



**Securities and Exchange Commission of Pakistan**  
*Enforcement Department*

**[Islamabad]**

Before Abdul Rehman Qureshi, Commissioner

Order

In the matter of

**M/S PAK ELEKTRON LIMITED**

Date of final hearing: December 27, 2004

Present: Syed Manzar Hasan, General Manager Finance on behalf of all the directors and chief executive

Date of Order: December 30, 2004

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This order will dispose of the proceedings initiated against the Chief Executive and Directors of M/s Pak Elektron Ltd. (the "Company") for making unauthorized investments in its associated companies in violation of the provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that while examining the annual audited accounts of the Company for the year ended June 30, 2003, it was observed by the Commission that the Company's auditors namely M/s Manzoor Hussain Mir & Co., Chartered Accountants had in their report signed on October 09, 2003 have drawn attention towards Note 18.4 of the aforesaid accounts which disclosed the following investments made by the company in its associated undertakings in violation of Section 208 of the Ordinance:

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**Note 18.4**

	<b>(Rs in thousand)</b>	
	<b><u>2003</u></b>	<b><u>2002</u></b>
<i>PEL Appliances Limited</i>	0	443,974
<i>PEL Daewoo Electronics Limited</i>	172,589	90,776
<i>Saigol Qingqi Motors Limited</i>	21,826	0
	<b><u>194,415</u></b>	<b><u>534,750</u></b>

Maximum debit balance standing at the end of any month is Rs.194.415 million.

**18.4.1** *Advances made to associated companies referred above to the tune of Rs.194.415 million are without authority of special resolution as required by the provisions of Section 208 of the Companies Ordinance, 1984.*

**18.4.2** *In pursuance of order by Honourable SECP dated 12<sup>th</sup> May 2003, the Directors of the Company are required to submit report within one month from the date of order to the authority confirming the principle and mark up payable thereon and provide the time frame and the manners in which the dues will be recovered from PEL Daewoo Electronics Ltd. Mark up will be charged at not less than the borrowing cost. All the dues are to be paid before 9<sup>th</sup> May 2005. However, no report under the aforesaid directive is yet submitted.*

3. The Directors, in their report submitted the following explanation pertaining to the above-referred qualifications of the Company's auditors:

*"Company has chalked out a plan to recover the amounts due from associated undertakings and compliance will be made under Section 208 of the Companies Ordinance, 1984."*

4. It has been observed that the Chief Executive and Directors of the Company during the year ended June 30, 2003, instead of recovering the loans and advances made earlier to its associated companies, for which separate order was issued and directions were also given for its recovery, have further extended loans and advances during the year amounting to Rs.81.813 million to its associated undertaking namely, M/s PEL Daewoo Electronics Ltd and further fresh investment of Rs. 21. 826 million was also made in another associated undertaking namely, M/s Saigol Qingqi Motors Ltd.

5. The Chief Executive and Directors have breached their fiduciary duty by failing to exercise duty of due care while providing advances to associated concerns due to the fact that they



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continued with their previous practice of advancing unauthorized loans and advances to its associated undertakings instead of recovering the same in accordance with law. This clearly establishes that the Chief Executive and all the Directors have knowingly and willfully avoided complying with the mandatory provisions of the Ordinance knowing well that they were duty bound to do so.

6. In view of the aforesaid position, it was evident that the Company has made investment in its associated undertakings namely PEL Daewoo Electronics Limited and Saigol Qingqi Motors Limited without seeking prior approval of the members as required under Section 208 of the Ordinance. An amount aggregating to Rs.194,415,000 was due from the associated undertakings as at June 30, 2003. Accordingly, a show cause notice dated October 27, 2004 was issued to the Chief Executive and all the other Directors calling upon them to show cause as to why penal action may not be taken against them under Sub-section (3) of Section 208 read with Section 476 of the Ordinance and SRO 865(I)/2000 for violating the statutory requirements of the Ordinance. The aforesaid notice was responded on behalf of the directors of the Company vide their letter dated October 4, 2004.

7. In order to provide an opportunity of personal hearing, the case was fixed on December 27, 2004 on which date Syed Manzar Hasan, General Manager Finance of the Company appeared and admitted the aforesaid default.

8. In the written submissions as well as at the time of hearing of this case, it was contended that:

- (i) The Company had made this investment when the business was expanding and the associated companies required funds. However this investment has not caused any revenue losses to the Company. The Company has stated that the mark up rate charged to PEL Daewoo Electronics Limited is more than Pak Elektron's borrowing costs as follows:

<u>Year</u>	<u>Borrowing Cost</u>	<u>Mark up Charged</u>
2003	13.86%	15%

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- (ii) Resolution seeking members' approval for the investment, in compliance with requirements of the Section 208 of the Companies Ordinance 1984 could not be passed due to omission and ignorance on part of the Company.
- (iii) With respect to Saigol Qingqi Motors Limited it has been stated that recoverable balance as at June 30, 2003 works out to Rs.21.826 million and further mark up charged for the year 2003-2004 has increased this balance to Rs.25.109 million. With regard to the afore mentioned balance, an amount of Rs.9.250 million has been recovered during the year 2004-05 and the outstanding balance as at 24.12.2004 is Rs.15.859 million which will be recovered by June 30, 2005.
- (iv) The Company has submitted that they have taken up matter with the venture Partner, Daewoo Electronics Ltd., Korea who has consented to transfer their 40% shares in PEL Daewoo Electronics Ltd. to Pak Elektron Ltd. and this would result in PEL Daewoo Electronics Ltd. becoming wholly owned subsidiary of Pak Elektron Ltd.

9. After having considered the admitted default of the Chief Executive and Directors of the Company and the perusal of the documents and information placed on record, it is evident that the investment was made in the associated undertakings without seeking approval of the shareholders through a special resolution, in violation of the requirements of Section 208 of the Ordinance. The same fact has been reported by the company's auditors and the directors separately in their reports. The argument that this investment has not caused any revenue loss is not a valid reason for violating the mandatory provisions of law by making unauthorized investments in associated undertakings. It is important to mention that the Company's paid up capital is just Rs.189.501 million and the maximum balance due from the associated undertakings during the year ended June 30, 2003 was Rs.194.415 million.

10. For the foregoing reasons, it is established that the Chief Executive and the Directors have violated the provisions of Section 208 of the Ordinance and have not exercised due care while

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providing advances to associated concerns. I have, however, noted that the Directors of the Company have admitted the default and are in a process of rectifying the default by recovering the balance due from its associated companies with interest over and above their borrowing cost. The Chief Executive and the Directors of the Company have also assured that they would ensure strict compliance of the provisions of the Ordinance in future.

11. In view of the above, I, instead of imposing maximum penalty as prescribed by Sub-section (3) of Section 208 of the Ordinance, take a lenient view of the default and impose a fine of Rs.50,000 on each of the directors namely, Mr. M. Naseem Saigol, Mr. M. Azam Saigol, Mr. Shahid Sethi, Mr. Haroon Ahmad Khan, Mr. Sh. Mohibullah Usmani and Mr. Homaeer Waheed. The afore-named directors are directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities & Exchange Commission of Pakistan in the Habib Bank Limited within 30 days of the date of this order and furnish a receipted challan to the Commission in this regard.

12. The Chief Executive and Directors are also directed to recover the entire outstanding amount along with markup thereon from the associated undertakings by June 30, 2005. An auditor certificate confirming the total recovery of the amount from the associated undertakings shall be furnished to the Commission by July 2005.

**Abdul Rehman Qureshi**  
*Commissioner (CLD)*

**Announced**  
December 30, 2004  
**Islamabad**