



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
*Enforcement Department*

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

***In the matter of***

***Sapphire Textile Mills Limited***

Number and date of show cause notice    EMD/233/281/2002-3008-14 dated February 26, 2008  
Date of Hearing                                    April 16, 2008  
Present    Mr. Imtiaz Majeed of Hameed Majeed Associates Pvt. Ltd.

***ORDER***

**Under Sub-section (3) Section 208 read with Section 476 of the Companies Ordinance, 1984**

This order will dispose of the proceedings pertaining to contravention of the provisions of Section 208 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”) initiated through show cause notice No.EMD/233/281/2002-3008-14 dated February 26, 2008 served on all the seven directors of the Sapphire Textile Mills Limited (herein after referred to as “the Company”).

2.        The Company is a public company limited by shares incorporated under the Companies Act, 1913 now the Ordinance and is listed on Karachi Stock Exchange. Its paid up capital is Rs. 200,831,400 comprising of 20,083,140 ordinary shares of Rs. 10 each as per the latest available balance sheet as on December 31, 2007 and the Company is engaged in the business of sale of yarn, fabrics and home textile products.

3.        The facts leading to this case are that during the examination of annual audited accounts for the year ended June 30, 2007 of the Company, submitted with the Securities and Exchange Commission of Pakistan (“Commission”) under the provisions of Section 233 of the Ordinance, it was revealed that the Company made an investment of Rs. 400,000/- in the 40,000 shares of Sapphire Wind Power Limited (“the SWPL”), making it a wholly owned subsidiary as on December 27, 2006. Further, it was noted that the Company had advanced a loan amounting to Rs.5.00 million to the SWPL for the purpose of leasing



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project land. The current account of SWPL maintained in the books of the Company reflected that the advance was made on January 11, 2007. Therefore, the Enforcement Department (hereinafter referred to as “the Department”) of the Commission issued a show cause notice number EMD/233/281/2002-3008-14 dated February 26, 2008 under Sub-section (3) of Section 208 read with Section 476 of the Ordinance to the following directors asking them to show cause in writing within 14 days of the date of the notice:

- i) Mr. Mohammad Addullah, Chairman
- ii) Mr. Nadeem Abdullah, Chief Executive
- iii) Mr. Shahid Abdullah, Director
- iv) Mr. Amer Abdullah, Director
- v) Mr. Yousuf Abdullah, Director
- vi) Mr. Mohammad Younas, Director
- vii) Mr. Mohammad Yamin, Director

4. Mr. Imtiaz Majeed of Hameed Majeed Associates Private Limited (“the Counsel”) submitted reply on behalf of all the directors of the Company vide letter dated March 06, 2008. The Counsel replied that the total amount of Rs. 5.4 million was invested in wholly owned subsidiary without taking necessary approval as required under the provisions of the Section 208 of the Ordinance. The said transaction took place based on the understanding that there is a SRO whereby the holding company does not require any special resolution for the purposes of investment made in wholly owned subsidiary company.

5. In order to provide an opportunity of personal representation, the case was fixed for hearing on April 16, 2008 before the undersigned, at head office of the Commission at Islamabad. The hearing was conducted as per schedule. The hearing was attended by the Counsel and Mr. Imran CFO of the Company. During the hearing, the Counsel accepted the default under Section 208 of the Ordinance and prayed for taking a lenient view.

6. I have gone through the facts of the case, record of the Company, relevant provisions of the Ordinance, discussion took place in the hearing and written submissions given in response to the show cause notice. I feel it appropriate to quote here the relevant provisions of the Ordinance. Sub-section (1) and Sub-section (3) of Section 208 of the Ordinance provides that:



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- (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.*

- (3) *If default is made in complying with the requirements of this section, every director of a company who is knowingly and willfully in default shall be liable to 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 the company in consequence of an investment which was made without complying with the requirements of this section.*

It has been established that both the Company and SWPL were associated companies in terms of Section 2 of the Ordinance as on December 27, 2006 and the Company advanced an amount of Rs. 5.00 million to the SWPL on January 11, 2007 for leasing project land. The amount advanced falls under the term 'investment' as per Sub-section (1) of Section 208 of the Ordinance.

7. As the default is admitted in writing vide Counsel's letter dated March 06, 2008 and also during the hearing held in the matter therefore, further deliberation in the matter is not required. The provisions of Section 208 of the Ordinance have been violated and the directors are liable for the penalties as provided in Sub-section (3) of the aforesaid provisions of the Ordinance. However, keeping in view the fact that the amount was advanced to a wholly owned subsidiary of the Company and that the Commission vide notification No.819(1)/2007 dated August 10, 2008 exempted such investments from the scope of Section 208 of the Ordinance, I am inclined to take a lenient view and hereby impose a token penalty of Rs.350,000 (rupees three hundred and fifty thousand only) on the directors of the Company and direct them to deposit the aforesaid fine in the designated bank account maintained in the name of Commission with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission in a following manner:



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S #	Name of Directors	Amount of Penalty (Rs.)
1	Mr. Mohammad Addullah, Chairman	50,000
2	Mr. Nadeem Abdullah, Chief Executive	50, 000
3	Mr. Shahid Abdullah, Director	50, 000
4	Mr. Amer Abdullah, Director	50, 000
5	Mr. Yousuf Abdullah, Director	50, 000
6	Mr. Mohammad Younas, Director	50, 000
7	Mr. Mohammad Yamin, Director	50, 000
	<b>Total</b>	<b>350,000</b>

Further, in terms of Section 473 of the Ordinance, I direct the Chief Executive of the Company to recover the mark up calculated on a rate which shall not be less than the borrowing cost of the Company, on the aforesaid advance of Rs.5.00 million from SWPL from the date of advance till April 30, 2008 within 15 days of the date of this order and submit a report with the Department. The Company shall continue to charge mark up till the advance remains outstanding in order to ensure that transactions with associated company are undertaken at arms length.

8. In case of non-deposit of the penalty proceedings for recovery as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed on the directors in their personal capacity therefore they are required to pay the same from their personal resources. Further non-compliance of the directions given in para 7 above would result into initiation of proceedings under Section 495 of the Ordinance.

**Tahir Mahmood**  
Executive Director (Enforcement)

**Announced**  
May 19, 2008  
Islamabad