

Before Mr. Tahir Mahmood, Executive Director (Enforcement)

In the matter of

Crescent Jute Products Limited

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

No. and date of Notice	EMD/Co.233/324/2002 dated July 05, 2007
Date of hearing	August 10, 2007
Present	Syed Ali Rizvi, Advocate, Legal Consultant

Order

This order shall dispose off the proceedings initiated against Crescent Jute Products Limited (hereinafter referred to as the “Company”) vide show cause notice dated July 5, 2007 under the provisions of Section 208 read with Section 476 of the Companies Ordinance, 1984 (hereinafter referred to as the “Ordinance”).

2. The Company was established as a public limited company on September 19, 1964 and is currently listed on all the three Stock Exchanges in the country. Its authorized and paid-up capital, as per annual audited accounts for the year ended June 30, 2006 (hereinafter referred to as the “annual accounts”), was Rs.200 million and Rs.150.635 million respectively. The principal activity of the Company is manufacturing and sale of jute products including jute bags. The Company has 1,684 shareholders comprising individuals, financial institutions, joint stock companies etc., as per pattern of shareholding annexed to the Directors’ Report on the annual accounts.

3. Brief facts leading to this case are that the examination of the annual accounts of the Company revealed that during the year ended on June 30, 2006 the Company had sold freehold land having book value of Rs.5.59 million at a price of Rs.44.00 million to its associated company namely Crescent Steel and Allied Products Limited (hereinafter referred to as “CSAPL”). Further, note 18.1 of the annual accounts revealed that an amount of Rs.9.00 million is receivable from CSAPL against the sale of freehold land. The Company vide Commission’s letter dated April 17, 2007, was advised to provide ledger accounts of CSAPL maintained in the books of the Company from July 01, 2004 to June 30, 2006.



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4. The perusal of ledger accounts of CSAPL, as provided by the Company vide its letter dated April 30, 2007, revealed that Rs.9.00 million is outstanding since December 31, 2005 from CSAPL against the sale of freehold land. It was further informed by the Company vide its letter dated June 29, 2007 that the aforesaid amount has not yet been recovered or adjusted with CSAPL.

5. The facts narrated in the preceding paras indicated that the Company *prima facie* has contravened the provisions of Section 208 of the Ordinance as Rs.9.00 million is receivable from CSAPL since December 31, 2005, the Company has also not charged any mark-up on the outstanding amount and the transaction does not seem to be a normal trade credit. It was, therefore, considered necessary to probe the details of the transaction and probable loss sustained by the Company as a consequence of the same. Proceedings through a show cause notice (hereinafter referred to as the "SCN") dated July 05, 2007 under the provisions of Section 208 read with Section 476 of the Ordinance were initiated against all the directors of the Company namely:

- i. Mr. Mazhar Karim, Chairman;
- ii. Mr. Humayun Mazhar, Chief Executive;
- iii. Mr. Amir Hussain Zaidi, Director;
- iv. Mr. Khalid Bashir, Director;
- v. Mr. Khurram Mazhar Karim, Director;
- vi. Mr. Riaz Masood, Director;
- vii. Syed Raza Abbas Jaffari, Director (NIT Nominee).

6. In response to the SCN, following submissions were made by the Company vide its letter dated July 18, 2007:

- a. The Company agreed to sell 44 kanals of land with all construction thereupon situated at chak no.128 GB, District Faisalabad to CSAPL at price of Rs.44 million vide sale Agreement dated June 27, 2006. As per clause 3 of aforesaid agreement, the payment of Rs.35.00 million being part payment towards the sale of land was made immediately to the Company and the balance payment of Rs.9.00 million was agreed to be paid by the CSAPL at the time of registration of sale deed between the parties.



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- b. At the time of sale of land by the Company to CSAPL, the land was encumbered in favor of PICIC by way of an equitable mortgage created on the same. Due to financial constraints the Company could not get the charge vacated at that time which was vacated later on and the same was confirmed by the bank vide its letter dated May 7, 2007.
- c. Pursuant to the vacation of the charge by the bank, the entire land has been transferred in favor of CSAPL and all the necessary formalities have been completed as per agreement. Subsequently, the CSAPL has paid the remaining Rs.9.00 vide online transfer of funds on July 17, 2007.
- d. The sale of land to an associate company on particular terms and conditions does not fall with the ambit of investment as defined in Section 208 of the Ordinance.

7. In order to provide an opportunity of personal hearing, the case was fixed on August 10, 2007. Syed Ali Rizvi, legal counsel of the Company (hereinafter called as the "Counsel") appeared before me on behalf of all the directors to argue the case. During the course of hearing, the Counsel admitted the default and reiterated the same arguments as were given through written submissions in response to the SCN and also submitted as follows:

- a. The aforesaid transaction for sale of land for Rs.44.00 million was in the best interest of the Company as the book value of this land was Rs.5.590 million as per the annual accounts and the Company sold it at a profit of Rs.38.410 million.
- b. As the land was encumbered in favor of PICIC, so after getting an advance payment of Rs.35.000 million, the Company entered into an agreement with CSAPL, according to which balance of Rs.9.00 million was to be paid by CSAPL after the vacation of charge and transfer of land in its name.

8. I have gone through the facts of the case, record of the Company, relevant provision of the Ordinance, written submissions given in response to the SCN and arguments presented by the counsel in the hearing. I feel it appropriate to quote here the relevant provisions of the Ordinance. Sub-Section (1) of Section 208 of the Ordinance provides that:

(1) A company shall not make any investment in any of its associated companies or associates undertakings except under the authority of a special resolution which shall



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indicate the nature, period and amount of investment and terms and conditions attached thereto:

Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.

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.

9. I have analyzed the written submission of the Company as well as the verbal submissions made by the learned Counsel during the course of hearing and my observations on the issue are as follows:

- a. The transaction for sale of land, having book value of Rs.5.590 million, at a price of Rs.44.00 million took place in November 2005 and on December 31, 2005 whereas the Company entered into agreement with CSAPL for aforesaid sale on June 27, 2006.
- b. There is an unusual delay between the date of transaction and the agreement date.
- c. The date of agreement coincides with the closure of financial year which create further doubts about the transparency of the transaction.
- d. The transaction is also not done at arms length as the sale of land was executed much before the finalization of terms and conditions attached to it.
- e. Generally normal trade credit is defined as a credit given in normal course of business and such credit extended should be a current liability for the receiver. Open ended credit cannot be termed as "normal trade credit".
- f. The agreement at sub-para (2) of para 2 states that the property is free from all encumbrances and all rights and interest appurtenant thereto;
- g. The other documents provided by the Company evidencing the charge on the land in question do not clearly reflect the mortgage on this specific piece of land sold to CSAPL;
- h. The encumbrance on the aforesaid land was vacated on May 7, 2007, after repayment of loan facility obtained from the bank and the land was transferred in the name of CSAPL. Subsequently, on July 17, 2006 CSAPL released the payment of Rs.9.00 million on July 17, 2007 after enjoying the full value of land



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for a period of more than one and a half years i.e. from December 31, 2005 to July 17, 2007.

- i. It is pertinent to mention here that the Company was in financial constraints and as per the annual accounts; it has obtained finances from banks at a mark-up rate ranging from 11% to 30%. It could not afford to allow its associated company i.e. CSAPL not to release its funds for such a long period which would otherwise have been used for its own business and might have resulted in a declined financial cost.
- j. Apparently, the Company has sold land on profit and said transaction appears to be in the benefit of the Company but the way this transaction was conducted, was definitely not in the interest of the Company as the outstanding amount of Rs.9.00 million was not a normal trade credit and the same remained outstanding from CSAPL without authorization from shareholders and without charging any mark-up thereon in contradiction to the provisions of Section 208 of the Ordinance.
- k. Had Rs.35.00 million be an advance against sale of land, the same would have been shown in the annual accounts as advance against sale of land. However, the Company showed a sale of land transaction of Rs.44.00 million, Rs.35.00 million as receipt for sale of land and Rs.9.00 million as receivable respectively.

10. From the above discussion, submissions of the Company and argument put forward by the Counsel, I am of the considered view that the provisions of Section 208 of the Ordinance have been violated and directors are liable for the penalties as defined in Sub-section (3) of the aforesaid provisions of the Ordinance. Sub-section (3) of Section 208 of the Ordinance provides that if default is made in complying with the requirements of this section, every director of the company who is knowingly and willfully in default shall be liable to fine which may extend to one million rupees and in addition the directors shall jointly and severally reimburse to the company any loss sustained by it in this respect. As the Company has recovered Rs.9.00 million from CSAPL on July 17, 2007, therefore taking a lenient view, I instead of imposing a maximum penalty of one million rupees on each director impose a token fine aggregating to Rs.70,000 (seventy thousand rupees only) which will be paid by the Chief Executive and directors in the following manner:



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Name	(Rs.)
Mr. Humayun Mazhar, CEO	20,000
Mr. Mazhar Karim, Chairman	10,000
Mr. Amir Husnain Zaidi, Director	10,000
Mr. Khalid Bashir, Director	10,000
Mr. Khurram Mazhar Karim, Director	10,000
Mr. Riaz Masood, Director	10,000

The above named directors of the Company are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Commission with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as an arrear of land revenue. It may also be noted that the said penalties are imposed on the directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

Mr. Syed Raza Abbas Jaffari, nominee directors of NIT is hereby strictly warned to be vigilant in playing his role as independent non-executive director as I expect that the independent directors are the main element of transparency in the decisions of the Board of Directors of a Company.

Tahir Mahmood
Executive Director (Enf.)

Announced
August 29, 2007
Islamabad.