



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
COMPANY LAW DIVISION
(Enforcement Department)

[Islamabad]

Before Abdul Rehman Qureshi, Commissioner

Order

In the matter of

M/S J. K. SPINNING MILLS LIMITED

Date of final hearing: February 24, 2004

Present: Syed Hussain Shahid Mansoor Naqvi
Director Finance on behalf of all the
directors

Date of Order: February 25, 2004

This order will dispose of the proceedings initiated against the Chief Executive and directors of M/s J. K. Spinning Mills Ltd. (the "Company") for making unauthorized investments in associated companies in violation of 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 September 30, 2003, it was observed by the Enforcement Department, that the Company's auditors, M/s Zahid Jamil & Co., Chartered Accountants had, in their report dated December 08, 2003 on the aforesaid accounts, reported the following qualification:

Quote

"In our opinion and to the best of our information and according to the explanations given to us except for the matter referred to in note 9.1 where a special resolution has not been passed under Section 208 of the Companies Ordinance, 1984....."

Unquote



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
COMPANY LAW DIVISION
(Enforcement Department)

3. Note no. 9 to the aforesaid accounts also revealed the following:

Quote

9. Due from associated undertakings:	2003	2002
<i>Considered good</i>		
<i>Unsecured</i>		
<i>Under markup arrangements</i>		
<i>J.K. Sons (Pvt) Ltd.</i>	66,792,982	-----
<i>J.K. Fibre Mills Ltd.</i>	<u>29,364,792</u>	-----
	<u>96,157,774</u>	<u>-----</u>

9.1 *“The maximum receivable balance was Rs. 147,734,197/- (2002; Nil) at the end of December 2002. It carries markup ranging from 8.5% to 15% p.a. However, a special resolution indicating the nature, period and terms and conditions under Section 208 of the Companies Ordinance, 1984 is to be passed.”*

Unquote

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

Quote

“The Company had advanced Rs. 96.158 million to their associated companies on mark-up arrangement and 1% higher than its financial cost. The auditors have pointed out that certain provisions of Section 208 of the Companies Ordinance, 1984 have not been fulfilled. The management is of the opinion that the company has not suffered any financial loss as these funds were surplus to its requirements and could not be used in the business. The management intends to use these funds in their own business, therefore, the advances will be subsequently recovered and adjusted.”

Unquote

5. In view of the aforesaid position, it was evident that the Company has made investment aggregating Rs.96,157,774 in its associated undertakings namely J.K. Sons (Pvt) Ltd. and J.K.Fibre Mills Ltd. without seeking prior approval of the members as required under Section 208 of the Ordinance. Accordingly, a show cause notice dated January 01, 2004 was issued to the Chief Executive and all the other directors calling



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
COMPANY LAW DIVISION
(Enforcement Department)

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 for violating the statutory requirements of the Ordinance. The aforesaid notice was responded by the directors of the Company vide their letter dated January 14, 2004.

6. In order to provide an opportunity of personal hearing, the case was fixed on February 24, 2004 on which date Syed Hussain Shahid Mansoor Naqvi, a director of the Company appeared and admitted the default.

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

- () The Company had made this investment when their associated companies were facing financial constraints but this investment has not caused any revenue losses to the Company.
- () Resolution seeking members' approval for the investment could not be passed due to omission and that too was unintentional.
- () The female directors of the Company took plea that being housewives, they do not take active part in the affairs of the Company, thereby, are not knowingly or willfully involved in the default pointed out by the SCN.
- () The Company has made recovery of the amount due from J. K. Sons (Pvt.) Ltd. alongwith markup thereon.
- () The Company has also given notice to M/s. J.K. Fibre Mills Ltd. for return of amount due to the Company alongwith markup thereon till March, 2004.

8. After having considered the confessional statement of the Directors of the Company and the perusal of the documents and information placed on record, I am of the view that the investment was made in the associated undertaking without passing special resolution by its shareholders, in term of the provisions of Section 208 of the Ordinance. The same fact has been reported in the auditors' report and in the directors' report. The argument that this investment has not caused any revenue loss is not a valid reason for making unauthorized investments in associated undertakings. It is important to note that the Company's paid up capital is just Rs. 70 million and the maximum balance due from the associated undertakings during the year was Rs. 147.734 million.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
COMPANY LAW DIVISION
(Enforcement Department)

9. For the foregoing reasons it is concluded that the Chief Executive and the directors have violated the provisions of Section 208 of the Ordinance and have not exercised due care while providing advances to associated concerns. I have, however, noted that the Directors of the Company have admitted the default, have promptly acted and is 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 directors and the Chief Executive of the Company have also assured that they would ensure strict compliance of the provisions of the Ordinance in future.

10. In view of the above, I, instead of imposing fine as prescribed by Sub-section (3) of Section 208 of the Ordinance, take a lenient view of the default, drop the proceedings against the female directors of the Company for not being involved in the default and impose a fine of Rs. 25,000/- each on the four responsible directors, namely, Mr. Javaid Anwar, Mr. Faiq Javaid, Mr. Shaiq Javaid and Syed Hussain Shahid Mansoor Naqvi. The afore-named directors are directed to deposit the said fine in the designated bank account in the name of Securities & Exchange Commission of Pakistan in the Habib Bank of Pakistan within 30 days of the date of this order and furnish a receipted challan to the SECP in this regard.

11. The Chief Executive and directors are directed to recover the entire outstanding amount alongwith markup thereon from the associated undertakings by June 30, 2004. An auditor certificate confirming the total recovery of the amount from the associated undertakings shall be furnished to the Commission by July 2004.

Abdul Rehman Qureshi
Commissioner (CLD)

Announced
February 25, 2004
Islamabad