Rs. 247.5 million extended to suppliers/vendors of the Company, where invoices were not accompanied by sales tax invoices and work orders. It was revealed from the scrutiny of these transactions and further probe from Bankers of the Company namely United Bank Limited that out of Rs. 247.5 million, the actual beneficiaries of advances worth Rs.210.6 million were different from those shown in the books of accounts. The following table gives a comparative of names of vendors as appearing in the books of account with those confirmed by the Bank:



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S.N.	Cheque	Amount (Rs.)	Beneficiary as per Bank Confirmation	Beneficiary as per Company financial record
1	25801696	8,000,000	Weaver Pakistan (Pvt) Limited	Rehman Engineering Works
2	25801694	45,000,000	Weaver Pakistan (Pvt) Limited	Ahmed & Sons
3	25801697	9,000,000	Weaver Pakistan (Pvt) Limited	Nabeel Traders
4	25801695	14,000,000	Weaver Pakistan (Pvt) Limited	R. M & Sons
5	28685027	1,000,400	Sana Jabeen	Rousing Engineering
6	28685011	5,742,000	Sana Jabeen	Rousing Engineering
7	2868507	3,690,000	Sana Jabeen	United Trader
8	28684994	4,583,300	Sana Jabeen	Rousing Engineering
9	28685009	3,345,000	Sana Jabeen	United Trader
10	28685010	4,246,050	Sana Jabeen	Rousing Engineering
11	28684993	4,752,000	Sana Jabeen	United Trader
12	28684968	6,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
13	28684971	9,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
14	28684970	3,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
15	28684969	6,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
16	28684972	8,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
17	28684974	7,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
18	28684973	6,000,000	Dost Sons Cotton Mills (Pvt) Limited	United Trader
19	28684988	3,800,943	M. Saleem	United Trader
20	28684989	2,200,000	Tanveer Ahmed	United Trader
21	28684990	3,939,000	M. Ali	United Trader
22	28684991	3,500,000	M. Ali	United Trader
23	28684992	4,030,100	Sana Jabeen	United Trader
24	28684995	355,193	Nudrat Fatima	Zohaib Traders
25	28684996	913,864	M. Ali	Zohaib Traders
26	28684997	2,084,000	M. Saleem	United Trader
27	28684998	3,521,000	M. Ali	United Trader
28	28684999	4892110	Sana Jabeen	United Trader
29	28685000	3,950,000	M. Saleem	United Trader
30	28685001	3,733,400	Tanveer Ahmed	United Trader
31	28685002	3,592,000	M. Ali	United Trader
32	28685003	5,142,000	Sana Jabeen	Rousing Engineering
33	28685004	4,680,000	M. Ali	Rousing Engineering
34	28685006	3,412,340	M. Saleem	United Trader
35	28685008	3212250	M. Saleem	United Trader
36	28685012	5250574	M. Ali	United Trader
Total		210,567,524		



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3. In view of the aforesaid, it was observed that, the Company provided incorrect and false records and books of accounts which attracts the provisions of Section 492 of the Ordinance. Taking into account the materiality and gravity of the offense w.r.t the payments, the Inspector vide his letter dated December 8, 2016, showed intent to meet the vendors/suppliers as appearing in the books of accounts of the Company. The Company in reply informed the Inspector that the Company recovered a major portion of advances. In this regard, the Inspector vide letter dated March 30, 2017 confirmed receipt of Rs. 201.38 million. It was therefore construed that the prompt recovery of advance from the suppliers/vendors, instead of receipt of goods and services, indicated that *prima facie* these were not given for the purposes of the Company's business. It was therefore observed that the board violated the provisions of sub-section (1) and sub-section 2(e) and 2(j) of Section 196 of the Ordinance.

4. Further, review of the record revealed that Rs. 45 million appearing in books of accounts of the Company as advance to United Traders was actually given to Dost Sons Cotton (Pvt) Ltd, associated company ("DSC"). It was observed that the Company and DSC are associated companies by virtue of common directorship as Mr. Zahid Iftikhar and Mr. Jamal Iftikhar are common directors. It was revealed that the said payment was made to DSC for supply of plant and machinery. However, instead of provision of plant and machinery, DSC repaid the said amount to the Company. This prompt recovery of these advances, instead of supply of plant and machinery, indicated that *prima facie* these were not in the nature of normal trade credit and the Company made an unauthorized investment in its associated company in terms of Section 208 of the Ordinance. The Company therefore apparently violated the provisions of Section 208 of the Ordinance by providing the abnormal trade credit to the DSC.

5. In view of the foregoing, the SCN was issued to the Respondents to show cause in writing within fourteen days from the date of this notice as to why penalty may not be imposed on you for violating the aforesaid provisions of the Ordinance.

6. The reply to the SCN was submitted by the Company vide its letter dated November 30, 2017, brief of which is as follows:

- a. It is disagreed that the Company has violated the provisions of Section 492, 196 and 208 of the Ordinance.



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- b. The Commission's SCN was based on the routing of the payments made to the third party vendors, suppliers and service providers and as a corollary provisions of Section 492, 196 and 208 have been invoked.
- c. The Company vide letter dated November 11, 2016 has already submitted its reply to the Commission on the finding of the Inspectors.
- d. We had already denied the allegations leveled in Para (viii) of the Report and expressed our serious exception to the allegations of misappropriation and breach of trust that had been leveled against DSL and its management without concrete evidence or basis.
- e. The investigation team had not summoned any vendor to investigate such payments wrongly considered by the Inspector as dubious.
- f. Investigation team allegations were based on assumptions and suppositions without any evidence or basis and without checking the supplies and services acquired by the Company.
- g. Local suppliers are unorganized and operate through other mechanism to avoid withholding tax and sales tax. Therefore, the Company had no option to route through third parties who are not actual beneficiaries. So the actual beneficiaries were the parties mentioned in the fourth column of the table appearing in the SCN.
- h. Payments to the vendors listed in last column of the table mentioned in the SCN were routed through the parties mentioned in the fourth column of the table only to facilitate the vendors who were the actual beneficiaries. Hence, there is no violation of Section 196 and 208 of the Ordinance.
- i. Vendors declined the request of the Inspector for recording of statements and declined to cooperate. The Company however had made a positive headway for possible recovery of the amount from these vendors.
- j. The Commission may appreciate that substantial recoveries from the vendors amounting Rs 201.38 million has been made and reported to the Inspectors.
- k. The Commission would concur that there has been no violation of Section 196 or Section 208 of the Ordinance. Sub-section (1) of the Section 196 of the Ordinance simply relates to the powers of the Directors on which there is no issue.



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- I. The Company has not made any investment in any associated company. Moreover, the payments made to the vendors are as part of additional capital expenditures required for the project already approved by the Board in its meeting held on April 26, 2016.
- m. DSC is undoubtedly an associated company of the Company but the Company has not made any investment in DSC. The payments to DSC were not paid on account of DSC but were paid to the vendors. These payments were not taken in the books of DSC as investment or loans. It may be noted that the vendors returned these payment amounting to Rs 201.38 million to the Company but not to the DSC. So the question of Section 208 does not arise in the instant matter.

7. Considering the reply of the Company, the hearing in the matter was fixed on March 28, 2018. The said hearing was attended by Mr. Jamal Iftikhar (CEO) and Mr. Zahid Iftikhar (Director) in person whereas Mr. Iqbal L. Bawaney, Mr. Salman I. Bawaney and Mr. Akbar Naqi attended the hearing proceedings as Authorized Representatives of Mr. Saad Zahid (Director), Mr. Mustafa Jamal Ifitkhar (Director), Mr. Mian Nasser Hayatt Maggo (Director), Mr. Amir Mahmood (Director), Mr. Naim Anwer (Director), Lt. General (R) Syed Parwez Shahid (Director) and Mr. Syed Adnan Ali Zaidi (Director). During the hearing proceedings, the Authorized Representatives and the appearing directors reiterated the viewpoint as submitted in written reply to the SCN.

8. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance, which states as under:

Section 492 of the Ordinance provides that:

"Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding [five]130 hundred thousand rupees."

Sub-section (1) of and Sub-section (2), clauses (e) and (j) of Section 196 of the Ordinance provides that:

"(1) The business of a company shall be managed by the directors, who may pay all expenses



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incurred in promoting and registering the company, and may exercise all such powers of the company as are not by this Ordinance, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.

(2) The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:

(e) to invest the funds of the company;

(j) to incur capital expenditure on any single item or dispose of a fixed asset in accordance with the limits as prescribed by the Commission from time to time."

- 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.

9. In terms of notification S.R.O 751(I)/2017 dated August 2, 2017, the power to adjudicate cases under Section 492, 196 and 208 of the Ordinance has been delegated to the Commissioner (Corporate Supervision Department).

10. I have gone through the fact of the case, reply to the SCN submitted and arguments put forth during the hearing. I would like to mention here that the inspector during his course of investigation pointed out payments aggregating Rs 210.568 million, which were not made to parties disclosed in the books of accounts of the Company. It is a matter of serious concern that the parties disclosed in the books of accounts of the Company differs with the actual beneficiaries. The plea of the respondents that vendors operate in unorganized sector and payments to these vendor were routed through different accounts is itself an admission wrongdoing.

11. The Inspector in his report categorically mentioned that he sent the confirmation letters to Rousing Engineering Services (Pvt) Ltd for confirmation as to the content and also to the bank for confirmation of particulars of transferee for various payments against the purchases. However, Rousing Engineering Services (Pvt) Ltd denied providing said services. Moreover, United Bank Limited confirmed that the actual beneficiary of the funds are different from the one stated in the financial record of the company. Beside this, though the ledger supported by invoices from United



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traders and Ahmad & Sons shows purchase of two cranes of Rs 95 million, Inspector reported that the status and number of cranes procured and erected as at May 2009 are same as of today. Inspector also reported that although the payments were made against invoice no. 1025 dated January 19, 2016 against Overhead cranes mechanical rail, over hauling, electrical bush bar, wiring and drive system supply, erection and commissioning to United Trader, however work has not been verified physically during visit at mill. Contrary to the ledger record, the work order issued and the payments made to Rousing Engineering, it was revealed that in-house staff performed all rehabilitation; overhauling and pre-commission activities.

12. With regard to the payment made to DSC, I am of the considered view that the Company advanced Rs 45 million to DSC, which is investment in term of Section 208 of the Ordinance. Section 208 clearly stipulates that investment includes loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit. The Company made these payments to DSC, without seeking approval from the shareholders of the Company, and it is construed as an investment in terms of Section 208 of the Ordinance. This fact is also established from the act of the Company that upon persuasion of the Commission and the Inspector, promptly recovered these advances from these vendors.

13. I would like to mention here that the provisions of Section 196 of the Ordinance empowers directors to manage the affairs of Company in the best interest of the shareholders. Directors are under a statutory as well as fiduciary duty to act within their powers, which are derived from the Ordinance as well as from the articles. Acts of directors, which are beyond the company's powers or in contravention of the Ordinance are likely to be ultra vires. The directors of the Company are morally, ethically and professionally duty bound to act in the best interest of the shareholders and be loyal to the Company. Fiduciary duties apply to directors to take the decision in the best interest of the Company. Any breach of fiduciary duty will attract a penal provision as stated in the Ordinance.

14. In view of the aforesaid, I am of the considered view that the Respondents misstated in the books of accounts regarding the payments made to the third parties and did not match with the actual beneficiaries. Furthermore, I am also of the view that that the Respondent violated the provision of Sub-section (1) and Sub-section 2(e) and 2(j) of Section 196 and Section 208 of the Ordinance. The Respondents are therefore are liable to be penalized under the relevant provisions



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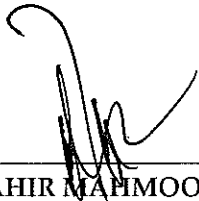
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of the Ordinance. In this regard, I, in term of Sub-section (4) of Section 196, Sub-section (3) of Section 208 and Section 492 of the Ordinance, hereby impose a penalty of Rs. 50,000 (Rupees fifty thousand only) under Section 196 of the Ordinance, Rs.150,000 (Rupees one hundred fifty thousand only) under Section 208 of the Ordinance and Rs 200,000 (Rupees two hundred thousand only) under Section 196 of the Ordinance on each of the Respondents. The aggregate penalty on each of the respondents is in the following manner:

S.No.	Name of Respondent	Penalty (Rs)
1	Mr. Jamal Iftikhar, CEO	400,000
2	Mr. Zahid Iftikhar, Director	400,000
3	Mr. Saad Zahid, Director	400,000
4	Mr. Mustafa Jamal Ifitkhar, Director	400,000
5	Mr. Mian Nasser Hayatt Maggo, Director	400,000
6	Mr. Amir Mahmood, Director	400,000
7	Mr. Naim Anwer, Director	400,000
8	Lt. General (R) Syed Parwez Shahid	400,000
9	Syed Adnan Ali Zaidi	400,000
	Total	3,600,000

The aforesaid fine 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 fine, 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 the Respondent in their personal capacity; therefore, they are required to pay the said amount from personal resources.


TAHIR MAHMOOD
Commissioner
Corporate Supervision Department

Announced:
May 7, 2018
Islamabad