



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Enforcement Department  
Company Law Division

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*Before Tahir Mahmood, Executive Director (Enforcement)*

*In the matter of  
Exide Pakistan Limited*

Number & date of the notice: EMD/233/443/2002-395-1 dated July 11, 2007  
Date of hearing: September 12, 2007  
Present: Mr. S. Haider Mehdi  
Director / Company Secretary

**DIRECTION**

**Under Sub Section (1) of Section 472 read with Section 208 of the Companies Ordinance, 1984**

This order shall dispose off the proceedings initiated through notice dated July 11, 2007 under the provisions of Sub Section (1) of Section 472 read with Section 208 of the Companies Ordinance, 1984 ("the Ordinance") served on Mr. S. Haider Mehdi, Director / Company Secretary of Exide Pakistan Limited ("the Company").

2. The Company was incorporated as a Public Limited Company on October 28, 1984. Its shares are listed on the Karachi Stock Exchange (Guarantee) Limited. The authorized share capital of the Company is Rs.100,000,000/- divided into 10,000,000 ordinary shares of Rs.10/- each. The paid up share capital of the Company is Rs.54,057,370/- divided into 5,405,737 ordinary shares of Rs.10/- each. The Company is engaged in the manufacture and sale of automotive batteries, industrial cells, chemical, and acids.

3. The examination of the annual accounts of the Company for the year ended June 30, 2005 had revealed that it has made certain payments amounting to Rs.108,000/- (one hundred & eight thousand only) on behalf of Chloride Pakistan (Pvt.) Limited ("the Chloride"), a wholly owned subsidiary of the Company without the approval of its shareholders as required under the provisions of Section 208 of the Ordinance. The Securities and Exchange Commission of



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Pakistan (“the Commission”) at that time taking a lenient view, had ignored the aforementioned default and issued a warning to the Company vide letter dated September 6, 2005 to be careful regarding compliance of the aforesaid provisions of the Ordinance, in future.

4. However, during the examination of the Company’s annual accounts for the year ended June 30, 2006, it has been observed that receivables from the Chloride has increased to Rs.191,000/- (one hundred & ninety one thousand only) as disclosed under note 22 to the accounts. The Company in response to the Commission’s letter dated June 28, 2007 has stated that amount of Rs.191,000/- (one hundred & ninety one thousand only) constitutes of payment made by the Company on behalf of its wholly owned subsidiary on account of audit fees, professional charges, filing fees, professional & firm tax.

5. Based on the above, it has been established that the Company has contravened the provisions of Section 208 of the Ordinance, however, taking into consideration the nominal amount being involved, the Commission instead of issuing show cause notice under the aforesaid provisions of the Ordinance, has given an opportunity to the Company in terms of the provisions of Sub Section (1) of Section 472 of the Ordinance to recover all outstanding amounts from Chloride and make good the default of the provisions of Section 208 of the Ordinance within thirty days of the service of that notice.

6. In response to the notice under Sub Section (1) of Section 472 of the Ordinance, Mr. S. Haider Mehdi, Director / Company Secretary of the Company submitted his reply vide letter dated August 17, 2007 wherein it was stated that the shareholders in their 40<sup>th</sup> Annual General Meeting held on June 17, 1993 had passed a special resolution for promotion and incorporation of a wholly owned subsidiary for the purpose of manufacturing lead acid batteries in Pakistan. The shareholders in terms of the said resolution had authorized the Company to invest up to Rs.80 million from time to time and on such terms and conditions as may be determined by its directors. The Company, therefore, had invested an amount of 224,000/- (two hundred & twenty four thousand only) in the Chloride. It was further stated that expenses amounting to Rs.191,000/- (one hindered & ninety one thousand only) were also paid by the Company on account of audit fee and statutory expenses against which the Chloride will issue its ordinary shares of to the Company in accordance with the resolution passed in 1993.



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7. The submissions made by the Company was not found satisfactory as the resolution passed by the Company in the year 1993 does not hold good based on the facts that since 1993 major amendments have been made in the provisions of Section 208 of the Ordinance in the year 1996 and then a notification dated December 6, 2000 had also been issued by the Commission wherein companies were directed to include certain material information in the statement which requires to be circulated to the shareholders under provisions of Section 160 of the Ordinance alongwith notice of meeting where a special business relating to investments in any of their associated undertaking to be transacted under the aforesaid provisions of law. In the said notification, it has also been stated that in case any decision to make investment under the authority of a resolution is not implemented till the holding of subsequent general meeting, its status including reasons for not having made investment so far and major change in financial position of investee company since date of last resolution, must be explained to the shareholders through a statement under Sub Section (1) of Section 160 of the Ordinance.

8. Accordingly, to provide an opportunity of personal hearing, the case was fixed on September 12, 2007. On the date of hearing, Mr. S. Haider Mehdi, Director / Company Secretary of the Company appeared before the undersigned and argued the case. He reiterated the same stance as submitted vide letter dated August 17, 2007, however, when his attention was invited towards the aforesaid legal position, he admitted the default and made commitment to recover the aforementioned amounts from Chloride.

9. I have taken into consideration the submissions made in writing as well as those at the time of hearing and also perused the relevant legal provisions applicable in this case. The default is established and admitted.

10. Before proceeding further, it is necessary to advert to the provisions of law under which the notice to undo the default / irregularity was given. Sub-section (1) of Section 472 of the Ordinance provides that;

“If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of the notice on the company requiring it to do so, the Commission may, of its own motion or on an application made to it by



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any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by a stock exchange, make an order directing the company and any office thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.”

11. Accordingly, in the circumstances of the case, I proceed to order as follows:

- The Company shall recover the entire outstanding / receivable amount from Chloride within 15 days of the date of this order;
- The Company shall submit an auditors’ certificate confirming the recovery of the aforesaid amount from Chloride;
- Any subsequent investment in its associated undertakings shall be complied with the relevant provisions of law.

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**Tahir Mahmood**  
Executive Director

*Announced*  
*September 17, 2007*  
*Islamabad*