



Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, 63, Jinnah Avenue, Blue Area
[ISLAMABAD]

Before Rashid Sadiq, Executive Director

In the matter of
M/S SITARA ENERGY LIMITED

Number and date of notice	EMD/233/412/2002 dated April 5, 2000
Date of final hearing	April 15, 2002
Present on final hearing	Mr. M. Yousuf Adil, FCA Mian Javed Iqbal, Director
Date of Order	April 11, 2003

Order

In the Matter of Donations Given by the Company

This Order will dispose of the notice issued to M/S Sitara Energy Limited (hereinafter called the “Company”) under Sub-section (1) of Section 472 of the Companies Ordinance, 1984 (the “Ordinance”) for giving huge donations during the years 1996 to 1999.



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The Company

2. The Company was incorporated on November 07, 1991 under the Companies Ordinance, 1984. The shares of the Company are listed on all the three Stock Exchanges in Pakistan. The authorized share capital of the Company is Rs. 300 million divided into 30 million ordinary shares of Rs. 10 each. The paid up share capital of the Company is Rs. 190.920 million divided into 19.092 million ordinary shares of Rs. 10 each. The object for which the Company was established and its powers are contained in its Memorandum and Articles of Association. The Company is principally engaged in the generation and distribution of electricity. The power generation facility of the Company is located at 33 K.M. Sheikhpura Road, Tehsil Jaranwala, District Faisalabad in the Province of Punjab. Registered Office of the Company is located at 601-602 Business Centre, Mumtaz Hasan Road, Karachi. As per pattern of shareholding annexed to the Directors' Report for the year ended June 30, 2002, the Company has 1,435 shareholders comprising individuals, joint stock companies, public and private financial institutions, insurance companies, modarabas and mutual funds. The sponsors including associated undertakings, directors and their spouses and minor childrens holds about 52% of the total share capital of the Company. This indicates presence of substantial public interest in the shares of the Company.



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Background Facts

3. In order to fully appreciate the matter in hand, it is necessary to glance the background facts of this case. The Enforcement and Monitoring Division has conducted examination of the balance sheets, profit and loss accounts and auditors and directors reports sent to the Commission under Sub-section (5) of Section 233 of the Ordinance and it was revealed that the Company had paid huge donations out of its profits during the financial years ended June 1996 to June 1999. It was also noticed that the major beneficiary of these donations was M/S Aziz Fatima Trust (hereinafter referred to as the “AF Trust”), wherein six directors including the Chief Executive of the Company were the trustees. The detail of donations made to the AF Trust during 1996 to 1999 is as under:

Year	Donation during the year Rupees	Donation to AF Trust Rupees
1996	2,683,500	2,666,000
1997	9,840,098	4,674,403
1998	6,609,179	6,209,543
1999	38,487,202	37,023,000
	57,619,979	50,572,946



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4. In view of the above circumstances, it was considered necessary to go into further details in this matter. The Enforcement and Monitoring Division, therefore, asked the Company vide its letter dated January 13, 2000 to justify the huge donations given to AF Trust. Through the said letter, the Company was also asked to provide the Minutes of the proceedings of the Board of Directors' meetings in which the aforesaid donations were considered and approved. In response, the Company vide its letter dated February 07, 2000 has made a number of submissions to justify the donations given to AF Trust. These submissions, briefly stated, are as under:

- The Company was making good profits and adequately remunerated its shareholders, which is evident from the distribution of cash dividends @ 30%, 25%, 35% and 60% to the shareholders during the years 1996, 1997, 1998 and 1999 respectively.
- Donation is a purely charitable act and is not prohibited under the Ordinance.
- No pecuniary interest of the directors was involved in making donations to AF Trust.
- AF Trust was running two hospitals in Faisalabad namely, M/S Aziz Fatima Trust Hospital and M/s Ghafoor Bashir Children and Maternity Hospital. Both these hospitals have most modern facilities and were providing medical facilities to the poor and needy people. Such



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facilities are not available in Government or private hospitals in Faisalabad.

- Donations were made to AF Trust to uplift, upgrade and modernize the medical facilities which hitherto were not available to the people of Faisalabad and surrounding areas.

5. It was noticed from the detail of donations that all the remittances of donations to the AF Trust were not through cheque but huge amounts were paid in cash and includes such items as Sadqa Expenses (Goats), marriage of poor girls etc., The directors also did not fix any amount for donations to AF Trust. The Memorandum of Association of the Company was also perused, however, nothing could be found authorizing the Company to make donations. The minutes of the proceedings of the meeting of the Board of Directors held on February 23, 1979 were also provided by the Company, the perusal of which revealed that instead of regular agenda item, the matter of giving donations was considered and approved by the directors under “any other business”. It was also noticed that all the directors including Chief Executive of the Company who were trustees of the AF Trust also attended the said meeting. As these minutes are the most relevant document in this case, therefore, the same are, to the extent relevant, reproduced hereunder:



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“Resolved That an adequate amount, out of profits of the Company, be donated to Aziz Fatima Trust for expansion, uplift, modernization and upgrading of the existing medical and surgical facilities at Aziz Fatima Trust Hospital and Ghafoor Bashir Children and Maternity Hospital, Faisalabad.”

“Further Resolved That Haji Bashir and Mian Javed Iqbal, Chairman and Chief Executive, respectively of the Company be and are hereby authorized and empowered singly and/or jointly to donate to Aziz Fatima Trust, Faisalabad and to any other person/institution any sum or sums from time to time, as they deem proper but not exceeding the amount as is admissible under the Income Tax Ordinance, 1979.”

6. While the Enforcement and Monitoring Division was working on this matter, a reference was received from the Karachi Stock Exchange vide its letter dated February 21, 2000 drawing attention of the Commission towards exceptionally high amount of donations given by the Company and pointing out that this financial irregularity may be investigated.

7. In view of the aforesaid circumstances and the fact that the quantum of donations was very high i.e, in the year 1999, it worked out to be Rs. 2 per share, the Enforcement and Monitoring Division was of the view that the donations given by



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the Company to the AF Trust were not in accordance with the objects of the Company contained in its Memorandum of Association. Huge donations paid in cash were also a cause for concern. Moreover, a major part of the donations were given to a trust in which majority of the directors of the Company had interest as Trustees. Further, the decision to give donations to AF Trust was made by the directors who themselves were trustees of the AF Trust.

Notice

8. A notice dated April 05, 2000 under Sub-section (1) of Section 472 read with Section 496 of the Ordinance was issued to the directors including the Chief Executive of the Company *inter alia* stating that the donations were made without any legal authority in the absence of any express provision in the Memorandum of Association of the Company.

9. The aforesaid notice was served on the following directors requiring them to undo the irregularity by depositing the total sum of donations given by the Company during the financial years 1996 to 1999 amounting to Rs. 57,619,979/- in the Company's account from their personal resources within 30 days.

1. Haji Bashir Ahmed

Chairman



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|------------------------|-----------------|
| 2. Mr. Javed Iqbal | Chief Executive |
| 3. Mr. Muhammad Adrees | Director |
| 4. Mr. Tariq Mahmood | Director |
| 5. Mr. Muhammad Anis | Director |
| 6. Mr. Imran Ghafoor | Director |

Submissions of the Company

10. In order to provide an ample opportunity to the Company and its directors, the case was heard a number of times. On May, 30, 2000, Mr. Muhamamd Akram Sheikh, Senior Advocate, Supreme Court attended the hearing on behalf of the Company and its directors and advanced his arguments. He also filed written submissions at the time of hearing. Hearing was also held on August 03, 2000 on which date the learned counsel of the Company desired that the Commission should wait for the outcome of the reference made to the ICAP. Subsequently, the hearing was held on November 08, 2000 when the learned counsel for the Company made a similar submission. The hearing, therefore, was adjourned till January 2001 to wait for the outcome of the reference sent by the Commission to ICAP. After waiting for a considerable period of time, the final hearing of this case was held on April 11, 2003, which was attended by Mian Javed Iqbal, Chief Executive of the Company along with Mr. M. Yousuf Adil, FCA. On the date of final hearing no fresh submissions were made and reliance was placed on the arguments already submitted by the



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Company in its replies and during the course of previous hearings. The main contention of the Company was that the entire case against the Company and its directors was raised on the ground that the Memorandum of Association of the Company does not contain any express power to give donations whereas the scheme of the Ordinance requires only the business objects to be built in the Memorandum and not the powers. It was also submitted that the hospitals managed under the Trust charged only five rupees as fee whereas medicines were provided free of cost to the poor patients. As nominal fee was charged in the hospitals, therefore, revenue was not even sufficient to meet the operating expenses of the hospitals not to speak of up-gradation and modernization of facilities. It was also explained that as per record 130,000 patients were treated in the O.P.D. in the year 2001. He further submitted that the Government and the general public of the area had always appreciated the Company's contribution towards this welfare activity for the uplift of the community.

Subsequent Actions by the Company

11. Subsequently, the Company took two actions, the first was to amend its Memorandum of Association by insertion of a new sub-clause in the object clause to give express power to the Company to support and subscribe towards charities and contributions. This was done by passing a special resolution by the shareholders on December 03, 2000. The second action pertained to the passing of resolution by the



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shareholders to give validity to the donations made by the Company during the years 1996 to 1999.

Consideration of the Submissions of the Company

12. I have taken into consideration the submissions, made in writing as well as those at the time of hearings of this case and have also perused the relevant documents and the legal provisions applicable in this case. The argument that making of donations was not an object and, therefore, the directors were at liberty to pay donations of any amount is not a justifiable ground because of the simple reason that even if it is so assumed, the fact remains that donation is expenditure and all expenditure incurred by the Company should be for the purpose of the Company's business. In my opinion, even if the Memorandum of a company contains express power to subscribe to charities, this expenditure must be for the purpose of the Company's business. The companies, therefore, do not have powers to make unlimited donations. Moreover, the expenditure incurred must be in accordance with the object of the Company. It has also been noted that no preferential treatment was give by hospitals run by the AF Trust to the patients who are employees of the Company. In this case although, I am convinced that the donations of the Company were motivated by corporate philanthropy for the poor people of this country, however, the directors of the Company have not exercised due care and caution while



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approving donations to the AF Trust. There are six directors on the Board of the Company who are trustees of the AF Trust and they were all present in the meeting when the Board of Directors approved the arrangement for the donations. They should have abstained, as they were interested directors by virtue of being the trustees of the Trust. In such a case, there was no quorum and the matter of donations had to be approved by the shareholders. This unfortunately was not done. Thus, there is a serious issue of breach of fiduciary duties by the directors, which they owed to the Company and its shareholders. Irrespective of the fact that shareholders subsequently have ratified these donations and the Memorandum of Association was also amended to include express powers to make donations and charities, the fact remains that these donations were made when no such approval was in place. Also huge donations paid in cash and approving the resolution casually while considering any other business are also acts, which are against the standard practice and procedures.

Conclusion

13. The provision of basic facilities to the people of this country is the responsibility of the Government. Pakistan being a less developed country, the Government does not have the requisite sources to provide adequate facilities to the people. Realizing the meager resources at the disposal of the Government, the non-



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governmental organizations and companies often come forward and play their role in the socio-economic uplift of the poor masses of this country. By making liberal donations, the business community is in fact supplementing the Government's welfare activities. Such efforts, therefore, need encouragement. In the context of the Company, however, there were certain issues, which needed consideration. Such issues has been identified and discussed in the preceding paragraph. The donations given to the AF Trust, as stated by the Learned Counsel and the Chief Executive of the Company in successive hearings, have been utilized for the social welfare and uplift of the community. This decision was also motivated by the company's realization that it is a part of the community and it should work not only for its own benefits but also for the benefits of the society as a whole. I have also noted that the Company has been earning sizeable profits in the past and the donations were paid out of such profits. While making donations, the Company also did not forget its shareholders, who were regularly remunerated during all these years.

Order

14. In view of the above discussion, I take a lenient view by ignoring the irregularities committed by the Company while approving and giving donations. I hope that the directors would react positively and would ensure that the irregularities committed in the past are not repeated.



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Auditors

15. As regards to the responsibility of the Auditors, I am not called upon in this order to decide this issue as the matter is already pending with ICAP on a reference from the Commission. I hope that ICAP would be able to make an early decision in this matter, which has already taken a considerable period of time. A copy of this order may be sent to President, ICAP for his information.

RASHID SADIQ
Executive Director (Enforcement & Monitoring)

Announced
April 11, 2003
Islamabad