



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan - Director/Head of Department
Adjudication Department-I

In the matter of

Ali Asghar Textile Mills Limited

Show Cause Notice No. & Date: No. CSD/ARN/15/2015-36 dated May 12, 2023
Date of hearing: June 12, 2023, July 27, 2023 and August 9, 2023
Hearing attended by: Mr. Zahid Hussain Zahid, Authorized Representative

ORDER

Under Section 199 of the Companies Act, 2017

This order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/15/2015-36 dated May 12, 2023 (the SCN) issued under Section 199 of the Companies Act, 2017 (the Act) against Ali Asghar Textile Mills Limited (the Company) and its following directors, hereinafter collectively referred to as the Respondents:

- (i) Mr. Nadeem Elahi Sheikh, Chief Executive
- (ii) Mr. Muhammad Afzal, Chairman
- (iii) Mr. Abdullah Moosa, Executive Director
- (iv) Mr. Ahmed Ali, Non-Executive Director
- (v) Mr. Muhammad Suleman, Executive Director
- (vi) Mr. Sultan Mehmood, Independent Director
- (vii) Mr. Muhammad Zubair, Independent director

2. The brief facts of the SCN are that upon reviewing the annual audited financial statements of the Company for the year ended June 30, 2022 (the Accounts), note 11 of the Accounts shows Other Receivables of Rs. 369 million. Details in this regard are as follows:

Other Receivable	Amount
Rent Receivable Faisal	Rs. 1,830
Ellahi Capital (Pvt) Limited	Rs. 369,432,032
Total	Rs. 369,433,862

3. Ellahi Capital (Pvt) Limited (ECL) is an associated company in terms of Section 2(4) of the Act as Mr. Naveed Ellahi, director and 50% owner of ECL also holds 45% shares of the Company. The Company was advised to provide dates of receivables of Rs. 369 million given



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

to ECL and explain compliance with Section 199 of the Act along with the terms and conditions.

4. The Company in its response vide letter dated March 24 2023 submitted that transaction was held during the year ended June 30, 2022 and approved as related party transactions disclosed in note 31 to the Accounts, in terms of Section 208 of the Act in the Annual General Meeting (AGM). The Company specifically submitted that compliance of Section 199 was not applicable.

5. The response of the Company was not found to be cogent, as compliance with Section 208 of the Act for approval of related party transactions cannot serve as a substitute for the requirements of approval and adherence to the terms and conditions under Section 199 of the Act. Moreover, notice for resolution under Section 208 of the Act failed to disclose the name of the related company, ECL, in the statement of material facts annexed with it. Additionally, note 31 to the Accounts erroneously indicates that the receivable of Rs. 369 million was received from the associated company, without disclosing the name of ECL. The Company acknowledged this error in its response dated March 24, 2023.

6. The Company made an investment of Rs. 369 million, in the form of other receivables in an associated company, ECL without, the authority of special resolution, without any terms and conditions of the agreement approved by the shareholders, disclosures in notice and without any return on such investment. This, *prima facie*, constitutes violation of Section 199 of the Act and therefore, the directors are liable under sub-section 6 of Section 199 of the Act. Henceforth, taking cognizance of the alleged non-compliance, proceedings were initiated against the Respondents through serving the SCN requiring them to show cause in writing, as to why penalty, as provided, may not be imposed on them.

7. Although no response to the aforementioned SCN was submitted by the Company, hearing in the matter was fixed for June 12, 2023, which was adjourned on the request of the Company vide its letter dated June 08, 2023. Subsequently, hearing was re-scheduled for July 27, 2023, however, no one appeared. Another opportunity of personal representation was then fixed for August 9, 2023, wherein Mr. Zahid Hussain Zahid, appeared as the Authorized Representative of the Respondents (AR) and submitted that:

- The transaction was in normal course of business.
- Shareholders approval will be obtained in compliance to the provisions of Section 199.
- Lenient view may please be considered.
- Assured compliance of law in future.

8. Subsequent to the hearing opportunity, the Company also submitted a response vide letter dated August 23, 2023 and stated as follows:

- During the year ended 30.06.2022, our client did related parties transaction with Elahi Capital (Pvt) Limited
- Related party transaction were got approved from the members in AGM held on 28.10.2021
- The main object of ECL is to invest in or upon, subscribe for, underwrite, purchase or otherwise acquire shares stocks.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

- The Transactions with Elahi Capital is for Sales / Purchase of shares of different companies and as per the principal business of ECL, these transactions are normal course of business. Being normal course of business, section 199 is not applicable to these transactions. These are just related party transactions which are treated and disclosed properly.
- Receivable figure of Rs.369 million from related party (ECL) was at the end of the year. Receivable figure could not be reduced due to the fact that during the year ended 2021-2022, stock market was under pressure as the country's political and economic situation was uncertain. The investment was held in securities to avoid heavy losses which resulted in increase of receivable figure at the end of the year 2022. The market has improved after the close of 30.06.2022, the receivable figure from related party has been reduced substantially.

9. Before proceeding further, it is necessary to refer to relevant legal provisions, which are reproduced as under:

Section-199 of the Act:

(1) A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period, amount of investment and terms and conditions attached thereto

Explanation: The term investment shall include equity, loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company

(2) The company shall not invest in its associated company or associated undertaking by way of loans or advances except in accordance with an agreement in writing and such agreement shall inter-alia include the terms and conditions specifying the nature, purpose, period of the loan, rate of return, fees or commission, repayment schedule for principal and return, penalty clause in case of default or late repayments and security, if any, for the loan in accordance with the approval of the members in the general meeting:

Provided that the return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis in accordance with the terms of the agreement, failing which the directors shall be personally liable to make the payment:

Section 199(6) of the Act:

Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 3 on the standard scale and in addition, shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section.

10. I have examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:

- (i) Section 199(1) of the Act clearly stipulates that the company cannot make investment in associated company or associated undertaking except under the authority of special resolution, which shall indicate the nature and the amount of the investment and the terms and conditions thereof. Hence, authority of special resolution of shareholders of a company is mandated by law for making any such investments, loans, advances etc., to associated companies or undertakings. The explanation added to Section 199(1) provides that the term "investment" shall include equity,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company.

- (ii) Section 199(2) of the Act provides that the company shall only invest in its associated company or associated undertaking by way of loans or advance in accordance with an agreement in writing and such agreement shall include the terms and conditions, specifying: (i) the nature, purpose and period of loan, (ii) rate of return on loan; (iii) fees or commission; (iv) repayment schedule for principal amount and return; (v) penalty clause in case of default or late repayments; and (vi) security, if any, for the loan in accordance with the approval of the members in the general meeting. Furthermore, the return on such investment shall not be less than the borrowing cost of the investing company or the rate as may be specified by the Commission whichever is higher and shall be recovered on regular basis in accordance with the terms of the agreement, failing which the Company/directors shall be personally liable to make the payment.
- (iii) The transactions in normal course of business with associated companies cannot be construed under the provisions of Section 208 of the Act as approval for such transactions is required to be obtained through a special resolution as mentioned under the provisions of Section 199 of the Act. Furthermore, the Respondents have also failed to place before me documentary evidence of compliance of the requirements of Section 199 of the Act.

11. From the above discussion and after careful consideration of all the facts of the case, I am of the view that provisions of Section 199 of the Act have been contravened and for this contravention, the Respondents are liable under sub-section (6) of the Section 199 and Section 479 of the Act. In exercise of the powers conferred under the said provision, I hereby impose aggregate penalty of Rs. 250,000/- (Rupees Two Hundred and Fifty Thousand only) on the Company and Warn the remaining Respondents.

12. The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited/United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty (30) days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

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

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced:

Dated: September 6, 2023

Islamabad