

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 DADABHOY CEMENT INDUSTRIES LIMITED

Number and date of notice	19(762) CF/ISS/2001 dated September 04, 2001
Date of final hearing	June 26, 2002
Present	Mr. M. Yousaf Adil, FCA Mr. Asad Ali Shah, FCA Mr. Abdul Samad, ACA

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

This order will dispose of the proceedings initiated against the Chief Executive of M/S Dadabhoy Cement Industries Limited (hereinafter called “Dadabhoy Cement”) for violating the provisions of Section 208 of the Companies Ordinance, 1984 (the “Ordinance”). In order to appreciate the issues raised in the show cause notice and the arguments of Dadabhoy Cement, it would be necessary to look at the relevant background facts of this case.

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2. Dadabhoy Cement is a public limited listed company incorporated on August 09, 1979 having authorized and paid up share capital of Rs. 600 million and Rs. 398.688 million respectively, as per its latest audited Balance Sheet for the year ended June 30, 2001. Dadabhoy Cement is engaged in the production and sale of cement.

3. The position of equity of Dadabhoy Cement, its profits and distribution of dividends for the years 1996 to 2001 are as under:

(R u p e e s i n '000')

Description	2001	2000	1999	1998	1997	*1996
Paid up capital	398,688	398,688	398,688	398,688	398,688	398,688
Capital reserves	33,224	33,224	33,224	33,224	33,224	33,224
Revenue reserves	0	0	90,000	90,000	90,000	90,000
Acc. Profit/(Loss)	38,944	9,242	(115,755)	(117,452)	(131,445)	6,551
Total equity	470,856	441,154	406,157	404,460	390,467	528,463
Net profit / (loss)	29,702	54,931	5,213	18,995	(137,996)	68,740
EPS	0.74	1.38	0.04	.35	(3.46)	1.72
Dividends	NIL	5%	NIL	NIL	NIL	10%

- 18 months period

4. The Board of Directors of Dadabhoy Cement, as per its Form 29 (Particulars of Directors) dated June 02, 1999, filed with Company Registration Office, Karachi comprises of the following individuals

- i) Mr. Muhammad Hussain Dadabhoy
- ii) Ms. Razia Hussain Dadabhoy
- iii) Mr. Muhammad Amin Dadabhoy
- iv) Mrs. Humaira Dadabhoy

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- v) Mr. Fazal Karim Dadabhoy
- vi) Mrs. Yasmeen Dadabhoy
- vii) Mr. Naseemuddin

5. The above named directors were elected in the Annual General Meeting held on May 29, 1999. The directors appointed Mr. Mohammad Amin Dadabhoy as Chief Executive of Dadabhoy Cement for a term of three years commencing from June 02, 1999.

6. The Commission conducted an examination of the balance sheet and profit & loss account (the "Accounts") of Dadabhoy Cement for the year ended June 30, 2000, received under Sub-section (5) of Section 233 of the Ordinance, which revealed investments of Rs. 133.364 million made by Dadabhoy Cement in its associated undertakings, the detail whereof is as follows:

	<i>Rupees in "000"</i>
<i>EQUITY INVESTMENTS</i>	
Dadabhoy Energy Supply Company Limited	50,000
Dadabhoy Sack Limited	<u>21,326</u>
	<u>71,326</u>
<i>LOANS AND ADVANCES</i>	
Dadabhoy Sack Limited	30,643
Dadabhoy Trading Corporation (Pvt) Limited	21,231
Dadabhoy Construction and Technologies (Pvt) Limited	3,901
Pak German Prefabs Limited	<u>6,263</u>
	<u>62,038</u>
TOTAL INVESTMENTS	<u>133,364</u>

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7. The paid up capital plus free reserves of Dadabhoy Cement as per its Balance Sheet as of June 30, 2000 stood at Rs. 407.930 million. This figure would have declined substantially had the provisions for mark up/interest on loans been made in the accounts by Dadabhoy Cement, as qualified by its auditors in their audit report dated November 22, 2000. The aforesaid investments, therefore, were 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. Moreover, the said investments increased from Rs. 87.141 million as appearing in the Audited Accounts of Dadabhoy Cement for the year ended June 30, 1999, meaning thereby that an amount of Rs. 46.223 million was invested during the year ended June 30, 2000. This was a *prima facie* violation of the proviso (a) of Sub-section (1) of Section 208 of the Ordinance.

8. Auditors of Dadabhoy Cement namely, M/S Sidat Hyder Qamar & Co. Chartered Accountants have drawn attention of its members in their audit report signed by them on November 22, 2000 towards the aforesaid investments in the following manner:

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“b(iii) the business conducted, investments made and the expenditure incurred during the year were in accordance with the objects of the Company except for the fact that the Company has made advances as referred to in note 19.1 and 19.2 to the accounts contrary to provisions of the Companies Ordinance, 1984. However, such advances have been realized/adjusted subsequent to balance sheet date;”

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9. The aforesaid qualification of the auditors disclosed that the advances made by Dadabhoy Cement to its associated undertakings were contrary to the provisions of the Ordinance. This also indicated that the said advances had been realized/adjusted subsequent to the balance sheet date. It would, however, be seen later on in this Order that these advances were not fully realized/adjusted till the date of signing of the audit report by the auditors.

10. Note no. 19.1 and 19.2 of the Accounts give the detail of advances to associated undertakings of Dadabhoy Cement. Since these are the subject of auditors' qualification and the main issue in this case, these are, therefore, reproduced hereunder:

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“19.1 The maximum amount due from associated undertakings at the end of any month was Rs. 30.643 (1999: Rs. 15.802) million.”

“19.2 The maximum aggregate amount due from associated undertakings at the end of any month was Rs. 31.395 (1999: Rs. 0.013) million.

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11. The Directors' Report attached to the Accounts under Section 236 of the Ordinance suffered from legal infirmity as it did not provide any

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information/explanation with regard to the Auditors' observation as required under the aforesaid provisions of the Ordinance. The failure of the directors to comment on this very important issue deprived the members from information essential for them to appreciate the state of affairs of Dadabhoy Cement.

12. It was also discovered from the perusal of the Accounts that Dadabhoy Cement has not charged any mark up on advances provided to its associated undertakings. This again was a *prima facie* violation of proviso (b) of Sub-section (1) of Section 208 of the Ordinance. Subsequent inquiries further revealed that investments were made in the associated undertakings without the authority of a Special Resolution, which is a compulsory requirement under Sub-section (1) of Section 208 of the Ordinance.

13. In view of the foregoing, it appeared to the Commission that investments of Dadabhoy Cement in its associated undertakings were made without complying with the requirements of Section 208 of the Ordinance. Moreover, Dadabhoy Cement has suffered losses because no return was received on these investments. These investments, therefore, appeared to have been prejudicial to the interest of Dadabhoy Cement and its shareholders. Moreover, the directors have *prima facie* breached their fiduciary duties towards Dadabhoy Cement and its shareholders by placing funds at the disposal of their associated concerns, the return wherefrom was not received, which has the effect of passing the benefit to these associated concerns at the cost of the shareholders of Dadabhoy Cement. It was, therefore, considered necessary to ascertain the extent of violations committed by Dadabhoy Cement and loss sustained in consequence of these investments, which were made without complying with the requirements of Section 208 of the Ordinance.

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14. It was in the above circumstances that a notice dated September 04, 2001 was issued to the Chief Executive of Dadabhoy Cement highlighting the violations of Section 208 of the Ordinance. The Chief Executive was also called upon to appear in person or through authorized representative for hearing of this case on September 13, 2001.

15. The reply to the aforesaid show cause notice was received from Dadabhoy Cement vide its letter dated September 07, 2001. Thereafter, in order to provide ample opportunity to Dadabhoy Cement to advance arguments in support of its contentions contained in the reply to the show cause notice, the case was heard a number of times, the final date being June 26, 2002. Mr. M. Yousaf Adil, FCA, and Mr. Asad Ali Shah, FCA of M/S M. Yousaf Adil Saleem & Co, Chartered Accountants and Mr. Abdul Samad, General Manager Finance represented Dadabhoy Cement and its Chief Executive in these proceedings. They also made written submissions during the course of hearings.

16. In the written submissions as well as verbal arguments at the time of hearings, the following contentions were raised:

- i) Investments in the share capital of Dadabhoy Energy Supply Company Limited and Dadabhoy Sack Limited were made in 1996 after obtaining approval of shareholders in the Annual General Meeting.
- ii) Advances were given to Dadabhoy Sack Limited against supplies of paper bags. However, the auditors considered these

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advances on the higher side. Accordingly, on the advise of the auditors, the advances were subsequently recovered from Dadabhoy Sack Limited.

- iii) Advances to other associated companies were provided against supply of materials and other items required for expansion and conversion of coal firing system. However, these projects could not start in time and the delay was occurred. On the observation of the Auditors, these advances were also subsequently recovered.
- iv) The amount receivable from Dadabhoy Sack Limited was for the purpose of “normal trade credit”. Dadabhoy Cement has been purchasing paper bags from Dadabhoy Sack Limited since last several years under properly executed agreements. 29,273,400 paper bags were purchased during the last five years worth Rs. 383 million approximately. The advance payments were against such supplies and being normal trade advances they did not attract the provisions of Section 208 of the Companies Ordinance, 1984. Dadabhoy Cement has also made advance payments to another company (not an associated undertaking) supplying paper bags, viz, M/s Pakistan Papersack Corporation Limited. As such the advance payments to M/s Dadabhoy Sack Limited were in accordance with normal trade practices, hence Dadabhoy Cement did not deem them as advances under Section 208 of the Ordinance and therefore, did not charge any mark-up thereon.
- v) Dadabhoy Cement has not suffered any loss due to advances to its associated companies.

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17. In the context of aforesaid arguments, the following were the issues, which required determination:

- i) Whether advances provided by Dadabhoy Cement to its associated company, Dadabhoy Sack Limited are in the nature of 'normal trade credit'?
- ii) Whether Dadabhoy Cement complied with all the requirements of Section 208 of the Ordinance while making investments in its associated undertakings? i.e.
 - a) Special Resolution was passed before making investments.
 - b) Aggregate investment was not in excess of 30 % of the paid up capital plus free reserves of the investing company.
 - c) Return on investments in the form of loans was not less than the borrowing cost of the investing company.
- iii) Whether Dadabhoy Cement has suffered any loss due to investments in its associated undertakings?
- iv) Whether such investments have been prejudicial to the interest of its shareholders?
- v) Whether directors have breached fiduciary duties towards Dadabhoy Cement and its shareholders?
- vi) Whether these advances have been realized/adjusted subsequent to balance sheet date as reported by the auditors of the Company?

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18. After having considered the contentions of Dadabhoy Cement and the perusal of the documents and information, I hold on each issue as under:

- i) ***Whether advances provided by Dadabhoy Cement to its associated company, Dadabhoy Sack Limited are in the nature of ‘normal trade credit’?***

It has been contended that advances provided by Dadabhoy Cement to its associated company, Dadabhoy Sack Limited were for the purpose of ‘normal trade credit.’ In order to determine the nature of the advances made by Dadabhoy Cement to Dadabhoy Sack Limited, it would be useful to refer to the expression “investment” which has been defined in “Explanation” to Sub-section (1) of Section 208 of the Ordinance. For proper appreciation of the said provision, the same is reproduced as under:

“Explanation.---The expression “investment” shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.”

It is clearly stated in the aforesaid explanation that the term ‘investment’ includes all kinds of loans, advances, equity or any other amount excluding normal trade credit. Since the advances to associated companies are the main issue in this case, therefore, it is necessary at this stage to analyze the term ‘normal trade credit’ which could be of widest possible scope in legal usage, I am, however, of the view that the context in which these words had been used in the aforesaid provisions of law had limited meaning. In my opinion, the words ‘normal trade credit’ have been used to refer to the ‘credit’ allowed by

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the investing companies to its customers in the ordinary course of business. In the case of a company, which is in the business of extending credits on the basis of any of its major objects, the credit extended in the normal course of its business would also be considered as normal trade credit. On the other hand, the making of investment by a company, whose main object is to set up a textile mill or cement factory, in its associated undertakings, would not be considered as normal trade credit except the 'credit' allowed to them as a customer in the normal course of its business. This appears to be the clear intent of the aforesaid provisions of law. Considering the advances made by Dadabhoy Cement to Dadabhoy Sack Limited in the present proceedings, it is evident that Dadabhoy Cement has neither been a company having its major object to lend credit nor had it supplied to its associated companies any goods manufactured by it during the normal course of its business, the outstanding payment of which could be treated as 'normal trade credit.' Instead, Dadabhoy Cement has provided advances to Dadabhoy Sack Limited for supply of paper bags, material and other items. At this point, I also consider it necessary to look at the transactions of Dadabhoy Cement with Dadabhoy Sack Limited. These transactions were stated to have been entered into on the basis of several agreements executed between the said two companies. A perusal of these agreements revealed that the agreements stipulate the supply of paper bags by Dadabhoy Sack Limited to Dadabhoy Cement. The mode of payment for these supplies is contained in Clause 3 of these agreements, which state, "Payment will be made to supplier on advance basis as and when required by them." The statements of account of Dadabhoy Sack Limited in the books of Dadabhoy Cement indicate that the transaction between two companies mainly comprised of payments made by Dadabhoy Cement for various expenses on behalf of Dadabhoy Sack Limited and also advances made for purchase of paper bags. In the absence of any covenant in the aforesaid agreements for any fixed amount of advances and the mode of their

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adjustments, Dadabhoy Cement treated the said amounts as advances towards supplies of paper bags. The supplies made by Dadabhoy Sack Limited to Dadabhoy Cement, however, did not correspond with the amount of advances and were far less than the said advances. For instance, during the year ended June 30, 2001, average monthly advances amounted to Rs. 9.885 million whereas the supplies there against were only Rs.5.059 million per month. Obviously, the excess advances cannot be termed as normal trade credit unless it is the industry practice to sell their product (paper bags) on the basis of advance payments. On an enquiry, during the course of hearing, it was stated that there was no industry norm so far as the credit allowed to paper bag customers was concerned. It has, however, been brought to my notice that the paper bag manufacturers were not taking advances from their customers and instead allowing them credits on sales. Dadabhoy Cement has contended that they have made similar advances to another supplier, however, the documentary proof thereof was not placed before me to substantiate this contention. In the circumstances, the payments made by Dadabhoy Cement to Dadabhoy Sack Limited on day-to-day basis including payments for expenses apparently were intended to provide financial benefit to the associated company and cannot be treated as 'normal trade credit.' The contention of Dadabhoy Cement that they deemed these advances as normal trade credit and, therefore, did not charge any return thereon is not sustainable. As a result of the above discussion, I hold that advances made by Dadabhoy Cement to Dadabhoy Sack Limited were not in the nature of normal trade credit. I, therefore, treat them investments under Section 208 of the Ordinance. As regard to the advances to other associated companies, Dadabhoy Cement has admitted that advances provided to M/S Pak German Prefabs Limited, M/S Dadabhoy Construction Technologies (Private) Limited, M/S Dadabhoy Energy Supply Company Limited and M/S Dadabhoy Trading Corporation

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(Pvt) Limited were not in the nature of normal credit. It is, therefore, not considered necessary to deliberate on this issue for the purpose of this Order.

ii-a) Whether Special Resolution was passed before making investments?

Having discussed that the nature of advances made by Dadabhoy Cement to its associated undertakings are not in the nature of ‘normal trade credit’ I next come to the issue as to whether shareholders’ approval through ‘Special Resolution’ was obtained by Dadabhoy Cement for investments, both equity and advances, made in its associated companies. The relevant provisions of law for making investments in associated undertakings are contained in Sub-section (1) of Section 208 of the Ordinance, which make it compulsory to pass a Special Resolution for making any investment by a company in its associated companies or undertakings (prior to July 01, 1995, a resolution to be passed by 60% of the members present in person or by proxy was required). It is also one of the conditions that a statement of material facts including the nature and amount of the investment and terms and conditions attached thereto accompanies the notice of meeting in terms of S.R.O 634 (1)/96 replaced subsequently through another notification No. 865 dated December 06, 2001. These provisions of law are mandatory and no investment in associated companies could be made without following the laid down procedure. Dadabhoy Cement has contended that approval from shareholders was obtained in Extraordinary General Meeting held on June 29, 1995 for investing Rs. 50 million and Rs. 20 million in the shares of Dadabhoy Energy Supply Company Limited and Dadabhoy Sack Limited respectively. I have perused the minutes of the said meeting and the resolution passed for investments in M/s Dadabhoy Energy Supply Company Limited and M/s

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Dadabhoy Sack Limited. Against this approval, an investment of Rs 50 million was made in Dadabhoy Energy Supply Company Limited. Investments of Rs 18.980 million and Rs. 6.211 million were made in Dadabhoy Sack Limited during June 30, 1996 and 1997 respectively making a total investment of Rs. 25.191 million. This investment was brought down to Rs. 21.326 million as of June 30, 1998 by sale of investments valuing Rs. 3.865 million. The investment in Dadabhoy Sack Limited was in excess of approved limit by Rs 5.191 million as of June 30, 1997. It is still in excess of approved limit by Rs. 1.320 million. As regards to loans and advances provided to associated companies, Dadabhoy Cement has admitted that these investments were made without the authority of Special Resolution. I, therefore, hold that:

- i) Investments for purchase of shares of Dadabhoy Sack Limited over and above Rs. 20 million were made without the authority of a Special Resolution as required by Sub-section (1) of Section 208 of the Ordinance.

 - ii) Investments in the form of advances and loans to associated companies were made without the authority of a Special Resolution as required by Sub-section (1) of Section 208 of the Ordinance.
- ii-b) *Whether Investments made by Dadabhoy Cement in its associated undertakings are in excess of the prescribed limit?***

I now take up the issue of breach of statutory investment limit. The following figures of the Accounts of Dadabhoy Cement as on June 30, 2000 are relevant to determine this question:

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Description	Rupees in '000'
Paid up capital (PUC)	398,688
Accumulated Profit/(Loss)	9,242
PUC plus free reserves	407,930
Admissible limit-30%	122,379
Investments at year end	
Equity	71,326
Advances/loans	62,038
Total	133,364
% age of PUC & reserves	32.69%

According to the audit report dated November 22, 2000, the auditors have qualified their opinion because of several reasons including the non-provision of interest/mark up on loans in the accounts. Had the provisions, as aforesaid, been made in the accounts, the free reserves would have been negative and investments made so far by Dadabhoj Cement as a percentage of paid up capital and free reserves would have increased much more than 32.69%, as indicated in the above table. At this point, it is necessary to refer to the proviso (a) to Sub-section (1) of Section 208 of the Ordinance, which requires that

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“aggregate investments in associated companies, except a wholly owned subsidiary company, shall not exceed thirty percent of the paid up capital plus free reserves of the investing company at any point of time.”

UNQUOTE

It is abundantly clear from the above discussion that the investments of Dadabhoy Cement in its associated companies were in excess of the statutory permissible limit. I, therefore, hold that Dadabhoy Cement has violated the provisions of proviso (a) of Sub-section (1) of Section 208 of the Ordinance by making investment in excess of 30 % of its paid up plus free reserves.

ii-c) Lending at less than borrowing cost.

The next issue is return on investments in the form of advances/loans to associated undertakings. The proviso (b) to Sub-section (1) of Section 208 of the Ordinance being relevant, is reproduced hereunder:

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“the return on investment in the form of loan SHALL not be less than the borrowing cost of the investing company.”

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This provision of law is mandatory and a public company cannot make advances/loans to associated companies charging any return thereon at less than its borrowing cost. As stands admitted in the Accounts and at the time of hearings, Dadabhoy Cement has not received any return on loans/advances to associated companies. The names of these associated companies along with

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amounts of advances/loans outstanding at the end of financial years 1996 to 2001 and maximum outstanding during each year, are as under:

S #	Name of Company	1996	1997	1998	1999	2000	2001
1	Dadabhoy Sack -June 30		7,461	18,577	15,802	30,643	18,451
2	-Maximum		7,461	23,495	25,150	36,900	66,898
3	Pak German -June 30	8,227	9,957	16,815		6,263	
4	-Maximum	34,616	9,957	16,815		23,077	
5	Dadabhoy Const -June 30	625			13	3,901	
6	-Maximum	625			13	3901	
7	Dadabhoy Energy. June 30	1,344					
8	-Maximum	1344					
9	Dadabhoy Trading -June 30	25,278				21,231	
10	-Maximum	25,278				21,847	
11	Uni Bleaching -June 30	275					
12	-Maximum	325					
13	Total-June 30	35,749	17,418	35,392	15,815	62,038	18,451

Return on the aforesaid advances/loans should have been charged at not less than borrowing cost of Dadabhoy Cement. Return free advances by Dadabhoy Cement to its associated undertakings have the effect of siphoning off of the gains of its shareholders accruable on the aforesaid finances, to the associated companies. This is obviously unfair to the shareholders of investing company as benefit to the shareholders of the associated company was provided at the cost of the shareholders of the investing company. Had Dadabhoy Cement placed these funds in the market, it would have generated considerable income on these finances. I, therefore, hold that Dadabhoy Cement has violated the requirements of proviso (b) of Sub-section (1) of Section 208 of the Ordinance over a long period of time by not receiving return on its fund provided to its associated companies.

iii) Whether Dadabhoy Cement has suffered any loss due to investments in its associated undertakings?

As stands admitted that Dadabhoy Cement has not charged any return on advances/loans to its associated undertakings over a long period of time as required under mandatory provisions of the Ordinance. This undue advantage

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given to associated undertaking is a loss to Dadabhoy Cement and its shareholders and is an unwarranted benefit to the shareholders of associated undertakings. Dadabhoy Cement has resorted to borrowings for its own requirements and is incurring substantial cost on borrowed funds whereas no return was charged on funds extended to associated undertakings. For the forgoing, I am left with no doubt in holding that Dadabhoy Cement has suffered losses as a consequence of its investments in associated undertakings, which were made without complying with the requirements of Section 208 of the Ordinance.

iv) Whether investments by Dadabhoy Cement have been prejudicial to the interest of its shareholders?

Having discussed that Dadabhoy Cement has suffered loss on its investments in associated undertakings, there could be no other conclusion except that these investments have been prejudicial to the interest of its shareholders. The value of the shareholding of its members has diminished by providing return free advances to associated concerns. This, therefore, has seriously jeopardized the interest of its shareholders. Also the course of conduct of directors constitutes mismanagement of affairs, which again is prejudicial to the interest of the shareholders of Dadabhoy Cement.

v) Whether directors have breached fiduciary duties towards Dadabhoy Cement and its shareholders?

The directors owe fiduciary duties to the company they serve and its shareholders. The fiduciary must treat all the shareholders whether they are sponsors, promoters or the general public, fairly. Moreover, they must

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discharge their statutory obligations in good faith with fairness, morality and honesty. In the present case, the directors of Dadabhoy Cement are also the directors of its associated companies. As such they appeared on both side of the transactions. In such a situation, the directors, in my view, have not made a conscious decision. This conflict of interest has deprived the shareholders of Dadabhoy Cement of substantial benefits. The directors have also failed to exercise reasonable care to see that mandatory provisions of law are complied with. In view of the above discussion, I hold that the directors have breached their fiduciary duties, which they owed to Dadabhoy Cement and its shareholders.

vi) Whether the advances have been realized/adjusted subsequent to balance sheet date as reported by the auditors of Dadabhoy Cement?

The auditors of Dadabhoy Cement in their report have reported that the advances to associated companies have been realized/adjusted subsequent to balance sheet date. It was, therefore, necessary to peruse the subsequent statement of accounts of associated companies. This reveals that the recoveries from associated undertakings were partial and that Rs. 18.451 million were recoverable from M/s Dadabhoy Sack Limited as on June 30, 2001 whereas Rs. 63.148 million and Rs. 3.921 million were recoverable from Dadabhoy Sack Limited and Dadabhoy Construction & Technologies (Private) Limited respectively as on 22nd November 2000, the date of signing of auditors' report. The statement of auditors in their report, therefore, appears to be incorrect that these advances have been realized/adjusted subsequent to balance sheet date.

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19. Considering the conclusions drawn in the preceding paragraphs, I find that Dadabhoy Cement has contravened the provisions of Section 208 of the Ordinance as under:

- i) Making of investments in associated companies without the authority of Special Resolution.
- ii) Making investments in associated undertakings in excess of prescribed ceiling.
- iii) Making advances/loans to associated undertakings without any return thereon.

20. For the foregoing reasons, an action under Sub-section (5) of Section 208 read with Section 476 of the Ordinance has to be taken. This action becomes more important because of the responsibility put on the Commission under sub-section (6) of Section 20 of the Securities and Exchange Commission of Pakistan Ordinance, 1997 which requires that, in performing its functions and exercising its powers, the Commission, which is the Regulator, is to strive, among others, to maintain facilities and improve the performance of companies and securities markets, in the interest of commercial certainty, reducing business costs, and efficiency and development of the economy.

21. The Chief Executive and the directors have breached their fiduciary duty by providing unnecessary benefits to its associated undertakings where they are major shareholders and thereby acting against the interest of shareholders of Dadabhoy Cement. They did not exercise due care while

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providing advances to associated concerns. This clearly establishes that the Chief Executive and all the directors have purposefully and deliberately avoided to comply with the mandatory provisions of the Ordinance knowing well that they were duty bound to do so. The default, therefore, is considered deliberate and willful. The Chief Executive and the directors have, therefore, made themselves liable for fine as provided under Sub-section (5) of Section 208 of the Ordinance. Dadabhoy Cement has undertaken, during the course of final hearing, to recover the advances along with the mark-up thereon, which stated to have been recovered subsequently except Dadabhoy Sack Limited and also Rs. 25.654 million has been recovered from associated companies as return on advances, as follows:

<i>Name of Associated Company</i>	<i>Amount (Rs.)</i>
Dadabhoy Sack Limited	12,881,227
Pak German Prefabs Limited	7,895,981
Dadabhoy Construction Technologies (Pvt) Limited	578,015
Dadabhoy Energy Supply Company Limited	34,956
Dadabhoy Trading Corporation (Pvt) Limited	4,263,680
Total	25,653,859

In view of the substantial recovery of advances and return thereon as reported by Dadabhoy Cement, I am inclined to take a lenient view of the default and hereby impose of fine of Rs. 300,000/- (Rupees Three Hundred Thousands Only) on the Chief Executive of Dadabhoy Cement, who has been found mainly responsible for the violation of the mandatory provisions of the Ordinance.

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22. Dadabhoy Cement has recovered advances from all associated companies except Dadabhoy Sack, which as of June 30, 2001 were Rs. 18.451 million. This, according to Dadabhoy Cement, was equal to advances for three months purchases of paper bags from Dadabhoy Sack Limited. In order to secure that these advances (three-months supplies) were at arms' length, I hereby direct Dadabhoy Cement to provide this Commission, the industry norm prevalent in the Cement Industry duly certified by their auditors within one month of this Order. In case there is no industry norm for such advances, then Dadabhoy Cement shall recover the outstanding advances along with interest on the said three-month advances provided to Dadabhoy Sack Limited from 1997 onwards within a period of three months from the date of this Order. I also direct Dadabhoy Cement to recover the excess investment in shares amounting to Rs. 1.326 million made in Dadabhoy Sack Limited over and above the approved limit within a period of three months and submit a certificate of its auditors thereof within one month of the recovery. A certificate by the auditors for the return of Rs 25.654 million already recovered may also be submitted to this Commission within one month of the date of this Order.

23. Mr. Muhammad Amin Dadabhoy, the Chief Executive of Dadabhoy Cement is directed to deposit the fine amounting to Rs 300,000/- (Rupees three hundred thousands) in the following head of account within 30 days of the date of this order:

Account No. 10464-6
Habib Bank Limited
Habib Bank Plaza, I. I. Chundrigar Road,
KARACHI.

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division

24. Before parting with this Order, I would like to express my appreciation for the valuable assistance provided to me by Mr. M. Yousaf Adil, FCA and Mr. Asad Ali Shah, FCA of M/S M. Yousaf Adil Saleem & Co., Chartered Accountants, during the course of hearing of this case.

RASHID SADIQ

Executive Director (Enforcement and Monitoring)

Announced
August 12, 2002
ISLAMABAD