



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/434/2017-618 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 AND SECTION 196 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 Company issued Prospectus dated September 28, 2007 to elicit public subscription of its shares and raised Rs. 275 million from general public. The Company in its Prospectus stated that:

- a) Annual production capacity of the Company is 350,000 tons of steel rebar per annum;
- b) 98% of the machinery (i.e. imported and local) has been installed at site;
- c) Cold commissioning of different systems are already in progress (in July 2007 and will continue for August 2007);
- d) Overhead cranes, electricity connection and lighting system had been installed;
- e) Commercial operations shall start from October 2007; and
- f) Total project cost amounting to Rs. 1,650 million, with working capital requirement for the project being Rs. 15 million, shall be financed through combination of debt and equity. Therein, Rs. 275 million raised from the initial public offer (*"IPO"*) will be utilized to repay the bridge finance and that no further capital outlay/investment was foreseen.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

3. The Company failed to commence commercial production and an investigation into affairs of the Company under Section 265 of the Ordinance was initiated through an Order of the Commission dated May 11, 2016 to ascertain reasons for non-commencement of commercial production. The investigation report stated that:

- a) The vendor of the plant, NBP restructuring plan and evaluation report provided by Company to NBP state the annual capacity of 300,000 rather than 350,000 tons of re-bars;
- b) The Company had misstated regarding installation of cranes required for designed capacity, electricity connection and lightening system;
- c) Despite an outlay of Rs.319 million on capital work in progress, certain mechanical and electrical equipment were missing;
- d) The Company gave a wrong perception of apparent trial production (August 2007) and that too prior to date of Prospectus;
- e) Merely 3 months after issuance of Prospectus, the Company in its directors' report for period ending December 31, 2007 stated that Rs.694 million is additionally required to achieve commercial production; and
- f) Management failed to ascertain the capital cost of project and working capital requirements, which resulted in project's failure to commence commercial productions in accordance with the plans as disclosed in the Prospectus.

4. In view of above, it was observed that the Company misstated in the Prospectus, gave a deceptive perception of trial production and failed to commence operations. Further, the directors failed to carryout due diligence with respect to valuation and financial planning of project, financing of project, disclosures made in Prospectus and utilization of funds raised through IPO. Therefore, the directors failed to exercise their powers and perform their fiduciary duties of prudently managing the affairs of the Company and protecting the interest of the shareholders.

5. In this regard, a SCN dated October 10, 2017 was issue to the Respondents under the provisions of Section 492 and Sub-section (1) and clauses (e) and (j) of Sub-section (2), of Section 196 of the Ordinance 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.

7th Floor, NIC Building, 63-Jinnah Avenue
Islamabad, Pakistan

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

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

- a. With regard to annual capacity of the plant, the Commission's understanding is not clear that the Company had understated the annual capacity of plant at 300,000 Tons instead of 350,000 Tons. It was stated that the findings of the inspector in this regard is totally incorrect. The maximum design capacity of the plant as mentioned in the brochure of the vendor namely VIA POMNI as based on 7200 plant operational hours based on 300 working days, stating the same, which is applicable to European countries. In Pakistan, plant operates for more than 300 days a year i.e. for 330 days on the average, because of lesser number of holidays. The total production capacity in Pakistan comes to about 369,000 tons per year and to be conservative and considering unforeseen circumstances, the management of DSL had declared only 350,000 Tons per annum. Therefore, it is not correct that the management of DSL had overstated the production capacity of the plant.
- b. With regard to the installation of cranes, it was stated that the allegation of the inspector are utterly false and misleading. The Company has categorically refuted the allegations made in the Investigation Report. It may be noted that approval granted for 10.6 MW load through 132 KV grid station along with route for transmission towers, concreting for 10 poles out of 14 poles had been completed. All the material including all 14 transmission line towers had been issued from LESCO store and had been delivered at Company site. The Company had tried to negotiate the right of way from the owner of the land for installation of 4 poles. However, the owners considering the absolute need of the Company asked for the exorbitant price and took false and illegal measure to enforce their demand. However, Company then opted for the redesigning of the route for these poles and used the land of irrigation department. This caused loss of around four month time but the issue was finally resolved and 132 KVA grid energization has been fully achieved and Company is now calibrating and fine tuning its plant and machinery under trial productions to start the commercial operations by the end of the year 2017. It may be noted



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

- that neither the Company, nor its sponsors can be held responsible for delays caused by elements not visualized and beyond their control.
- c. As to the lightening system mentioned in the SCN, we had already clarified that the same was wholly separate from the periphery lightening appearing as outstanding. Periphery lighting itself was of little importance as it consisted of streetlights and Boundary lightening, and which had already been done to a large extent. The main issue that was being focused upon was the Plant, which had already been fully equipped with the lightening required for production.
- d. With regard to the outlay of Rs.319 million on capital work in progress, the Commission's observation in Para 4(c) of the SCN is not clear. All books were and are complete and duly maintained and full value of the property, plant and equipment is being shown. The Capital Work-In-Progress was not made a part of the fixed assets register at the time of audit, as this process is normally done at the year-end so that the register is updated accordingly. Further, we categorically state that there were no missing machinery or equipment at the plant. The whole plant and machinery is intact and only the upgradations and certain minor changes were required which is the part of the restructuring and rehabilitation process as already stated. The start of commercial production will confirm and proof of our assertion and we shall invite the officers of the respectable Commission to come and visit the plant and observe it working with their own eyes as soon as we start commercial operations.
- e. With regard to the wrong perception of apparent trial production (August 2007), it is vehemently denied that the Company gave a wrong perception of apparent trial production and that too to a date prior to the date of Prospectus. Misrepresentation or misstatement in a Prospectus would occur only if there was a deliberate act or omission to disclose material facts, with a view to deceive the public investors, which is not the case here and neither there is any evidence to that effect, nor are there any evidence of malafide intent or bad faith on part of the management. It is well settled that any statements, forecasts,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

opinions, etc. made in a Prospectus must be true on the date of issue of the Prospectus and up to the date of the issuance of shares to the public, pursuant to such Prospectus. This does not mean that financial plans, timelines, costs estimations, opinions, etc. must be taken as guarantees. Changed circumstances, adverse economic and political developments, internal and external unprecedented events affecting the timelines, estimated financial outlay and feasibility not visualized at the time of issuance of Prospectus and other such factors beyond the control of the Directors hampering the process of achieving trial production and commercial production and affecting costs estimates and financial plans and such other plans, etc. can by no stretch of imagination be considered as misstatements or misrepresentations on part of the Directors. If a contrary view is taken, then no entrepreneurs would dare to go for public offerings in respect of their companies.

- f. With regard to matter that merely 3 months after issuance of Prospectus, the Company in its directors' report for period ending December 31, 2007 stated that Rs.694 million is additionally required to be achieve commercial production, it may be noted that the assertions of the Management in the half-yearly report ended December 31, 2007 were based on the actual requirement of the funds due to various unforeseen factors, and after accounting for the rejections by the Faysal Bank Limited ("FEL") for the limits already approved for Letter of Credit etc., which could not have been visualized by any entrepreneur and were elements beyond the control of the Directors and Management of DSL. Bridge financing could be partially settled, but this was due to increased costs not visualized by the Management, whereas costs on electrical lines, gas connections, working capital requirement had increased manifold because various obstacles and impediments mentioned above, coupled with galloping inflation.
- g. At one time FBL failed to disburse the required amounts for the working capital, the Directors were left with no choice but to try to raise the amount from other sources, and consequently, the requirement of the further amount was mentioned in the Directors' report and the mandate was given to the Bank Alfalah/National Bank of Pakistan to arrange a total debt swap with some



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 5 -

other bank/financial institution so that the short fall can be arranged. Bank default can by no stretch of imagination be considered as Project failure or *misstatement* on part of the sponsors. It must further be appreciated that there can be no hard and fast rule in estimating any project cost and requirements for meeting commissioning and commencement of commercial operations, including power and gas connections which keep on increasing from time to time, whereas right of way and passage upto the Plant.

- h. It is therefore incorrect that the management failed to ascertain the capital cost of the Project and working requirements. It is also not correct that the Project is a failure. Commercial production is now expected to take place by 31st December 2017.
- i. The Company sternly refuted the allegations contained in Paras 5, 6 and 7 of the SCN. In particular, it was vehemently denied that there was any misstatement or deceptive perception in the Prospectus or that the Directors failed to carry out due diligence with regard to valuation, financial planning, financing of Projects, disclosures made in the Prospectus and utilization of funds raised through IPO and/or that the Directors *prima facie* failed to exercise their powers and perform their fiduciary duties mentioned at random in the SCN without any basis or evidence.

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:

7th Floor, NIC Building, 63-Jinnah Avenue
Islamabad, Pakistan

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 6 -

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."

Subsection (1) of and subsection (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 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."

9. In terms of notification S.R.O 751(I)/2017 dated August 2, 2017, the power to adjudicated 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 facts of the case, reply to the SCN submitted and arguments put forth during the hearing. I would like to mention here that Prospectus is a formal legal document that provides details about an investment offering for sale to the public. A Prospectus contains the facts that an investor needs to make a well-informed investment decision. It can be said that a Prospectus is a disclosure document that describes a financial security for potential buyers. The Prospectus provides the basis on which the intending investor decides whether or not they should subscribe the share or debentures. Therefore law required unstinted disclosure of various matters through Prospectus and forbids omission of any terms and conditions of contract contained therein. The issuer is bound to state everything with accuracy. It is therefore essential that the information statutorily needing disclosure be stated fully and precisely so that the investing public, which is ignorant of the present and future prospects of the Company, may get all the information, which is likely to affect the public mind. As discussed, the information given in the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 7 -

Prospectus provided the basis of decision of the investor therefore all the facts mentioned therein must be truthful, factual and fair, in letter and spirit.

11. In the instant case, the Company is found to be non-compliant with regard to the provision of information stated in the Prospectus, which are misleading and deceptive to the general public, as discussed below:

- The Company has provided incorrect statement regarding the annual capacity of the plant as 350,000 Ton instead of 300,000 Tons. This fact can be verified from the report of vendor namely VIA POMINI who precisely mentioned the maximum designed capacity of 300,000 tons of steel rebar per annum. The inspector has categorically reported that the CEO also confirmed that the maximum capacity of the plant is 300,000 tons per annum. I have also gone through the Report prepared by the National Bank of Pakistan, which is also certified by the Company. At page 6 of the Report, while discussing the history of the project, it is mentioned that annual capacity of the plant is 300,000 ton per annum.
- It is observed that the Company misstated regarding the installation of cranes, electricity connection and lightening system in the Prospectus. Contrary to the claim of the Company, out of three cranes only one crane was lying in the billet bay area for erection. Furthermore, the claim of the Company regarding the lightening system and electricity connection were also found incorrect.
- It is observed that the management in the Prospectus mentioned that Approx. 98% of the machinery has been installed at site. Cold commission of the different system in the mill are already in progress in July 2007 and will continue for August 2007. Moreover, it was stated that commercial production is going to start in October 2007. These were the major milestones, which are shown as achievement of the Company in 2007. I have noted with concern that at the time of investigation i.e. after the span of 9 years of issuance of Prospectus, the Company failed to install number of mechanical, electrical equipment despite the huge financial outlay of Rs 319 million. This shows that the status of installation of plant and equipment at the time of issuance of Prospectus was false, misleading and deceptive. Furthermore, the Company gave a wrong perception with regard to the trial production date. It was mentioned that the production will start in October 2007 however till 2016 there was no sign of production.
- A Prospectus is a well thought out document, which contains all the information about the project, including but not limited to its financial outlay. It is matter of concern that the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 8 -

Company shortly after issuance of its Prospectus, in December 2007 raised an additional capital expenditure of Rs. 694 million. Moreover, the Prospectus stated the requirement of the working capital as Rs 15 million. In this regard, I have observed that in National Bank of Pakistan report on restructuring of the Company, Rs 1 billion was shown as requirement for working capital after commissioning. This depicts that the Company had not provided the accurate detail regarding the capital expenditure in the Prospectus and failed to carry out due diligence w.r.t. to valuation and financial planning of project, financing of project, disclosures made in Prospectus and utilization of funds raised through IPO.

12. 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.

13. In view of the aforesaid, I am of the considered view that the Respondents misstated in the Prospectus issued by the Company regarding the above stated facts. I am therefore of the view that the Respondents violated the provision of Subsection (1) and Subsection 2(e) and 2(j) of Section 196 and Section 492 of the Ordinance. The Respondents are liable to be penalized under the relevant provisions of the Ordinance. In this regard, I, in term of Sub-section (4) of the Section 196 and Section 492 of the Ordinance, hereby impose a penalty of Rs 50,000 (Rupees fifty thousand only) each on Respondent under Section 196 of the Ordinance and Rs.250,000 (Rupees two hundred fifty thousand only) on each of the Respondents under section 492 of the Ordinance. The aggregate penalty on each of the respondents is in the following manner:



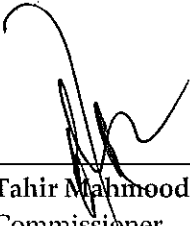
SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 9 -

| S.No. | Name of Respondent | Penalty (Rs) |
|-------|--|--------------|
| 1 | Mr. Jamal Iftikhar, CEO | 300,000 |
| 2 | Mr. Zahid Iftikhar, Director | 300,000 |
| 3 | Mr. Saad Zahid, Director | 300,000 |
| 4 | Mr. Mustafa Jamal Ifitkhar, Director | 300,000 |
| 5 | Mr. Mian Nasser Hayatt Maggo, Director | 300,000 |
| 6 | Mr. Amir Mahmood, Director | 300,000 |
| 7 | Mr. Naim Anwer, Director | 300,000 |
| 8 | Lt. General (R) Syed Parwez Shahid | 300,000 |
| 9 | Syed Adnan Ali Zaidi | 300,000 |
| | Total | 2,700,000 |

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