



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

*Before Tahir Mahmood Executive Director (Enforcement)*

*In the matter of*

## *Kohinoor Power Company Limited*

Number and date of notice                      EMD/233/404/2002-2494-2500 dated March 26, 2009  
Date of hearing                                      July 01, 2009  
Present:    Mr. M. Omer Farooq (Director)

### ORDER

#### UNDER THE PROVISIONS OF SECTION 208 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order will dispose of the proceedings initiated against the directors of M/s Kohinoor Power Company Limited (the "Company") pertaining to contravention of the provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance").

2. The Company is incorporated in Pakistan as public limited company and is listed on all stock exchanges of Pakistan. Issued, Subscribed and Paid up capital of the Company is Rs. 120,000,000/- comprising of 12,000,000 ordinary shares of Rs. 10 each as on June 30, 2008. The Company is engaged in the business of generation and distribution of electricity.

3. The facts leading to this case, briefly stated are that the Enforcement department of Securities and Exchange Commission of Pakistan ("Commission") conducted examination of the annual audited accounts of the Company for the period ended June 30, 2008, ("Accounts") revealed that the Company has allowed credit period of 31 days to its customers, other than the associates. However, credit period allowed to its associate Kohinoor Industries Limited ("KIL") stood at 441 days; furthermore, accounts of KIL in the books of the Company revealed that maximum debit balance outstanding at the end of any month during the year is



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substantially more than Rs. 31.49 million which is greater than total sale to KIL in financial year 2008, as it is evident from the following analysis:

	Rs.
Total Sales	405,612,458
Sales to Associate	29,375,601
Net sales (other than Associate)	376,236,857
Trade Debts (other than Associate)	32,653,892
<b>Collection period</b>	<b>31 days</b>
Sales to Associate (KIL)	25,723,691
Trade Debts (KIL)	31,488,381
<b>Collection Period</b>	<b>441 days</b>

4. From above analysis it is apprehended that the Company has given abnormal trade credit to its associate KIL without the authority of a special resolution and without any return. This is in contravention to the provisions of Section 208 of the Ordinance. Therefore, a show cause notice dated March 26, 2009 ("SCN") was issued to the directors of the Company to explain as to why penalties in terms of Sub-section (3) of Section 208 of the Ordinance may not be imposed on them.

5. The reply of SCN was submitted by all the directors vide their letter dated May 27, 2009, the seriatim reply given by the Company is given below:

- KIL has suspended its operations w.e.f 12 October 2007. Thereafter KIL has stopped buying electricity from the Company.
- The Company has not sold electricity to KIL for whole year, it is only July 2007-October 2007 (3 months and 12 days). Therefore, calculating collection period by 360 days is not correct. KIL has paid off its balance and as on 31-03-2009, the balance is nil.
- Currently the Company is only dealing with Fesco and collection period is 20-30 days. Further, Company requested to withdraw SCN as the issue does not fall under the ambit of Section 208 of the Ordinance.

6. In order to provide an opportunity of personal hearing, the case was fixed on July 01, 2009 on which date Mr M. Omer Farooq (Director) appeared before me on behalf of all the directors of the Company. He reiterated his earlier stance as was given through written submissions in response to the show cause notice.



7. I feel it appropriate to quote here 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.*

8. I have analyzed the written representation made by the Company, verbal submissions of the representative and relevant provisions of the law. My observations in the case are hereunder: "

a) The Company was advised in Orders issued by this Commission under Section 208 and Section 495 of Companies Ordinance, 1984 ("Ordinance") dated October 02, 2000 and July 17, 2007 respectively to treat 3 months sale as normal trade credit, but trade credit given to KIL exceeds approximately 14 months, furthermore, no interest was charged on outstanding balance during the year ended June 30, 2008. As admitted by the Company that collection period from other than associate is 20-30 days, therefore, credit period given to KIL is not a normal trade credit.

b) The proviso of Sub-Section (1) of Section 208 of the Ordinance is very clear. It explains that expression investment shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit. The Company has given credit to KIL with no time frame for recovery as has been observed from the ledger accounts for the year ended on June 30, 2008. Such transaction cannot be termed as normal trade credit, hence, falls within the explanation of investment as given in Sub-section (1) of Section 208 of the Ordinance. The normal trade credit is a credit which the Company extends to its customers against the sale of goods in the normal course of business and most of times it is based on industry norms.

9. For the foregoing reasons, 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 Section 208 of the Ordinance. However, keeping in view the fact that the




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debt is now recovered by the Company, I am inclined to take a lenient view and instead of imposing a maximum fine of Rs. Ten million on each director hereby impose fine of Rs. 100,000 (rupees one hundred thousand only) on each director. This will be paid by Chief Executive and directors in the following manner.

S. No.	Name	Penalty (Rupees)
1	Mr. M. Naseem Saigol, Chief Executive	100,000
2	Mr. M. Azam Saigol, Director	100,000
3	Mr. Shahid Sethi, Director	100,000
4	Mr. Muhammad Omer Farooq, Director	100,000
5	Mr. Rashid Ahmed Javaid, Director	100,000
6	Mr. Muhammad Ather Rafiq, Director	100,000
7	Mr. Muhammad Asif Bajwa, Director	100,000
	<b>Total</b>	<b>700,000</b>

The Chief Executive and directors of the Company are hereby directed to deposit the aforesaid fines aggregating to Rs.700,000/- (Rupees Seven hundred thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity and are required to pay the said amount from their personal resources.

  
Tahir Mahmood  
Executive Director (Enforcement)

**Announced**  
July 06, 2009  
Islamabad