

NO. 19(608)/CF/ISS/92
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Monitoring & Enforcement Division)
State Life Building, 7-Blue Area,
Islamabad

An information was received from Karachi Stock Exchange that Asim Textile Mills Limited a listed company, has booked a loss of Rs. 27.805 million during the year ended on 30.09.1998 on disposal of land which carried book value of Rs.67.805 million but was sold at a prices of Rs. 40 million to one of company's creditors namely Faysal Bank Limited. It was further informed that the company did not obtain approval for disposal of land in general meeting of its shareholders as required by Section 196(3) of the Companies Ordinance, 1984. The matter of not obtaining shareholders approval was raised by SECP with the company which took the plea that the subject land did not form a sizable part as envisages in Section 196(a) ibid and Company's explanation was considered satisfactory. As land was sold to a creditor bank to settle its dues, it was felt that there was no problem with the sale of land and the loss on sale could be due to something wrong when land had been purchased by the company.

2. The company was accordingly asked to provide information about the followings:-

- (i) Copies of the purchase agreement showing the exact date and rate along with names of the persons from whom the land sold was purchased.
- (ii) The objective of purchasing the land and details of income derived there from till the date of its sale.
- (iii) The reason of loss in sale of land.

- (iv) Copy of the minutes of the meeting of Board of Directors, in which decision was taken to purchase the land in question.

3. The company has replied through its letter No. ATM/303/2000 dated 26th January, 2000 and the General Manager Finance/Company Secretary has explained that the management of the company was changed in April, 1994 through Faysal Bank Limited and at the time of change of management, the "Purchase Agreement" of the said land was not handed over to the new management. However, a resolution of Board of Directors dated 08.06.1993 was available in the record of the company which indicates that the purpose of purchase of the said land was to confiscate the land given as security in respect of advances to one of the associated company namely Aizad Beverage Industries (Pvt). Limited. It was further explained that subject land was un-remunerative, lying idle and was of no use to the company. The company tried to sell this land but there were no buyers. The company insisted upon Faysal Bank Limited through whom the project was purchased to take back the land from the company and adjust long-term loans. The price of Rs. 40 million was agreed with the Faysal Bank Ltd., in these circumstances, resulting into a loss of Rs. 27.805 million to the company.

4. A perusal of the copy of the minutes of the board of directors meeting held on 01-06-1993 (provided alongwith the Secretary's letter dated 26-01-2000) indicates that the meeting was held under the Chairmanship of Ch. Muhammad Nazir Ahmed, the then Chairman of the company. In that meeting Mr. Shahid Nazir, the then director, informed the board of directors that the company had made advances to Aizad Beverage Industries (Pvt) Limited from time to time under the authority of the Resolution, under Section 208 of the Companies Ordinance, 1984 and pursuant to that, an agreement was also executed on Jan 30, 1992

whereby the company agreed to make advances to the extent of Rs. 70 million to the said associated undertaking with mark-up @23% per annum and the said associated company in return, had undertaken to secure the loan against its immovable property. It has been further stated in the minutes that on having been asked as to the repayment of advance, the borrowers had offered for sale of its land to satisfy the loan. The board considered the matter and agreed to purchase the land and passed the resolution as follows:-

“Resolved that the proposal for the purchase of land measuring 302 Kanals 14 Marlas situated in Chak No. 194/RB, Tehsil Jaranwala District Faisalabad is hereby approved for a total consideration of Rs. 67,804,800/- (Rupees sixty seven million eight hundred four thousand & eight hundred only) against adjustment of Rs. 67,200,000/- (Rupees sixty seven million, two hundred thousand only) already advanced to the seller. Accordingly, payment of Rs. 604, 800/- (Rupees six hundred four thousand and eight hundred only) be made to the Seller.”

5. While the minutes of the said meeting are totally silent as to the matter as to how the price of the land was settled, the resolution indicates that after adjustment of dues of Rs. 67.200 million, a further amount of Rs. 6,04,800/- was paid. So far as the consideration for purchase of land is concerned, this appears to have been separately determined about which the minutes are totally silent.

6. On an enquiry from companies Registration Office, Faisalabad, it was shocking to note that the said associated undertaking i.e Aizad Beverage Industries (Pvt.) Limited was owned by the sponsor/directors of Asim Textile Mills Limited i.e., Ch. Muhammad Nazir Ahmed, Mr. Shahid

Nazir and Mr. Zahid Nazir. This company (Aizad Beverage Industries Limited) had four directors which included these three persons and the fourth director of that company namely Mrs. Nasim Akhtar was again wife of Ch. Muhammad Nazir Ahmed. In view of this, it is only a fabricated story that there were some disputes/problems/hindrances in recovering the advance due to which land had to be purchased/confiscated as the "Seller" of the land were none else but the sponsor director of Asim Textile Mills Limited themselves. In other words, in this case the sellers and buyers of land were the same parties. In this manner, very daringly the directors of Asim Textile Mills Limited., which were also directors of the Aizad Beverage Industries (Pvt) Limited., transferred to the later company, the land held by the associated company at a price escalation of which stands proved as it could not fetch even the same price after the passage of five years. The land, as has been reported by the present management was unremunerative, lying idle and was of no use to the company. The company which raised funds amounting to Rs. 40 million from public in the year 1991 for meeting its public working capital requirements and for completion of the project advanced nearly the total capital so raised, (Rs.80 million including sponsors contribution) to a privately held associated undertaking and then squared up the advance by purchasing the idle land situated at distance of about five kilometers from mills premises of Asim Textile Mills at a price at which it could not resold. This is naked corporate crime which needs to be dealt with by iron hands. The ex-Directors have very bluntly siphoned out funds raised through share floatation in the year 1991. The directors did not even disclose their interest in the transaction in boards meeting as required by Section 216 ibid which is evident from the minutes of meeting of the board of directors dated 08-06-1993 and attracts action under Section 217 of the Companies Ordinance which deals with the matter of directors lacking

fiduciary behavior. The annual accounts published by the company also do not disclose the transaction adequately. While the proceedings may be started for all the violations of law, the circumstances justify that directions under Section 472 of the Companies Ordinance, 1984 are given to the directors of the company on one hand to recover from the ex-directors who arranged this fraudulent transaction, the amount of loss suffered ultimately by the company and on the other hand directions under Section 472 read with Section 493 of the Companies Ordinance, 1984 to the ex-directors namely; Ch. Muhammad Nazir Ahmad, Mr. Shahid Nazir, and Mr. Zahid Nazir to deposit into the company's account, the amount of loss i.e. Rs. 27.805 million (the difference between sale and purchase price of the said land) suffered by the company on this transaction. Notice under Section 472 read with Section 493 be issued immediately.

(M. Zafar – ul – Haq Hijazi)
Commissioner (Enforcement)

Place: Islamabad
Dated: 04-02-2000