



Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division

7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad

Before Rashid Sadiq, Executive Director

In the matter of
M/S PAK GERMAN PREFAB LIMITED

Number and date of notice	19(607) CF/ISS/2001 dated January 31, 2002
Date of final hearing	June 26, 2002
Present	Mr. Asad Ali Shah, FCA

ORDER UNDER SUB-SECTION (5) OF SECTION 208 READ WITH SECTION
476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the Directors of M/S Pak German Prefab Limited (hereinafter called “the Company”) for violating the provisions of Section 208 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The relevant facts of this case, briefly stated, are that the balance sheet and profit and loss account for the year ended June 30, 2001 of the Company received at the Commission pursuant to the provisions of Sub-section (5) of Section 233 of the Ordinance were examined and it was transpired that the Company had provided loans amounting to Rupees 2.791 million to its associated undertaking namely M/s. Dadabhoy Energy Supply Company Limited (hereinafter called as the “associated company”).



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3. It was also observed that the equity of the Company as per its audited accounts for the year ended June 30, 2001 was negative to the tune of Rs. 44.607 million, detailed hereunder:

	<i>Rupees in millions</i>
Issued, subscribed and paid up capital	14.025
Accumulated Loss	(58.092)
Equity	<u>(44.067)</u>

The aforesaid loan, therefore, was explicitly higher than the permissible statutory limit of 30% of the paid up capital plus free reserves of the investing company under the provisions of Section 208 of the Ordinance. This was a *prima facie* violation of the proviso (a) of Sub-section (1) of Section 208 of the Ordinance. Moreover, the Company had also not received any return on the amount advanced to the associated company and thereby *prima facie* had contravened the provisions of Clause (b) of proviso to Sub-section (1) of Section 208 of the Ordinance.

4. Consequently, a notice dated January 31, 2002 was issued to the Chief Executive and Directors of the Company to show cause as to why penal action may not be taken against them under Sub-section (5) of Section 208 of the Ordinance for violating the mandatory provisions of the Ordinance.

5. The Company responded to the aforesaid notice vide its letter dated February 15, 2002. In order to provide adequate opportunity to the Directors, the case was fixed a number of times, the last being June 26, 2002. Mr. Asad Ali Shah, FCA represented the directors in this case. It was averred in the written submissions and at the time of hearing of this case that the Company has not made any advances to the associated company and the amount of Rs. 2.791 million represented balance receivable from the associated company on account of construction contract executed by the company for the associated company having a total value of Rs. 10.00 Million. In order to substantiate this assertion, a copy of the construction contract and copy of the ledger account of the associated



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company was also placed on record of the Commission. Subsequently, the Company has recovered the balance amount and the same stands substantiated from the copies of the current account of the associated company in the books of the Company.

6. In view of the fact that the Company's main activity is to manufacture and install prefabricated elements of different civil works and after careful consideration of the submission made by the Directors, it is clear that the amount receivable from the associated company as appearing in the accounts of the Company for the year ended June 30, 2001 was the balance amount in respect of the construction contract executed for the associated company. Moreover, the said amount has also been recovered subsequently. In view of the above discussion, I am of the view that the Company has not violated the provisions of Section 208 of the Ordinance. The proceedings initiated against the Directors of the Company, therefore, are hereby dropped.

7. Before parting with this Order, I would like to make an observation. All the Directors of both the companies are common. In the circumstances, the Board of Director, it appears, was not competent to approve the construction contract, as all the Directors *prima facie* were interested in the said contract in terms of Section 214 of the Ordinance. The Office, therefore, is directed to look into this aspect of the transaction and take appropriate necessary action under the relevant provisions of the Ordinance.

RASHID SADIQ

Executive Director (Enforcement and Monitoring)

Announced
January 02, 2003
ISLAMABAD