



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Elahi Cotton Mills Limited

Show Cause Notice No. & Date CSD/ARN/48/2024-22 dated January 11, 2024

Date of Hearing: February 12, 2024

Hearing Attended By: Mr. Muhammad Imtiaz, Chief Financial Officer

ORDER

Under Sections 205 and 207 of the Companies Act, 2017 read with Section 479 thereof

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through Show Cause Notice (SCN) dated October 31, 2023 issued under Sections 205 and 207 of the Companies Act, 2017 (the Act) read with Section 479 thereof to the following directors of Bannu Woolen Mills Limited (the Company), hereinafter collectively referred to as the Respondents.

Sr. #	Name of Directors
1.	Mr. Mahfooz Elahi, CEO/ Director
2.	Mr. Mahboob Elahi, Director
3.	Mr. Mahmood Elahi, Director

2. Facts of the case are that :

- i. As per note 34 of the accounts of the Company for the year ended June 30, 2023 (Accounts 2023), the Company entered into Related Party Transactions (RPTs) with its associated company (by virtue of common directorship) namely Taj Mills Limited (TML) and two directors i.e. Mr. Mahfooz Elahi and Mr. Mahboob Elahi without complying with the provisions of section 205 and 207 of the Act. The brief description of the RPTs is as follows:

Related Party	Nature of Transaction	Amount (Rs.)
TML	Lease Rentals paid	1,200,000
Mr. Mahboob Elahi, Director	Loan Received	2,500,000
Mr. Mahfooz Elahi, Director	Repayment of Loan	(850,000)
	Loan Received	3,750,000

- ii. The Commission vide letter dated November 28, 2023 advised the Company to submit minutes of the board meeting approving the RPTs along with attendance sheet and, vide email dated December 19, 2023, also sought evidence with regards to compliance with sections 205 and 207 of the Act.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - I -

- iii. The Company vide letter dated December 11, 2023 provided extracts of board meeting dated September 26, 2023 along with attendance sheet, wherein RPT for the year ended June 30, 2023 were approved. Subsequently, the Company, vide letter dated December 21, 2023 stated that RPTs, with respect to section 208 of the Act, are required to comply with sections 205 and 207 of the Act and as no transaction was made with directors under section 208 of the Act, hence section 205 and 207 are not applicable. The Company further stated that directors had no personal interest except interest free loans provided for the benefit of the Company and no personal benefit was derived by any of the directors in respect of the RPTs approved by the board.
- iv. The aforesaid stance of the Company is not substantiated from the minutes of the board meeting wherein RPTs were approved as the minutes did not present any disclosure of interest by common directors nor they abstain from the proceedings of the board meeting. Furthermore it was observed that the following directors attended the aforesaid board meeting and approved RPTs:
- i. Mr. Mahboob Elahi
 - ii. Mr. Mahfooz Elahi
 - iii. Mr. Mahmood Elahi
 - iv. Mrs. Samina Begum
 - v. Sheikh Farrukh Ahmed
 - vi. Mr. Ahmed Shaffi
 - vii. Mr. Muhammad Azeem Afzal Hashmi
- v. The review of the accounts 2023 and response by the Company dated December 11, 2023 revealed that the Company had following directors in common (**Interested Directors**) with TML:
- i. Mr. Mahfooz Elahi
 - ii. Mr. Mahboob Elahi
 - iii. Mr. Mahmood Elahi
- vi. The interested directors, by virtue of their respective directorship, were interested in the RPTs, and failed to disclose their interest, *prima facie*, in contravention to the provisions of Section 205 of the Act. Moreover, the interested directors failed to abstain from participating in proceedings and passing resolution in the board meeting held on September 26, 2023 approving RPTs, *prima facie*, in contravention of the provisions of sub-section (1) of Section 207 of the Act.
- vii. In view of above facts, the interested directors of the Company, *prima facie*, have contravened the provisions of:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 2 -

- (i) Sub-section (1) of section 205 of the Act by not disclosing their interest in the transactions despite being concerned and interest due to common directorships and/or shareholding;
- (ii) Subsection (1) of section 207 of the Act as the interested directors have participated and voted to approve transactions with the said associated / related company, despite being concerned and interested.

3. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents for the aforesaid contraventions of Sections 205 and 207 of the Act, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions. In response to the SCN, the Respondents through letter dated January 23, 2024 made written submission, relevant extracts of which are produced below:

"A Company, under section 208 of the Companies Act, 2017, may enter into any contract or arrangement with a related party with respect to;

- (a) *sale, purchase or supply of any goods or materials;*
- (b) *selling or otherwise disposing of, or buying property of any kind;*
- (c) *leasing of property of any kind;*
- (d) *availing or rendering of any services;*
- (e) *appointment of any agent for purchase or sale of goods, materials, services or property; and*
- (f) *such related party's appointment to any office or place of profit in the company, its subsidiary company or associated company'*

Provided that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business on arm's length basis.

We understand that the related party transactions with respect to aforesaid clauses of section 208 are required to make compliance of section 205 and 207 of the Companies Act, 2017. As no transactions were made by the Company with Directors in respect of aforesaid clauses, section 205 and 207 of the Companies Act, 2017 is not applicable.

In addition to the above, section 207 of the Companies Act, 2017 provides that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered whereas in the present case the Directors of the Company have no material personal interest except the interest free short term loans provided only for the revival and benefit of the Company as is evident from note no. 20 and 21 of the audited accounts for the year ended 30.06.2023. No personal benefit was derived by any of the directors of the Company in respect of the related party transactions made and approved by the board.

Despite above, if the presence of interested directors in the meeting where the transactions were approved is against the law and their presence is not count for the purpose of forming quorum at the time of discussion or vote, even then, the remaining Directors have majority and the quorum is complete in all respect and the transactions were approved unanimously.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 3 -

As neither any personal benefit was derived by any of the directors of the Company nor any loss was incurred to any shareholder/ member in respect of the related party transactions made and approved by the board, you are requested to take a lenient view. We shall be more vigilant in future in making full compliance of the provisions of the Companies Act, 2017."

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for February 12, 2024 wherein Mr. Muhammad Imtiaz, Chief Financial Officer (CFO) appeared on behalf of the Respondents as their Authorized Representative (AR) and while admitting the default of section 205 and 207 of the Act, submitted that:

- The Respondents had no material personal interest except the interest free short term loans provided only for the revival and benefit of the Company. No personal benefit was derived by any of the Respondent in respect of the RPTs; and
- There is no history of non-compliance by the Company and Respondents. Also assured future compliance and requested lenient view.

5. Subsequent to the hearing, the AR vide letter dated February 15, 2024 made further submission, relevant extracts of which are placed below:

- The Company is in the process of updating check list in respect of compliance of provisions of the Act which will be updated shortly.
- The Company is also making arrangements to carry out training programs for the directors and relevant employees to acquaint them with the applicable legal and regulatory framework.
- Assured future compliance and requested to take lenient view.

6. Relevant legal provisions are reproduced as under:

"205. Disclosure of interest by director. – (1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board:

Provided that a director shall be deemed also to be interested or concerned if any of his relatives, is so interested or concerned.

(6) Any contravention or default in complying with requirements of sub-sections (1) or (2), shall be an offence liable to a penalty of level 1 on the standard scale.

207. Interested director not to participate or vote in proceedings of board. – (1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 4 -

Provided that a director of a listed company who has a material personal interest in a matter that is being considered at a board meeting shall not be present while that matter is being considered.

(4) Any contravention or default in complying with requirements under this section shall be an offence liable to a penalty of level 1 on the standard scale."

7. I have gone through the facts of the case, and considered the written submissions made by the Respondents, aforesaid legal provisions, the record placed before me and the arguments made during the hearings by the AR. It is noted that the Respondents, by virtue of their directorship were interested in the RPTs and they have not denied the fact that in the Board meeting held on September 26, 2023, RPTs were unanimously approved by the Board. Further in respect of the RPTs, I have observed that:

(i) Disclosure of interest of directors under Section 205 of the Act:

The Board of Directors of the Company in its meeting held on September 26, 2023 approved the RPTs. Section 205 of the Act provides for disclosure of nature of direct as well as indirect interest in any contract or arrangement entered or to be entered at the meeting of the board. Therefore, in context of the Company, the interested directors were required to disclose their interest in the meeting of the board of directors held on September 26, 2023 w.r.t. RPTs. It is however noted that due to non-disclosure of their respective interests in RPTs, the Respondents have contravened the provisions of Section 205 of the Act and the said fact has also been admitted by the AR during hearing.

(ii) Interested director not to participate or vote in terms of Section 207 of the Act:

In terms of requirements of sub-section (1) of Section 207 of the Act, interested directors of a company are prohibited to participate in discussion and vote on any contract/ arrangement entered or to be entered where such director is directly or indirectly concerned. It is an established fact that the Respondents were present in the Board meeting held on September 26, 2023 and the minutes of the same did not disclose that the interested directors abstained from the said meeting when the matter of RPTs was being considered and approved. The Respondents, therefore, by participating in the consideration and approval of the transaction with RPTs have contravened the provisions of Section 207 of the Act and the said fact has also been admitted by the AR during hearing.

(iii) Relevance of second proviso of section 208:

The plea of the Respondents/ AR relating to applicability of second proviso to section 208(1) of the Act in the instant matter is not tenable as the requirements of section 205 and 207 are independent of the requirements of section 208 of the Act and compliance of the former is mandatory. The directors of the company are considered to be knowledgeable and it is amongst their fiduciary duties to be aware of all the applicable legal requirements.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 5 -

8. Taking cognizance of the aforesaid established contraventions/ non-compliances, I in exercise of the powers conferred under Sections 205 and 207 of the Act, hereby impose aggregate penalty of **Rs. 60,000/- (Rupees sixty thousand only)** on the Respondents in the following manner:

Sr. #	Name of the Respondents	Penalty (Rs.)	
		Section 205	Section 207
1.	Mr. Mahfooz Elahi	10,000	10,000
2.	Mr. Mahboob Elahi	10,000	10,000
3	Mr. Mahmood Elahi	10,000	10,000
	Total:	30,000	30,000

9. The Respondents are hereby, directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the penalty.

10. Nothing in this Order may be deemed to prejudice the operation of any provision of the Ordinance or the Act providing for imposition of penalties in respect of any default, omission or violation of the Ordinance or the Act.

(Shahzad Afzal Khan)
Director/ HOD
Adjudication Department-I

Announced:

Dated: February 19, 2024
Islamabad