



**Before Tahir Mahmood**  
**Commissioner (Company Law Division)**

In the matter of

**AKD Capital Limited**

No.EMD/233/592/2002 -1163    January 20, 2015

February 19, 2015

Number and date of notice

Date of hearing:

Present:

Tanveer Hussain Khan- Company Secretary  
Asghar Ali Anjum – Corporate Manager  
Authorized representative of Respondents

**ORDER**

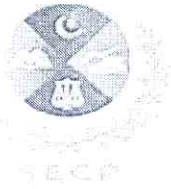
**Under Section 208 & 160 read with Section 476 of the  
Companies Ordinance, 1984**

This order shall dispose of the proceedings initiated against chief executive and directors ("Respondents") of AKD Capital Limited ("Company") through Show Cause Notice ("SCN") dated January 20, 2015, under Section 208 and 160 read with Section 476 of the Companies Ordinance, 1984 ("Ordinance").

2. The facts leading to this case, briefly stated, are that the examination of annual audited accounts for the year ended June 30, 2013 of the Company revealed that Rs. 30,405,526 is receivable from an associated company Creek Developers (Private) Limited ("CDPL") that has been approved by the shareholders in the annual general meeting (*the "AGM"*) dated October 27, 2011, under Section 208 of the Ordinance. This approval specifically authorized this investment up till June 30, 2012 and that this amount will be repaid not later than June 30, 2012.
3. The record of the Commission does not reflect the fresh authorization for such outstanding loans to CDPL after June 30, 2012, after the expiry of earlier authorization under Section 208, until in the AGM held on October 25, 2012. The agenda of notice of AGM held on October 25, 2012 did not include a special business under Section 208 of the Ordinance for re-authorization of the said loan. It has been observed from minutes of AGM held on October 25, 2012 that a business is passed as any other business authorizing the management to negotiate and mutually decide with CDPL the repayment schedule while other terms remain the same.



4. It has been observed that the notice of AGM does not stated the aforesaid business, neither the Company has classified the said business as a special one nor annexed to the notice of AGM statement setting out all material facts concerning such business as per Regulation 3 of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2012 ("Regulations"). Therefore, SCN under the provision of Section 208 and 160 read with Section 476 of the Ordinance dated January 20, 2015 was issued to Respondents, calling upon them to explain as to why penal action may not be taken against them for contravention of the said provision of the Ordinance.
5. The Respondents replied to the SCN through letter dated June 12, 2014, which is as follows;
- This was only an inadvertent overlook as the minutes of the meeting revealed that mark up on the said investment was continuously paid by CDPL. Subsequently the authorization for negotiation of repayment schedule with the same term of the said investment was sought out by the management in the annual general meeting dated October 25, 2012 as the matter was pointed out by a shareholder while the meeting was in progress. At the time of obtaining the said approval the chairman informed the members about the payment of mark up by CDPL, expiry time period and also need for extension of the same. The chairman further informed that require notice for passing the special resolution for the purpose of Section 208 has inadvertently omitted and the same may be condoned and special resolution may be passed if the entire member resolve so. Upon this Mr. Abul Qadir folio number 7039-7435 propose a resolution and same was passed to condone the above said omission. It is also to note that the omitted agenda and the statement of material facts under Section 160 was read at the spot for the shareholders.*
  - The interest of minority shareholders being not hearted by the above said inadvertent overlook rather the Company always protect the same by the management through distribution of dividend and nothing has been concealed from the shareholder.*
6. Considering the above mentioned submission of the Respondents, hearings in the matter was fixed on January 20, 2015 that was attended by Tanveer Hussain Khan- Company Secretary and Asghar Ali Anjum – Corporate Manager, the authorized representative of respondents. During the hearing proceedings, the authorized representative argued that statement of material fact was read at the meeting and shareholders having 94% shareholding were present at the meeting and the Company has recovered the principal and interest from CDPL.
7. I have considered the facts and record of the case, relevant provisions of the Ordinance, written submissions made in response to SCN and presented during the hearing, I feel appropriate to quote the relevant provisions of the Ordinance which provides that:



"where any special business, that is to say other than consideration of accounts, balance sheets and the reports of the directors and auditors, declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and place where the document may be inspected shall be specified in the statement".

Regulation 3 of Regulations requires that a company shall, while issuing notice of its general meeting where a special business related to investments in any of its associated companies or associated undertakings is to be transacted under section 208 of the Ordinance, annex a statement pursuant to clause (b) of sub-section (1) of section 160 of the Ordinance setting out, among other, the information as per this Regulation.

8. In terms of Section 160 (1) (b) of the Ordinance the aforementioned business falls under special business hence it was required to be classified as special business and a statement was also required to be annexed to the notice of the meeting setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly. It has been observed that the notice of AGM does not stated the aforesaid business, neither the Company has classified the said business as a special one nor annexed to the notice of AGM statement setting out all material facts concerning such business as per Regulation 3 of Regulations.

9. The aforesaid provisions of the law are clear and explicit. It is my considered view that the respondents have failed to comply with the Regulations and Section 160 of the Ordinance. However, keeping in view of the admission of default, assurance of compliance of applicable laws and considering recovery of loan with interest from CDPL I, instead of imposing any penalty hereby, warn the Respondents of the Company to be careful and ensure meticulous compliance of the law in future.

Tahir Mahmood  
Commissioner  
Company Law Division

**Announced:**  
April 16, 2015  
Islamabad.