



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Enforcement & Monitoring Division)

Before M. Zafar- ul-Haq Hijazi, Commissioner (E&M)

In the matter of

M/S FATEH SPORTS WEAR LIMITED

Number and date of notice	No.19 (699) CF/ISS/2001-579-585 Dated November 27, 2001
Date of final hearing	June 18, 2003
Present	Mr. Rauf Alam, Chief Executive Mr. Saeed Alam, Director Mr. Arshad M. Tayebaly, Advocate

ORDER

Under Sub-Section (5) of Section 208 of the Companies Ordinance, 1984

This order will dispose of the proceedings initiated against M/s. Fateh Sports Wear Limited (the “Company”) under Section 208 of the Companies Ordinance, 1984 (the “Ordinance”) for making investments in its associated undertakings contrary to the provisions of the Ordinance.

2. The facts of this case, briefly are that annual audited accounts of the Company for the year ended June 30, 2001 were examined in the Commission and it was noticed that the Company has given advances of Rs.39.246 millions to its associated undertakings which constituted 64% of paid up capital and free reserves of the Company and no markup had been charged on these advances. Thus, the provisions of Section 208 of the Ordinance were violated.



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3. In view of the above, a show cause notice dated November 27, 2001 was issued by Executive Director (E&M) to the directors including Chief Executive of the Company calling upon to show cause as to why penalty as provided in Sub-section (5) of Section 208 read with Section 476 of the Ordinance may not be imposed and loss, sustained by the Company in consequence of the said investments may not be recovered from directors. In response to the aforesaid show cause notice, the Chief Executive of the Company vide letter dated January 02, 2002 informed that the advances pertain to the period 1992 and were made with the approval of the shareholders in annual General Meeting held on June 29, 1992 and that the proviso (a) and (b) to Sub-section (1) of Section 208 of the Ordinance are not applicable to this case as these provisos were added subsequently through Finance Act, 1995. It was also contended that Fateh Industries Limited was established as subsidiary of the Company to cater the high demand of footwear in former U.S.S.R. The said Company has been closed since January 1998 and its staff had been laid off. It was also stated that these advances have subsequently been recovered. It was also requested that default, if any, may be condoned.

4. During the currency of these proceedings the Company filed a suit before Honorable Sind High Court on April 18, 2002 against the proceedings initiated by the Commission under the provisions of Section 208 of the Ordinance. The Honorable Sind High Court vide its order dated April 24, 2003 dismissed the aforesaid suit observing that vexatious suit was filed with the sole purpose of dragging the official defendants in frivolous litigations to cause undue harassment. In the said Order, the Commission was directed to dispose of the matter on merits within a period of sixty (60) days from the date



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of the judgment, after providing fair opportunity of hearing to the plaintiffs. The case was, therefore, fixed on May 14, 2003 before Executive Director (E&M). At the request of the Company, the case was adjourned to May 29, 2003. In the meantime, the Commission vide Notification No.S.R.O. 413(1)/2003 dated May 14, 2003 delegated the powers and function under Section 208 of the Ordinance to the undersigned. On May 24, 2003 a letter was received from legal Counsel of the Company namely Mohsinaly Tayebaly & Co. Advocates and Legal Consultants requesting for further extension in time for hearing, which was granted. The case was, thus, finally heard on June 18, 2003 when Mr. Rauf Alam, Director, Mr. Saeed Alam, Director and Mr. Arshad M. Tayebaly, Advocate appeared and argued the case. During the hearing, the contentions and arguments submitted previously were reiterated. It was further stated that the company has also obtained loans/advances from M/s. Fateh Industries Limited an associated undertaking on which no return was paid by the Company. Lastly, it was requested by Chief Executive of the company, that default in complying the requirements of Section 208 of the Ordinance should be condoned and lenient view should be taken as the said loans have been recovered by now and he has also given an undertaking in writing to recover “reasonable return” on these advances. He filed an undertaking to this effect during the proceeding which has been placed on record.

5. The provisions of law pertaining to investments in associated undertakings are embodied in Section 208 of the Ordinance. This Section of the Ordinance as amended through Finance Act, 1995 categorically prohibits the provisions of free loans/advances to associated companies and provides that the return on investments/advances shall not be



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less than the borrowing cost of the investing company. So borrowing cost of investing company has been made a benchmark for the determination of return to be received on loans/advances to associated companies. Advancing of loans without any return amounts to passing of undue benefit to the associated company, which is a loss to the investing company and its shareholders. The law, therefore, does not envisage loans to associated companies without return. Amendments introduced in this section through Finance Act, 1995 further require authority of a special resolution of the investing company before making any investments in associated undertaking and in case of investment exceeding 30 percent of paid up capital and reserves, prior approval of the Commission is required. The annual accounts of the company show that advances of Rs. 0.424 million outstanding in the name of associated undertakings as on June 30, 1995 rose to Rs. 9.706 million on June 30, 1996, then to Rs. 59.827 million on June 30, 1997 and then further to Rs. 100.291 million on June 30, 1998. The outstanding advances, however, started decreasing from June 30, 1999. The management of the company never bothered to get the approval of the shareholders by way of special resolution (and approval of the Commission when advances exceeded 30 percent of the capital and free reserves in the year 1997) as required through amendments in Section 208 in 1995.

6. The Chief Executive Mr. Rauf Alam and Director, Mr. Saeed Alam who appeared before me have admitted the default and requested a lenient view as the said advances have been recovered by the company subsequently. They have also undertaken to recover reasonable return and requested that the default should be condoned. Enforcement and Monitoring Division of the Commission estimates that loss of approximately Rs. 50



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million has been suffered by the Company by not charging return on investments in associated companies.

7. I have considered the arguments and request of the Chief Executive, the director and their Counsel and the records put before me and reached to the conclusion that the Chief Executive and directors of the company have made themselves liable to fine under Sub-section (5) of Section 208 of the Ordinance, by making default in complying with the requirements of this section, knowingly and willfully. However, keeping in view that the principal amount of advances/loans has been recovered by the company so far and the directors have given undertaking to recover return not less than borrowing cost of the Company, I take a lenient view of the default and impose a fine of Rs. 30,000 (Rupees thirty thousand only) on each of the followings directors including Chief Executive of the Company:-

1. Mr. Rauf Alam, Chief Executive,
2. Mr. Aftab Alam, Director,
3. Mr. Saeed Alam, Director,
4. Mr. Muhammad Mohsin, Director,
5. Mrs. Jamila Alam, Director
6. Mr. Muhammad Naveed, Director,
7. Mrs. Najma Roshan, Director,

8. The Chief Executive and other directors of the Company are called upon to submit a certificate from statutory auditors of the Company with 30 days indicating that return calculated in accordance with the provisions of proviso (b) of Sub-section (1) of Section 208 of the Ordinance has been accounted for in the books of accounts of the Company.



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The Chief Executive and directors are further called upon to recover the return from associated undertaking within a reasonable period.

9. The directors including Chief Executive of the Company are directed to deposit the fine as indicated above within 30 days of the receipt of this order.

M.ZAFAR- UL-HAQ HIJAZI
Commissioner (Enforcement and Monitoring)

Announced
June 19, 2003
ISLAMABAD