

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
NIC Building, Jinnah Avenue, Islamabad

IN THE MATTER OF
M/S United Distributors Pakistan Limited

No. and date of notice

No.19 (556) CF/ISS/2001
dated July 05, 2001

Date of final hearing

August 06, 2001

Present

1. Mr. Abdul Rahman Memon
2. Mr. S.M. Nasir Raza

ORDER UNDER SUB-SECTION (1) OF SECTION 472 OF THE
COMPANIES ORDINANCE, 1984

The facts leading to this case are that the annual accounts of *MIS United Distributors Pakistan Limited* (the "Company") for the year ended June 30, 2000 revealed that a sum of Rs. 39.765 million has been shown receivable by the Company from its associated company namely M/S International Brands (Private) Limited. It was indicated in Note 16.3 to the aforesaid accounts that the said amount receivable from the associated company, represented interest free current account balance.

2. While examining this issue, it was noticed that the auditors of the Company M/S Sidat Hyder Qamar & Co., Chartered Accountants in their report to the members on the aforesaid annual accounts, have observed that the said amount was in the nature of advances which were made to the associated company contrary to the provisions of the Companies Ordinance, 1984 (the "Ordinance").

3. Since the advances in question appeared to have been made in violation of Sub-Section (I) of Section 208 of the Ordinance and *prima-facie* attracted the provisions of Sub-Section (5) of Section 208 of the Ordinance, the Company was advised to provide copies of the current account ledger of the associated company for the year ended June 30, 2000 which were supplied by the company vide its letter dated July 02, 2001. Mr. Abdul Rahman Memon and Mr. S.M. Nasir Raza also appeared on the said date on behalf of the Company and contended that the balance of the associated company shown receivables in the accounts is in the nature of current account in which regular business transactions have been recorded. They also argued that the company has not given any cash advance or loan to the associated company during the year ended June 30, 2000.

4. On scrutiny of the current account of the associated company, it was revealed that the proceeds of encashment of the company's deposits and accrued profit thereon amounting to Rs. 92.597 million were adjusted by Crescent Investment Bank Limited against the indebtedness of the associated company. The Company has debited the account of the associated company with the said amount, which has converted the credit balance of Rs. 49.325 million payable to the associated company into receivables of Rs. 43.272 million as on November 15, 1999. The company has also purchased stocks from the associated company amounting to Rs. 43.739 million, which was subsequently returned back to the associated company. No

agreement, documentary evidence or information was provided regarding the purchase of stocks and the reasons for the return of the said stocks. It was evident that the company tried to cover the receivables of the associated company through the transaction of purchase of stocks. However, at the close of financial year, the said stocks were shown as returned. The balance of Rs. 43.272 million due from associated company was, however, reduced to Rs. 39.765 million as on June 30, 2000 through receipts of several small amounts during the period from November 15, 1999 to June 30, 2000.

5. From the above facts, as placed on record, it was convincingly established that the amount receivables from the associated company is not in the nature of "normal trade credit" and the same falls under "investment" as provided under Sub-section (1) of Section 208 of the Ordinance and the said investment was made in violation of the aforesaid provisions of the Ordinance. A notice dated *July 05, 2001* under Sub-section (1) of Section 472 of Ordinance was, therefore, served on the Company calling upon to make good the default within 30 days by arranging the return of Rs. 39.765 million alongwith mark up thereon, which shall not be less than borrowing cost of the Company, by recovering it from the associated company.

6. In response to the aforesaid notice, the Company vide its letter dated *July 06, 2001* stated that:

- i) the company has never provided advances to associated company as stated in the auditors report.
- ii) the company has not paid any specific cash advance or loan to the associated undertaking during the year.
- iii) the stocks were returned from the dealers due to near expiry period.
- iv) auditors report states that advances were made to the associated undertaking, while Note 16.3 to the accounts states that the amount represented interest free current account balance under the head other receivables.
- v) The policy of non-recovery of interest on current account balances was consistently applied and remained unchanged from previous years. However, the auditors have changed their opinion, as the same issue was not qualified in previous year.

In the aforesaid letter, the Company has assured that the amount due from associated company would be recovered alongwith mark up.

Although the Company has agreed to recover the advances from associated company, I consider it necessary to discuss the Company's arguments. The company has tried to justify that it has never provided advances nor paid cash advance to the associated company. The current account information provided by the Company speaks otherwise. The company has made several payments on behalf of the Company during the year ended June 30, 2000. The proceeds of encashment of the Company's deposits and accrued mark up thereon amounting to Rs. 92.597 million were also adjusted by Crescent Investment Bank Limited against the indebtedness of the associated company. In my view, the argument given by the Company that it has never provided advances or cash advance is absolutely devoid of any force. The amounts paid by the Company on behalf of associated company and any amount recovered from the funds of the Company on behalf of the associated company is nothing but advances and tantamount to cash advances / loan by the Company to its associated company. The argument of inconsistency in the audit report and the note to the accounts is not relevant as preparation of the accounts is the responsibility of the management whereas whatever has been stated in the audit report is auditors opinion. The argument that the policy of non-recovery of interest on current account balances is also not relevant because in the instant case the transactions reflected in the current accounts were not in the nature of normal business transactions.

7. In order to give another opportunity of being heard, the case was fixed for hearing on *August 06, 2001*. On the date of hearing, Mr. S.M.Nasir Raza and Mr. Abdul Rahman Memon appeared

on behalf of the company and argued the case. They initially reiterated the same arguments as were covered in the reply to the notice. However, later on, they admitted that the payments made on behalf of associated company and the amount adjusted by Crescent Investment Bank Limited against the indebtedness of the associated company could not be considered a normal business transaction. They also informed that after part payment received from the associated company, an amount of Rs. 23 .486 million was outstanding for the recovery of which the period of 30 days was not sufficient. It was requested to extend the period for further 60 days up to September 30, 2001 to enable the company to make arrangement for the recovery of the balance amount. As regard to the mark-up on the amount of Rs. **39.765** million, the company has informed that the average borrowing cost of the company was 17% during the year ended June 30, 2000. On the basis of the said borrowing cost, an amount of Rs. 11.196 million is also recoverable for mark-up on the aforesaid amount if the time, as requested by the Company, is extended uptill September 30, 2001. The total amount recoverable from the associated company including mark up of Rs. 11.196 would comes to Rs. 50.961 million out of which Rs. 16.279 million has been recovered by the company after issuance of notice under Sub-section (1) of Section 472 of the Ordinance. The balance amount of Rs. 34.682 million is still recoverable for which the company has requested to extend the date till September 30, 2001. Keeping in view the fact that the company has already recovered an amount of Rs. 16.279 million from the associated company after the service of notice, I am inclined to allow further time till September 30, 2001 to the company to recover the balance amount along with mark-up.

8. For the reasons stated, I hereby direct, in terms of the provisions of Sub-section (1) of Section 472 of the Ordinance, the Company and its Chief Executive to recover the balance amount of advance alongwith mark-up thereon aggregating to Rs. 34.682 million from the associated company namely MIS International Brands (Private) Limited upto September 30, 2001 and submit documentary proof duly authenticated by the auditors to the Commission within ten days thereof.

9. In case of non-compliance of the above directive within the period specified, the Commission shall be constrained to proceed to take action under Section 495 of the Ordinance.

10. This order is being issued without prejudice to any other provisions under which action may be taken in respect of the default as aforesaid.

RASHID SADIQ

Executive Director (Enforcement & Monitoring)

Announced
August 15, 2001
ISLAMABAD