

NO. 19(622)/CF/ISS/91
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Monitoring & Enforcement Division)
State Life Building, 7-Blue Area,
Islamabad

Subject: **ORDER TO ISSUE NOTICE UNDER SECTION 472 READ WITH SECTION 208 OF THE COMPANIES ORDINANCE, 1984.**

The examination of the published financial accounts of the company for the year ended 30-06-1999, revealed that M/s. Dewan Salman Fibres Limited had made an advance of Rs.50 million in the year 1996 to Dewan Farooq Petrochemicals Ltd., as associated public (unlisted) company against future issue of share capital. The said advance was made on the basis of the special resolution passed in the annual general meeting of the company held on 31.01.1996. The statement under Section 160(1)(b) of the Companies Ordinance, 1984 as published in the annual accounts ending on 30.06.1995 stated that the company will make an initial investment of Rs.50 million in Dewan Farooq Petrochemicals Limited and that the board of directors of the company feel that the investment in the DFPL will be safe, secure, profitable, prestigious and beneficial to the company.

2. The statement under Section 160(1)(b) of the Ordinance as published was ambiguous as it did not indicate even whether the proposed investment was in equity or a loan whereas Section 160(1)(b) requires that in case of special business material facts concerning such business will be disclosed for information of shareholders. This intention of law was subsequently elaborated through SRO Notification

634(1)98- dated 30.07.1996 explaining that in case of equity investment, name of investee company, nature and extent of investment, price at which shares will be purchase, period for which investment will be made, the purpose and the benefits likely to accrue to etc., are required to be disclosed. In case of loans it was explained through said SRO that rate of interest to be charged, period of loan, terms of repayment and benefits likely to accrue to the investing company and the shareholders are required to be disclosed.

3. Since the statement made under Section 160(1)(b) was not in full compliance to law and even shares were not issued against this amount advanced during the last 4 years, a notice under Section 160(1)(b) read with section 208 ibid. was issued to the Chief Executive of the company requiring him to explain that why penalty as provided under sub-section 8(a) of section 160 and Section 208(5) of the Companies Ordinance, 1984 may not be imposed on each of the directors responsible for the default and further as to why they should not be held jointly and severally responsible and may be asked to reimburse to the company the loss sustained by it on this transaction. It may be mentioned here that provision (b) to Section 208(1) categorically states that the return on investment in the form of loan shall not be less than the borrowing cost of the company.

4. The company vide its letter dated January 31, 2000 explained that as it was a major producer of Polyester Staple Fibre (PSF) in Pakistan it planned to enter production of PTA to meet its own and other polyester manufacturer's requirements, hence it made an investment of

Rs. 50 million in Dewan Farooq Petrochemicals Limited for future issue of equity for which an I./C for US\$ 300 million was also established on January 30, 1999. However, due to down turn in PTA business, the company decided to delay the said project. It was further stated that a "special resolution" in this regard was passed under Section 208 of the Companies Ordinance, 1984 which in their opinion properly disclosed the material facts concerning to the said special business. It was further contended that SRO Notification No. 634(1)/96- explaining the disclosure requirements was dated 30th July, 1996 whereas the company had passed the said resolution on 30th June, 1996. The representative of the company, Mr. Farrukh S. Ansari, Chief Financial Officer also appeared before me on 29.02.2000 and repeated the same arguments. He could not satisfy me as to why the amount advanced to the associated company should not be treated as loan as shares were not issued against the investment in last 4 years and why the return on the investment not be recovered from the investee company in terms of provision (b) of Section 208(1) ibid.

5. In view of the position stated above a notice may be immediately issued to the company under Section 472 of the Companies Ordinance, 1984 with the direction to the management of Dewan Salman Fibres Limited to recover return from the investee company i.e. Dewan Salman Petrochemicals Ltd., at a rate which should not be less than its own borrowing cost, from the date when the advance was made till such time, the investee company issues shares to Dewan Salman Fibres Limited or return this advance. The company may be further directed to make compliance to notice within a period of 30 days of the notice. In case company promptly

complies the directions, it may be understood that the violation of the proviso (b) to Section 208(1) was not intentional on the part of Chief Executive/directors and proceeding under Section 208 under notice dated January 17, 2000 may be dropped.

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

Place: Islamabad
Dated: 03-03-2000