



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Company Law Division
Enforcement Department

Continuation Sheet -0

***Before Tahir Mahmood
Executive Director (Enforcement)***

In the matter of

Faran Sugar Mills Limited

Number and date of show cause notice	No.EMD/233/36/02 dated October 10, 2007
Date of hearing	December 11, 2007
Present	Mr. Muhammad Ayub, CFO & Company Secretary Mr. Jehangir Adam Abdul Aziz, Advisor

ORDER

Under provisions of Section 208 read with Section 476 of the Companies Ordinance, 1984

This order will dispose of the proceedings initiated through show cause notice bearing No.EMD/233/36/02 dated October 10, 2007 against all the directors including the Chief Executive of Faran Sugar Mills Limited (“the Company”) under the provisions of Section 208 read with Section 476 of the Companies Ordinance, 1984 (“the Ordinance”).

2. The Company was incorporated in Pakistan as a Public Limited Company on November 03, 1981 under the Ordinance and its shares are listed on Karachi and Lahore Stock Exchanges. The paid up capital of the Company as on September 30, 2006 stood at Rs.188.269 million divided into 18.827 million ordinary shares of Rs.10 each. The principal activity of the Company is manufacturing and sale of white sugar. The registered office of the Company is situated at Karachi.

3. The facts leading to the case are that the examination of annual audited accounts of the Company for the year ended September 30, 2006 (the “annual account”) revealed that the total investment in an associated undertaking, Unicol Limited (“Unicol”) aggregates to Rs.80.367 million. Further, note 8 to the accounts revealed that the Company has given a guarantee to a commercial bank on behalf of Unicol amounting to Rs.138.00 million.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Company Law Division
Enforcement Department

Continuation Sheet -1

4. On perusal of the records of the Company, it was found that the Company had passed a special resolution for making equity investment amounting to Rs.58.67 million in Unicol in its extra ordinary general meetings (“EOGM”) held on July 22, 2004. Further, another special resolution was passed for making investment amounting to Rs.30.00 million in its EOGM held on May 18, 2006. Thus the Company was authorized by the shareholders to make a total equity investment up to Rs.88.67 million which it had invested in Unicol. However, in addition to above, the Company during the year 2006 had given guarantee to a commercial bank on behalf of Unicol amounting to Rs.138.00 million. The Company had not taken any approval from the shareholders under the aforesaid provisions of the Ordinance for giving such guarantee.

5. The facts narrated above indicated that the Company *prima facie* had contravened the provisions of Section 208 of the Ordinance. It was, therefore, considered necessary to probe the details of the transaction.

6. Proceedings through a show cause notice under the provisions of Section 208 read with Section 476 of the Ordinance dated October 10, 2007 were initiated against all the directors of the Company namely:

- i. Mohammad Amin Ahmed Bawany
- ii. Mohammad Omar Amin Bawany
- iii. Ahmed Ali Mohammad Amin
- iv. Iqbal A. Rehman
- v. Abdul Wahid A. Ghaffar
- vi. A. Wahid Jaliawala
- vii. Mohammad Asif (NIT Nominee)
- viii. Iqbal Ismail (NIT Nominee)

7. The response of the show cause notice was submitted by the Company Secretary, providing a copy of notice of EOGM held on May 18, 2006 and a copy of statement of material facts under the provisions of Section 160(1)(b) of the Ordinance. Further it was stated that the Company had taken approval for any guarantee given on behalf of Unicol for any funding from financial institution to fund 60% of project cost without mentioning amount of guarantee. As guarantee is a non funded facility, the Company had not specified the amount in the special resolution. However, the amount was disclosed in the annual accounts of the Company which were approved by the shareholders.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Company Law Division
Enforcement Department

Continuation Sheet -2

8. In order to provide an opportunity of personal hearing, the case was fixed for December 11, 2007. On the date of hearing Mr. Muhammad Ayub, Chief Finance Officer and Company Secretary and Mr. Jehangir Adam Abdul Aziz, Advisor of the Company, appeared as an authorized representative to plead the case. During the course of hearing, submissions already made through written reply were reiterated. The representatives acknowledged the fact that special resolution was passed for making equity investment in Unicol however the Company failed to mention the amount of guarantee separately with the view that disclosing the same in the annual accounts would suffice. The guarantee was given by the Company in July 2006. The transaction was not *mala fide* and was carried out in the best interest of the shareholders. Further copies of the notices of both the EOGMs held on July 22, 2004 and May 18, 2006 and minutes of the EOGM held on May 18, 2006 were provided. The representatives while admitting the default prayed that a lenient view may be taken and proceedings may be withdrawn. They also assured that the Company would ensure strict compliance of the statutory provision in future.

9. It is important to quote the relevant provisions of the Ordinance. Sub-section (1) of Section 208 of the Ordinance provides that:

(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 and amount of investment and terms and conditions attached thereto.

Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.

Explanation: The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.

10. It is viewed that the expression 'investment' shall include loans, advances, equity, by whatever name called. Hence the intention of the legislature is wider than merely referring to the loans, advances and equity. Further, reference can be made to sub-section (f) of Section 2 of the Banking Companies Recovery of Loans, Advances, Credits, Advances and Finances) Act 1997 which provides the meanings of loan. In terms of the aforesaid Section, a "loan" means a loan, advance and credit under a system based on interest and includes a guarantee, indemnity, letter of credit or any other financial engagement which a banking company may give, issue or undertake on behalf of a borrower. Hence guarantee is deemed to be a loan.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Company Law Division
Enforcement Department

Continuation Sheet -3

11. I have gone through the facts of the case, record of the Company, relevant provisions of the Ordinance, written submissions given in response to the show cause notice and arguments by the authorized representatives in the hearing and I am of the view that the Company has not complied with the requirements of Section 208 of the Ordinance. It would be beneficial to look at the relevant provisions of law for making investment in associated undertakings. Under Section 208 of the Ordinance, it is mandatory that a 'special resolution' be passed for making investment in associated undertakings. It is also one of the conditions prior to making investment that the resolution shall indicate the nature and amount of the investment and terms and conditions attached thereto. Section 208 of the Ordinance responds to the potential group of people/ companies in control of more than one company who may accommodate their own interest rather than interest of all the shareholders. The Directors under the Ordinance are required to discharge their obligations and fiduciary duties to act in the interest of the company and its shareholders. However, Section 208 of the Ordinance does not rely on the directors in order to secure the confidence of minority shareholders and make it mandatory that such transactions must be approved by them. These provisions of law, therefore, have been enacted with a view to make the matters concerning investments by companies in their associated companies transparent and enabling the shareholders to make an informed decision in the light of the detailed information provided to them in the statement of material facts. These provisions are mandatory and no investments in associated companies can be made without getting prior approval from the shareholders. The Company has argued that advance to its associated undertaking is deemed approved by the shareholders by approving the annual account in the Annual General Meeting held on January 27, 2007. I have carefully read the notice of the EOGMs held on July 22, 2004 and May 18, 2006 along with statement of material facts and the notice of AGM held on January 27, 2007 and observed that the shareholders were no where informed about the guarantee to be given by the Company to banks on behalf of Unicol. The Counsel, during the hearing, has emphasized on the fact that the word of guarantee has been used in the resolution passed on May 18, 2006, I therefore consider it necessary to reproduce the contents of the aforesaid resolution which states as follows:

Quote

Resolved that pursuant to Section 208 of the Companies Ordinance, 1984 the Board of Directors of the Company be and is hereby authorize to make as additional investment of up to Rs.30.00 million (in addition of investment of Rs.58.67 million already approved by the shareholders of the Company) in the equity of Unicol Limited (unlisted). That the Board of Directors of the Company and the Company Secretary be and hereby authorized to take all necessary steps including negotiations with financial institutions,



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Company Law Division
Enforcement Department

Continuation Sheet -4

execution of such documents / deeds as may be required including guarantee / other securities and do all acts, deeds and things that may be necessary or required to give effect to the above resolutions”

Unquote

The reading of the above resolution clearly indicates that the shareholders while passing the above resolution have authorized the Board of Directors to execute deeds or arrange for guarantees for the equity investment of Rs.30.00 million and directors were given no mandate by the shareholders to give guarantee of their company for Unicol.

12. In view of the above discussion, I am of the firm opinion that the provisions of Section 208 of the Ordinance have been violated and directors are liable for the penalties as defined in Sub-section (3) of the aforesaid provisions of the Ordinance. Sub-section (3) of Section 208 of the Ordinance, applicable in the relevant period, provides that if default is made in complying with the requirements of this section, every director of the company who is knowingly and willfully in default shall be liable to a fine which may extend to one million rupees and in addition the directors shall jointly and severally reimburse to the company any loss sustained by it in this respect. Keeping in view the track record of the Company, I am taking a lenient view and instead of imposing a maximum penalty of one million rupees on each director impose a token fine aggregating to Rs.450,000 (four hundred and fifty thousand rupees only) which will be paid by the directors in the following manner:

S.No.	Name	Rs.
i.	Mohammad Amin Ahmed Bawany	100,000
ii.	Mohammad Omar Amin Bawany	100,000
iii.	Ahmed Ali Mohammad Amin	100,000
iv.	Iqbal A. Rehman	50,000
v.	Abdul Wahid A. Ghaffar	50,000
vi.	A. Wahid Jaliawala	50,000
Total		450,000

13. The above named directors of the Company are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Commission with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as an arrear of land revenue. It may also be noted that the said penalties are imposed



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

*Company Law Division
Enforcement Department*

Continuation Sheet -5

on the directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

14. Mr. Mohammad Asif and Mr. Iqbal Ismail, nominee directors of NIT are hereby strictly warned to be vigilant in future. Nominee directors being the main element of transparency in the decisions of the Board of Directors of a Company have the same duties and responsibilities as any other director of the Company. The law expects the nominee director to give full attention to the affairs of the companies and look after the interest of the Company as a whole and discharge the functions entrusted under the Ordinance with due care and prudence.

15. Before departing with the order, I hereby invoke provisions of Section 473 of the Ordinance and direct the Chief Executive of the Company to arrange for passing a special resolution under the provisions of Section 208 of the Ordinance, providing complete information to the shareholders in the statement of material facts under the provisions of Section 160 of the Ordinance regarding grant of guarantees to Unicol and file the required returns with the Commission and the concerned Registrar.

Tahir Mahmood
Executive Director (Enf.)

Announced:
December 17, 2007
ISLAMABAD