

No. 19 (783)CF/ISS/1SS/94-
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Enforcement & Monitoring Division)
NIC Building, Jinnah Avenue,
Blue Area, Islamabad

IN THE MATTER OF KOHINOOR POWER COMPANY LTD.

ORDER

Section 208 of the Companies Ordinance, 1984 provides that a company shall not make investment in any of its associated companies except under the authority of a "special resolution". This section further provides that the return on investment in the form of loans shall not be less than the borrowing cost of the investing company. The "Explanation to this section provides that expression "investment" shall include among others, any amount which is not in the nature of "normal trade credit". In case of default/non-compliance of this provision of law, a director of the company who is knowingly and willfully in default is liable to a fine upto Rs. one million and in addition is liable jointly and severally to reimburse to the company any loss sustained by the company in consequence of the investment made without complying with the requirements of this section.

2. In case of Kohinoor Power Company Limited, complaints were received that this company has extended huge trade credits to its associated company namely M/s. Kohinoor Industries Ltd. which could not be termed as normal trade credit on examination of the matter, it was noticed that trade credits allowed to Kohinoor Ind. Ltd. by this company stood at Rs.389.683 million on 30th June, 1999 which were equivalent to about 20 month's sale of the company. It was decided to initiate proceedings against the management of the company under section 208 ibid and a show cause notice was issued on 26th July, 2000.

3. The company in response to the show cause notice through its written reply and also at the time of hearing on September 12, 2000 pleaded that M/s. Kohinoor Ind. Ltd. is the only buyer of electricity produced by Kohinoor Power Company Ltd. and due to crisis in textile industry it failed to clear in time the bills raised on account of electricity supplied. It was argued that it was not possible to force recovery or to discontinue supply of electricity to that company as it was the only customer and without its survival, Kohinoor Power Company itself would not have survived. It was further explained that the Kohinoor Ind. Ltd. has in a way already paid the cost of delaying the payments as it was allowed 5% rebate which it could avail on timely payment as per agreement with company.

4. I have carefully examined the matter. Undisputedly it is an abnormal trade credit but it appears to have accumulated only due to inability of the customer to pay and not due to willful default of the directors of this company. It has been rightly pointed out that forced recovery or discontinuation of supply of electricity to Kohinoor Industries Ltd., would have resulted into collapse of this company itself. However, the representative of the company appeared at the time of hearing himself accepted that credit has accumulated to an abnormal limit and on persuasion of Commission agreed to:-

- (a) Start recovering markup on the outstanding balances w.e.f. 1.7.2000 at a rate not less than company's own borrowing cost;
- (b) Recover outstanding balance (treating 3 months sale to be normal trade credit) in 4 years time i.e. recovery of at least Rs. 75 million per annum.

5. The management of the company has undertaken to settle the outstanding balance in the matter mentioned above vide its letter dated 20th September, 2000. I am of the view that objective of proceeding under section 208 ibid stand achieved and this arrangement will serve the interest of small

shareholders of M/s. Kohinoor Power Company Ltd. better.

6. In view of the above, the proceedings initialed under section 208 ibid. are dropped. However, if default is made in complying with the undertaking given by the company in its letter dated September 20, 2000 appropriate action will be taken in the matter.

(M. Zafar - ul - Haq Hijazi)
Commissioner (Enforcement)

Announced

Islamabad October 2, 2000.