



**Before Abid Hussain, Director (Enforcement)**

**In the matter of**

**Dadabhoy Construction Technology Limited**

**Order**

**Under Sub-section (4) of Section 196 read with Section 476 of  
The Companies Ordinance, 1984**

This order shall dispose of the proceedings initiated against the Chief Executive and directors of Dadabhoy Construction Technology Limited (the “Company”) under Sub-section (4) of Section 196 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The Company has paid up capital of Rs.23.23 million divided into 2.32 million ordinary shares as reported in the annual financial statements for the year ended on June 30, 2006. The Company is listed on Karachi Stock Exchange. Its latest pattern of shareholding reflects that general public holds 17.74% shareholding in the Company. Background facts of the case are that the examination of annual accounts for the year ended on June 30, 2006 (“the Accounts”) revealed that the Company sold its entire plant and machinery during the year without obtaining prior approval of the shareholders as required under the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance. A show cause notice dated February 2, 2007 under the provisions of Sub-section (4) of Section 196 of the Ordinance was therefore served on all the Directors, including the Chief Executive, of the Company requiring them to explain their position in writing on or before February 16, 2007 as to why penal action may not be taken against them for contravention of the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance.

3. The Company Secretary submitted reply to the show cause notice on behalf of the directors, vide letter dated February 15, 2007, in which following arguments, in brief, were put forth:

- Due to lack of demand, the Company ceased its operating and trading activities in 1993 and the plant remained inoperative and closed since then. The plant and



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machinery of the Company having book value of Rs.5.280 million was not useable in future due to deterioration and closure of manufacturing of prefabricated elements by the Company.

- Due to suspension of manufacturing activities of the Company lenders liabilities were over due and there was no source for repayment. These loans were negotiated with the institutions and were paid by the directors through their interest free loan to the Company. The sale proceeds of the plant and machinery were utilized for payment of Company's liabilities.
- The sale of the machinery was made with the approval of the Board of Directors of the company as per the powers conferred by Clauses (h) & (j) of Sub-section (2) of Section 196 of the Ordinance. Further, the matter came up for discussion in the Annual General Meeting ("AGM") of the Company held on October 31, 2006 and resolution passed for approval of accounts also included approval of sale of fixed assets.

4. Having set out the facts of the case, directors' contentions as above, and after detailed examination of the information enclosed with the reply, it was observed that:

- The agenda was not considered in the meeting referred to by the Company as the notice of AGM conveyed to the Commission and exchanges did not contain any indication that the Company has proposed any such business for consideration of the shareholders as required under the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance; rather it contained information about ordinary businesses.
- It was also noted that sale of a sizeable part of the undertaking of the Company was a special business and in order to propose this business, it was obligatory to specifically mention the same in the notice and annex a statement of material facts to the notice of the meeting as required under Clause (b) of Sub-section (1) of Section 160 of the Ordinance.
- The review of the Accounts further revealed that the director's report was silent in respect of sale of entire plant and machinery of the Company.



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- The resolution enclosed by the Company was a Board of Director's resolution and not a resolution duly approved by the general body of members. Further the minutes of the board meeting reflected that the matter was considered under item "to transact any other business with the permission of the chair" reflecting that the matter was not even included in the notice of the board meeting sent to all the directors of the Company;
- Even if the Company was forced by the circumstances, to sell off its assets in order to meet creditor's obligation, the requirement of complying with Section 196 of the Ordinance by passing a special resolution could not be done away with.
- The stance taken by the Company in response to Commission's proceedings violates the principles of good corporate culture and depicts carelessness on the part of the directors.

5. Keeping in view the above facts, reply of the Company was not found satisfactory and therefore in order to provide an adequate opportunity to the directors to present their case a hearing in the matter was fixed on March 15, 2007. However, the Company vide its letter dated March 14, 2007 stated that due to pre-occupation of their consultants the hearing may be adjourned. The case was again fixed for April 20, 2007 which was again adjourned on the request of the Company. The Company besides requesting adjournment of the said hearing also requested for fixing the hearing in Commission's Karachi office. Keeping in view the request of the Company, the matter was fixed for hearing in the Company Registration Office Karachi on May 04, 2007.

6. On the date of hearing Mr. Muhammad Waseem, FCA, of Rehman Sarfaraz Rahim Iqbal Rafiq & Co., Chartered Accountants, appeared as authorized representative on behalf of the Chairman and all the directors of the Company before the undersigned. He accepted the default and stated that the Company is ready to ratify the default by taking approval of the shareholders in the next general meeting. He further informed that the plant and machinery has been sold by calling quotations privately. He however added that the disposal of the said assets was in good faith and it was better to sell it instead of leaving it for further deterioration and that the management is keenly interested in revival of the Company.



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7. I have heard the authorized representative at length, examined the record and read the relevant provisions of law applicable to this case very carefully. For ease of reference, the relevant provision, contained in Clause (a) of Sub-section (3) of Section 196 of the Ordinance is, to the extent relevant, reproduced as under:

*“(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely:*

*(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof, unless the main business of the company comprises of such selling or leasing;”*

The aforesaid provision restricts the powers of the directors of a public company or of a subsidiary of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of the general meeting. The objective of this provision is that the directors must consult the shareholders when an undertaking or a sizeable part thereof is intended to be sold. The prior approval of the shareholders, therefore, is a condition precedent for selling or disposing of the undertaking or a sizeable part thereof. This has been given special significance by providing that default of this provision would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

Keeping in view the importance of this provision and right given to the shareholders the Commission has also issued a notification No.S.R.O.1227/2005 dated December 12, 2005 requiring the companies to disclose, as minimum, following information to the shareholders in the statement of material facts annexed with the notice of the meeting in which decision for disposal of sizable part of undertaking is to be made:

- i. Detail of assets to be disposed of i.e. its description, cost, revalued amount (if available), book value and approximate current market price/fair value. In case of disposal of land location and area proposed to be sold shall be disclosed.
- ii. The proposed manner of disposal of the said assets.
- iii. Reasons for the sale, lease or disposal of assets and the benefits expected to accrue to the shareholders therefrom.



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8. The plant and machinery disposed of by the Company had cost of Rs.23.387 million against total fixed assets cost of Rs.41.988 million and book value of Rs.5.280 million against total assets book value of Rs.12.396 as reported in the annual accounts for the year ended June 30, 2006. Thus the plant and machinery constituted 56% and 43% of the total cost and book value of property, plant and equipment respectively. It is therefore evident that the plant and machinery disposed of by the Company constitutes a sizable part of the undertaking and its disposal required special resolution to be passed by the shareholders. The board of directors under the provisions of Clause (j) of Sub-section (2) Section 196 of the Ordinance can dispose of the assets up to the limits prescribed by the Commission however where disposal of assets constitutes sizable part of the undertaking, the board has to obtain consent of the general meeting under the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance. Whereas in the case in hand the notice of the meeting referred to by the Company, is silent about the sale of assets. Moreover, the Company and its directors have not submitted any evidence that they have complied with the requirements of law or provided complete information to the shareholders as required under Section 160(1)(b) of the Ordinance read with aforementioned notification in order to enable the shareholders to make an informed decision. I, therefore, do not agree to the argument that the shareholder's approval was obtained in accordance with the requirements of law for the sale of sizeable part of the assets as contended by the directors of the Company in their written reply. The mandatory requirements are meant to ensure that the shareholders are consulted prior to sale of the undertaking or a sizeable part thereof; therefore, this breach cannot be ignored.

9. On the basis of the relevant facts, reply of the directors and acceptance of default during the course of hearing, I am of the view that the default is established and directors are liable for punishment under the provisions of Sub-section (4) of Section 196 of the Ordinance. However, considering the fact that the proceeds from the sale of assets were utilized to repay the liabilities of the Company and the fact that the management is making efforts for revival of the Company, I instead of imposing maximum fine of Rs.100,000 on each director for the violation of the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance, hereby impose a penalty of Rs.50,000 (Rupees fifty thousand only) on Mr. Fazal Karim Dadabhoy, Chief Executive of the Company under the provisions of Sub-



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section (4) of Section 196 of the Ordinance. Further all the directors are hereby warned to be careful and vigilant in future and comply with the requirements of the law in letter and spirit.

10. The Chief Executive is directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

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**Abid Hussain**  
Director (Enforcement)

***Announced:***  
***Islamabad, May 15, 2007***