

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
MANDVIWALLA MAUSER PLASTIC INDUSTRIES LIMITED

Number and date of show cause notice	19(648) CF/ISS/2001 dated July 20, 2001
Date of hearings	August 08, 2001 and August 20, 2001
Present	None

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

The relevant facts leading to this case, briefly stated, are that annual audited accounts of M/S Mandviwalla Mauser Plastic Industries Limited (the “Company”) for the year ended June 30, 2000 were examined and it was revealed that an investment of Rs. 5.626 million has been made by the Company in its associated undertaking namely, M/S Mandviwalla Entertainment (Pvt) Limited despite its own negative equity of Rs. 85.985 million.

2. Note No. 20.1 of the aforesaid accounts further disclosed the following information regarding this investment:

QUOTE

“Mandviwalla Entertainment (Pvt) Limited is an associated company. The maximum balance outstanding during the year amounted to Rs. 5,625,627 (1999: 4,863,041) and is on account of loan installments and mark-up there on.”

UNQUOTE

3. The above quoted Note No. 20.1 categorically admits that M/S Mandviwalla Entertainment (Pvt) Limited and the Company are associated undertakings.

4. The Auditors of the Company, namely M/S Rahman Sarfraz and Co., Chartered Accountants in their report to the members on the aforesaid annual accounts signed by them on January 24, 2001 have drawn attention of the members to the several matters including the following:

QUOTE

“ 2) the company has advanced Rs. 5.626 million to an associated undertaking (Note 20). The approval of the members meeting was not shown to us.”

UNQUOTE

5. The Auditors have also qualified their opinion contained in Para (c) of their above referred report in respect of unauthorized investment in associated undertaking.

6. The Directors Report attached to the aforesaid accounts under Section 236 of the Ordinance, while giving information and explanation in regard to the auditors' qualification, stated in the following terms:

QUOTE

“Item (2) of the auditors report required approval of members for balance with the associated company of Rs. 5.626 million. The same has to be regularized in the 12th Annual General Meeting.”

UNQUOTE

7. It was further noted from the perusal of the aforesaid financial statements that:

- i) the Company has not charged any mark-up on the amount advanced to its associated undertaking.
- ii) the cash flows of the Company for the year ended June 30, 2000 were negative and, therefore, the Company has used borrowed funds for making investment in associated undertaking.
- iii) the Company has accumulated losses of Rs. 159.539 million against its total equity of Rs.73.554 million.

8. The aforesaid circumstances necessitated the examination of the matter to determine as to whether the Company has violated the mandatory provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance"). In view of the foregoing, a show cause notice No.19 (648)/CF/ISS/2001 dated July 20, 2001 was issued to the Chief Executive of the Company calling upon him "to show cause in writing within seven days of the date of this notice as to why penalty provided in Sub-section (5) of Section 208 read with Section 476 of the Ordinance may not be imposed on you and you may not be directed to reimburse the loss sustained by the Company in consequence of the investments which were made without complying with the requirements of Section 208 of the Ordinance".

9. In response to the aforesaid show cause notice, the Chief Executive vide his letter dated July 21, 2001 requested for a personal hearing on August 07, 2001, the case was, therefore, fixed on the said date. However, no one appeared on the said date and instead a letter from the Chief Executive dated August 02, 2001 was received stating that due to some unavoidable circumstances, he would like to reschedule his meeting to August 08, 2001. Accepting the request, the Company was informed that the case has been fixed on August 08, 2001. The Chief Executive again did not appear on the date of hearing. To give

another chance, the case was fixed on August 20, 2001. The Chief Executive was also asked to bring all the documents and information in support of his arguments.

10. Before the date fixed for hearing, a letter dated August 02, 2001 of the Company was received in the Commission on August 17, 2001, stating as under:

QUOTE

“ We submit that the advance of Rs. 5.62 million to Mandviwalla Entertainment (Pvt) Limited was duly approved by the shareholders in 12th Annual General Meeting of the Company held on February 14, 2001.

However, having noted your observation, we undertake that all the amounts of Rs. 5.62 million, receivable from Mandviwalla Entertainment (Pvt) Limited, will be received back within one year, with interest rate paid by the Company to its lenders.”

UNQUOTE

11. No one, however, appeared on the date of hearing. In order to work out the total amount recoverable from Mandviwalla Entertainment (Pvt) Limited, the Commission vide its letters dated September 06, 2001 and October 26, 2001 asked the Chief Executive to provide the borrowing cost of the Company and the working of interest to be charged since the date of advance to the associated company. The Chief Executive, however, failed to respond to the Commission's letters. In view of these circumstances, the undersigned proceeds to decide this case on its merits.

12. The relevant provisions of law pertaining to investments in associated undertakings are embodied in Section 208 of the Ordinance, which are mandatory in nature. These provisions of law requires that a 'Special Resolution' is passed for making investment in associated undertakings. It is also one of the conditions for making investment that the Resolution shall indicate the nature and amount of the investment and terms and conditions attached thereto. It has further been provided that aggregate

investment in associated companies, except a wholly owned subsidiary company, shall not exceed thirty percent of the total paid up capital and free reserves of the investing company at any point of time. It is also required that the return on investments in the form of loans shall not be less than the borrowing cost of the investing company. These provisions of law have been enacted with a view to make the matters concerning investments by companies in their associated companies transparent and at arm's length. These are mandatory provisions and no investments in associated companies could be made without getting prior approval from the shareholders. The Company has violated these provisions as under:

- i) No Special Resolution was passed by the Company prior to making advance of Rs. 5.625 million to its associated undertaking.
- ii) In spite of its negative equity to the tune of Rs. 85.985 million as on June 30, 2000, the Company has made advance to its associated company.
- iii) The Company has also not charged any interest on the aforesaid advance.

13. The Company has argued that the advance to its associated undertaking has been approved by the shareholders in the 12th Annual General Meeting (AGM) held on February 14, 2001. According to the notice of the 12th AGM contained in the published accounts, one of the agenda item is the "approval of transactions with associated company". Statement of material facts as required under Clause (c) of Sub-section (1) of Section 160 was not appended to the notice of the said AGM. Even the draft resolution proposed to be passed for investment as required under Sub-section (1) of Section 164 of the Ordinance was not sent to the shareholders. On the other hand, the agenda disclosed in the notice of the said AGM published by the Company in the daily newspapers under clause (3) of Section 158 of the Ordinance did not contain any business relating to investments in associated undertaking. These are glaring violations of the provisions of the Ordinance. The undersigned is of the view that the proceedings of the meeting and the resolution passed therein pertaining to investment in associated company suffered from material defects, omission and illegality. Also, the special resolution was passed after making investment in

associated undertaking. This resolution is of no effect as the Company was not authorized to make any investment in view its negative equity. The manner of investment, non-appearance at the hearings, and disregard to the Commission's letters show that all along the directors were fully aware of the violations and disregarded the same deliberately.

14. The upshot of the above discussion and finding is that the Company was not authorized to make any investment in its associated undertaking as its equity was negative at the time of making of such investments. The investment, therefore, made in Mandviwalla Entertainment (Pvt) Limited is declared unauthorized and violative of the provisions of Section 208 of the Ordinance. The Chief Executive is held responsible for violation of the mandatory provisions of Section 208 read with Section 476 of the Ordinance and is liable for punishment under Sub-section (5) there under.

15. In view of the above stated facts and after considering all the circumstances of this case, the default is considered willful and deliberate. The undersigned, therefore, in exercise of the power conferred on me under sub-section (5) of Section 208 of the Ordinance hereby impose a fine of Rs 200,000 (Rupees two hundred thousand only) on the Chief Executive of the Company who is mainly responsible for the aforesaid contravention.

16. Mr. Saleem H. Mandviwalla, the Chief Executive of the Company is directed to deposit the fine as indicated above in the following head of account within 30 days of the receipt of this order:

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

17. The unauthorized investment made in Mandviwalla Entertainment (Pvt) Limited now requires consideration. The undersigned, in terms of Section 473 of the Ordinance, hereby directs the Chief Executive to arrange the recovery of the advances of Rs. 5.62 million, along with mark up thereon till the date of receipt of full and final settlement, at not less than borrowing cost of the Company, from Mandviwalla Entertainment (Pvt) Limited or from his personal resources within two months of the date of this Order. Auditors certificate confirming the total amount recoverable, including principal and interest thereon shall be filed with the Commission within fifteen days of the date of this Order. On making full recovery from Mandviwalla Entertainment (Pvt) Limited, a certificate from the auditors of the Company shall also be submitted to the Commission within seven days thereof.

18. In case of non-compliance of the above direction, the Chief Executive shall further be liable to punishment under Section 495 of the Ordinance.

RASHID SADIQ
Executive Director
(Enforcement and Monitoring)

Announced
December 06, 2001
ISLAMABAD