

**Securities and Exchange Commission of Pakistan  
Enforcement and Monitoring Division  
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad.**

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*May 09, 2002*

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**Before Rashid Sadiq, Executive Director**

**In the matter of  
Yusuf Textile Mills Limited**

Number and date of show cause notice No.

19 (98) CF/ISS/2001

**dated**  
January 18, 2002

**Date of hearings**  
April 15, 2002

**Present:**

Mr. M. Yousaf Adil, FCA

**ORDER UNDER SUB-SECTION (5) OF SECTION 208 OF THE COMPANIES  
ORDINANCE, 1984**

This order will dispose of the proceedings initiated against M/S Yusuf Textile Mills Limited (the "Company") under Section 208 of the Companies Ordinance, 1984 (the "Ordinance") for making investment in its associated company namely M/S Indus Tech Limited (the "ITL") without the authority of a Special Resolution.

2. The facts of this case, briefly stated, are that Annual Audited Accounts of the Company for the year ended September 30, 2000 were examined and it was revealed that the Company has given an advance amounting to Rs. 18.0 million to ITL. The accounts of ITL attached with the accounts of the Company indicated in its note 3 that the finance

obtained from the Company was free from any mark up or financial charges. The auditors of the company namely, M/S M. Yousaf Adil, Saleem & Co., Chartered Accountants in their report to the members on the aforesaid Annual Accounts signed by them on April 03, 2001 have also drawn attention of the members towards the aforesaid advance and observed that the said advance was contrary to the provisions of the Companies Ordinance, 1984

3. The above quoted note No. 3 to the accounts of ITL and the observation of the auditors of the Company indicated that the Company has contravened the provisions of Section 208 of the Ordinance.

4. The aforesaid circumstances necessitated the examination of the matter in order to determine as to whether the investment made by the Company in its associated undertaking was in accordance with the mandatory requirements of Section 208 of the Ordinance.

5. In view of the foregoing, a show cause notice No.19 (98)/CF/ISS/2001 dated January 18, 2002 was issued to the Chief Executive of the Company calling upon him to show cause in writing within seven days as to why penalty under Sub-section (5) of Section 208 read with Section 476 of the Ordinance may not be imposed.

6. In response to the aforesaid show cause notice, the Chief Executive vide his letter dated January 24, 2002 informed that the advance was for a very short period to enable the subsidiary company to get release of generators to avoid heavy demurrages. He also stated that ITL was established as a subsidiary company to generate and supply electricity to the Company. It was also informed that the loan was subsequently recovered along with mark up thereon. This fact was also substantiated from the latest audited accounts of the Company for the year ended September 30, 2001. As regards to the issue that the advance had been shown as interest free in the accounts of the subsidiary company, the Company stated that it was advised to the management at the time of finalization of accounts of the Company that interest should be charged on advance to subsidiary company. It was also argued that the Company had not suffered any loss due to the aforesaid transaction and, therefore, the default may be condoned. It was further assured that the Company would ensure full compliance of Section 208 of the Ordinance in future. In order to give an opportunity of being heard, the case was fixed on April 22, 2002.

7. Before the date fixed for hearing, Mr. M. Yousaf Adil, FCA requested for hearing on April 15, 2002. I, therefore, heard him on the said date. He repeated the arguments already advanced by the Company in reply to the show cause notice. He forcefully argued that the Company had not sustained any loss due to this transaction and, therefore, taking a lenient view, the default may be condoned.

8. The relevant provisions of law pertaining to investment in associated undertakings are embodied in Section 208 of the Ordinance, which are mandatory in nature. These provisions of law require a 'Special Resolution' to be passed for making investment in

associated undertakings. It is also one of the conditions for making investment that the Resolution shall indicate the nature and amount of the investment and terms and conditions attached thereto. It has further been provided that aggregate investment in associated companies, except a wholly owned subsidiary company, shall not exceed thirty percent of the total paid up capital and free reserves of the investing company at any point of time. It is also one of the requirements that the return on investments in the form of loans shall not be less than the borrowing cost of the investing company. 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 at arm's length. These provisions are mandatory and no investments in associated companies could be made without the authority of a Special Resolution.

9. Having considered the arguments of the Company, both written and at the time of hearing, I am of the opinion that the Company had violated the mandatory provisions of Section 208 of the Ordinance because of the simple reason that the advance was made without authority of a Special Resolution. The Company has also admitted this position. The Company has not been able to present convincing justification that the directors were not aware of the requirements of Section 208 of the Ordinance and the default was not willful. I am of the view that in the circumstances, described above, the Company could have refrained from making or committing the aforesaid default. The Company has committed the default but have saved subsidiary from losses due to heavy demurrages by making payment on its behalf. The default in complying with the provisions of Section 208 of the Ordinance was, therefore, made knowing the fact that the payment being made on behalf of the subsidiary would constitute violation of Section 208 of the Ordinance. However, the said advances were recovered subsequently along with return at not less than the borrowing cost of the Company and consequently no loss has been sustained by the Company in consequence of the investment, which was made in ITL without complying with the requirements of Section 208. In view of the aforesaid, the undersigned is inclined to take a lenient view of the default.

10. In view of the foregoing, the undersigned impose a fine of Rs 10,000 (Rupees ten thousand only) on the Chief Executive of the Company for default in complying with the requirements of Section 208 of the Ordinance.

11. The Chief Executive of the Company is directed to deposit the fine as indicated above in the following head of account within 30 days of the receipt of this order:

Account No. 10464-6  
Habib Bank Limited  
Habib Bank Plaza, I. I. Chundrigar Road,  
KARACHI.

**RASHID SADIQ**  
Executive Director (Enforcement & Monitoring)

Announced:  
May 09, 2002  
ISLAMABAD