

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Gulshan Spinning Mills Limited

Dates of Hearings

January 21, 2020, February 3, 2020, October 2, 2020, November 27, 2020, December 15, 2020, January 21, 2021, February 12, 2021, March 15, 2021, March 18, 2021, April 14, 2021, June 1, 2021, June 9, 2021

Order-Redacted Version

Order dated August 20, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Gulshan Spinning Mills Limited. Relevant details are given as hereunder:

Nature	Details						
1. Date of Action	Show Cause Notice dated April 19, 2019						
2. Name of Company	Gulshan Spinning Mills Limited						
3. Name of Individual*	The proceedings were initiated against Board of Directors of the Company.						
4. Nature of Offence	<p>The following amounts were disclosed as 'Others' under 'loans and advances', under Note 12 to the Accounts for the year ended June 30, 2015:</p> <p style="text-align: right;"><i>(Rupees in Millions)</i></p> <table border="1"><thead><tr><th>Particulars</th><th>2016</th><th>2015</th></tr></thead><tbody><tr><td><i>Loans and Advances - unsecured and considered good - Others</i></td><td style="text-align: center;">45.8</td><td style="text-align: center;">45.3</td></tr></tbody></table> <p>Moreover, note 24 to the annual audited financial statements of ***, the associated company, for the year 2017 disclosed the aforesaid amount of Rs. 45.8 million as due to the Company, a related party, under 'Trade and Other Payables'. The Company and *** have common directorship, hence, are associated companies in terms of Section 2(2) of the Companies Ordinance, 1984 (the Ordinance). The Accounts disclose that the aforesaid amount of advance extended by the Company to *** has been stagnant since the year 2015 and the Company had not been charging any interest/mark-up on the aforesaid amount. The above, <i>prima facie</i>, attracted contravention of sub-section (1) of Section 208 of the Ordinance as the aforesaid extended amounts fall under the category of abnormal trade credit and tantamount to investment made in terms of Section 208 of the Ordinance, made by the Company without the authority of a special</p>	Particulars	2016	2015	<i>Loans and Advances - unsecured and considered good - Others</i>	45.8	45.3
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<i>Loans and Advances - unsecured and considered good - Others</i>	45.8	45.3					

	<p>resolution. Hence, proceedings under Sections 208 read with Section 476 of the Ordinance were initiated against the Respondents.</p>
<p>5. Action Taken</p>	<p>Key findings are given as hereunder:</p> <p>I have gone through the facts of the case, written submissions by the Respondents and arguments made by the Authorized Representative during the hearing including the submissions by the Respondents that the amounts due from associated company i.e. *** was recovered and balance remained nil as of June 30, 2021. In this regard, it is stated that in terms of sub-section 2 of Section 2 of the Ordinance; the Company and *** are associated companies due to common directorship. The Company extended an amount of Rs. 45.3 million to associated company which was due since the year 2015 and the Company was not charging any mark-up on the said amount. The Respondents' view that the said amount was extended to associated company i.e. ***, as normal trade credit, and was to meet common expenses; is not tenable. It is important to mention that in terms of note 12 to the Accounts 2015 and 2016, the said amount was extended to associated company as "Loan or Advances". Besides as of June 30, 2016, total loans and advances were Rs. 86.771 million and out of the said amount Rs. 45.841 million i.e. 53% were due from associated ***. The Company, being a loss-making company, provided its funds for an extended time period to the associated company without the authority of members and no mark-up was being charged there against.</p> <p>I am therefore of the view that the aforesaid amount falls within the definition of investment in terms of Section 208 of the Ordinance. The Respondents have extended the said amount to the associated company without the authority of special resolution and no markup was being charged as envisaged under the law. I am of the view that the Respondents have violated the provisions of Section 208 of the Ordinance.</p> <p>Keeping in view the aforesaid non-compliance, I, in exercise of powers under sub-section 3 of Section 208 of the Ordinance, hereby, impose a penalty of Rs.100,000/- (Rupees One Hundred Thousand) on ***, and Rs. 25,000/- (Rupees Twenty Five Thousand) on each *** (total aggregate penalty of Rs. 250,000/-).</p> <p>The Respondents are, hereby, directed to deposit the aforesaid amount of penalties in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under law will be initiated for recovery of the fines as arrears of land revenue. It may also be noted that the said penalties are being imposed on the Respondents in their personal capacity; therefore, the Respondents are required to pay the said amount from personal resources.</p>

	Nothing in this Order may be deemed to prejudice the operation of any provision of the Act/Ordinance providing for imposition of penalties in respect of any default, omission, violation of the Act/Ordinance.
6. Penalty Imposed	Rs. 250,000/-
7. Current Status of Order	The penalty was not deposited. Appeal was filed.