



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department
Company Law Division

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Before Tahir Mahmood, Executive Director (Enforcement)

In the matter of
Atlas Battery Limited

Number & date of the notice: EMD/233/437/2002-3230 dated Dec 04, 2006
Date of hearing: August 24, 2007
Present: Mr. Talha Saad, Chief Executive
Mr. Ahmad Zafaryab Ali, C.F.O.

Order

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

This order shall dispose off the proceedings initiated through show cause notice dated December 04, 2006 under the provisions of Section 208 read with Section 476 of the Companies Ordinance, 1984 ("the Ordinance") served on Mr. Vazeer Ali, Chief Executive of Atlas Battery Limited ("the Company").

2. The Company was incorporated as a Public Limited Company on October 19, 1966. Its shares are listed on the Karachi and Lahore Stock Exchanges in Pakistan. The authorized share capital of the Company is Rs.100,000,000/- divided into 10,000,000 ordinary shares of Rs.10/- each. The paid up share capital of the Company is Rs.60,805,000/- divided into 6,080,504 ordinary shares of Rs.10/- each. The Company is engaged in the manufacture and sale of automotive and motorcycles batteries.

3. The brief facts of the case are that while examining the annual accounts of the Company for the year ended June 30, 2006, it was observed that an investment of Rs.0.254 million has been made during the year in Atlas Income Fund, a related party / associated undertaking of the Company without the approval of its shareholders as required under the provisions of Section 208 of the Ordinance for which explanation was sought vide letter dated October 10, 2006. The Company in response to the Commission's letter has stated that Section 208 of the Ordinance deals with loans, advances, equity in associated companies whereas the Company has invested



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in mutual fund which was designated as investment at fair value through profit & loss and does not fall in the definition of loans, advances and equity. The reply was not found satisfactory, therefore, a show cause notice under the provisions of Section 208 of the Ordinance was issued to the chief executive of the Company to explain why penal action may not be taken under Sub Section (3) of Section 208 of the Ordinance for the aforesaid contravention. In reply to the show cause notice, M/s Mohsin Tayebaly & Co on behalf of chief executive of the Company has taken the following plea:

- (i) The investment made by the Company is in mutual fund which does not fall under the definition of loans, advances, and equity as stated in Section 208 of the Ordinance.
- (ii) Mutual fund in which the Company has made investment is being managed by M/s Atlas Asset Management Limited ("AAML"), an associated undertaking of the Company. Since the investment made by the Company is in Atlas Income Fund and not in AAML, therefore, no investment has been made in any associated undertaking.

4. In order to provide an opportunity of personal hearing, the case was initially fixed on February 6, 2007 which was adjourned on the request of the Company. The case was again fixed for hearing on August 24, 2007 at Karachi on which date Mr. Talha Saad, Chief Executive & Mr. Ahmad Zafaryab Ali, Chief Financial Officer of the Company appeared before the undersigned and argued the case and reiterated its earlier stance.

5. I have analyzed the facts of the case, provisions of Section 208 of the Ordinance, and arguments put forth by the Company. The stance of the Company cannot be accepted as:

- (i) the explanations given in the Ordinance, the expression "investment" shall include loans, advances, and equity by whatever name called, or any amount which is not in the nature of normal trade credit. Hence, it may be concluded that any investment either it is an investment in mutual fund or by whatever name called or any amount which is not in the nature of normal trade credit does fall under the definition of "investment".



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(ii) And as per the prevalent legal framework, firstly an Asset Management Company (“AMC”) is formed which gets approval of the Commission for appointment of Trustee for floatation of mutual fund, thereafter, mutual fund is established based on a trust deed between the Trustee and AMC. After establishment of mutual fund, AMC manages and advises the mutual fund fully in the interests of the stakeholders. AMC provides management / advisory services to open and close ended schemes and are paid management fee as compensation. This fee remains a fixed percentage of monthly average of net fair value of assets managed by the AMC. AMC responsible for all the acts it undertakes on behalf of mutual fund. This implies that management of AMC may be regarded as management of mutual fund. Since the Atlas Income Fund are fully managed / advised by AAML, therefore, it may be concluded that the Atlas Income Fund is an associated undertaking of the Company. Accordingly, Section 208 of the Ordinance is applicable to the Company, thus, a prior approval of its shareholders for making investment in Atlas Income Fund should be obtained.

6. For the foregoing reasons, it is evident that the Company has violated the provisions of Section 208 of the Ordinance and had failed to exercise due care while making investment in its associated concern. The default is established.

7. However, taking into consideration the nominal amount being involved and no financial loss have been caused to the Company, I, instead of imposing penalty as prescribed under Sub Section (3) of Section 208 of the Ordinance hereby warn the Chief Executive of the Company to observe compliance of law in letter and spirit.

8. Further, in terms of the provisions of Section 473 of the Ordinance, I hereby direct the Chief Executive of the Company:

- To recover the Company’s all outstanding investment in Atlas Income Fund within thirty days of this order;



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- To submit an auditors' certificate confirming the recovery of its entire investment in Atlas Income Fund;
- Any subsequent investment in its associated undertaking shall be complied with the relevant provisions of law.

Tahir Mahmood
Executive Director

Announced
September 27, 2007
Islamabad