

**Before Javed K. Siddiqui, Executive Director (CL)**

**In the matter of**

**M/S Suhail Jute Mills Limited**

**(Under Section 208 read with Section 476 of Companies Ordinance, 1984)**

Number and date of notice:	No. EMD/233/328/2002-586-592 dated July 18, 2005
Date of hearing:	August 03, 2005
Present	<b><i>On behalf of the Company:</i></b> (i) Mr. Suhail Farooq Shaikh, Chief Executive (ii) Mr. Javed Akhtar, Assistant Director
Date	September 02, 2005

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**ORDER**

This order shall dispose off the proceedings initiated through Show Cause Notice No. EMD/233/328/2002-586-592 dated July 18, 2005 against the Chairman, Chief Executive and the Directors of M/s. Suhail Jute Mills Limited (the "Company") for the violation of provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance").

2. The Company was incorporated in the year 1981 as a public company limited by shares. Shares of the Company are listed on the all three Stock Exchanges of the Country. Paid up capital of the Company is Rs. 37.450 million divided into 3.745 million ordinary shares of Rs. 10 each. The Company is principally engaged in the manufacture and sale of jute products. Its production facilities are located in Nowshera and it has 480 shareholders including individuals, joint stock companies, private limited companies, insurance companies, financial institutions etc. and as per its pattern of

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

*Continuation Sheet - 1 -*

shareholding disclosed in the annual report for the year ending June 30, 2004, directors, their spouses and minor children hold 73.42% of the total shareholding. This indicates that there is considerable public interest in the Company. Board of Directors of the company as per its annual report for the year ended June 30, 2004 comprises of the following persons:

1.	Mian Farooq Ahmed Shaikh, Chairman
2.	Sohail Farooq Shaikh, Chief Executive
3.	Mrs. Neelam Sohail, Director
4.	Mrs. Sadia Mohsin, Director
5.	Mrs. Sharmeen Azam Jamil, Director
6.	Mrs. Mehreen Haroon Rashid, Director
7.	Mrs. Ambreen Zahid Bashir, Director

3. Brief facts of the case are that while examining annual audited accounts of the Company for the year ended June 30, 2004, it was observed that an amount of Rs.50.170 million is due from associated company M/s. (Colony) Sarhad Textile Mills Limited (the “associate”) and the auditors of the company M/s. Anjum Asim Shahid Rahman & Company (Chartered Accountants) in their audit report dated October 09, 2004 reported that receivable from the associate is doubtful of recovery. The breakup of this receivable was reflected in note 16 to the accounts as given below:

*(Rupees)*

	<b>2004</b>	<b>2003</b>
Principle Borrowing	10,406,128/-	10,408,369/-
Mark-up on Borrowing	22,272,071/-	20,811,116/-
Joint Office Expenses	17,491,338/-	16,491,338/-
<b>Total</b>	<b>50,169,537/-</b>	<b>47,710,823/-</b>

It was further noticed from note 16.1 to the accounts that the company has entered into reciprocal agreement for lending/borrowing of funds with its associated undertaking, (Colony) Sarhad Textile Mills Limited. The aforesaid note is reproduced hereunder:-

*“(Colony) Sarhad Textile Mills Limited and Suhail Jute Mills Limited entered in a reciprocal arrangement of lending and borrowing when either company has surplus fund as is evident in the arrangement approved by the shareholders in their meeting dated October 5, 1991.”*

On perusal of the special resolution passed by the shareholders in annual general meeting held on May 05, 1991, it was observed that the aforesaid resolution authorised the Chairman or Chief Executive of the Company to give loan/advance and borrow up to Rs. 20.00 million only @ 14%

markup per annum. However, the annual audited accounts for the year ended June 30, 2004, reflect an amount of Rs. 50.170 million as due from associated undertaking which is much more than the borrowing/lending limit approved by the shareholders. The matter was taken up with the Company and it was advised vide letter no. EMD/233/328/2002/5039 dated February 16, 2005 to explain the aforesaid transaction with the associate with specific reference to Section 208 of the Ordinance and to provide the details of markup charged against advance of Rs.50.170 million. The Company, in its reply dated June 09, 2005, submitted that the advance has been made under a reciprocal arrangement and markup @ 14% p.a. is being charged which is not less than the borrowing cost of the Company. The company also provided the detail of markup charged on advance to associate from July 2003 to June 2004. Reply of the company was examined and it was noticed that the company has not furnished any ground for advancing in excess of the authorised amount.

Above facts reveal that the company, *prima facie*, contravened the provisions of Section 208 of the Ordinance by making investment in associated concern in excess of the approved amount of Rs. 20 million and the return on investment to the associated company also appeared to be less than the borrowing cost of the company.

4. In the above circumstances, the Enforcement Department was of the view that the company is in violations of statutory provisions of Section 208 of the Ordinance. Consequently, a Show Cause Notice (the "Notice") was issued to the Chief Executive and Directors of the Company on July 18, 2005 and they were advised to appear before me on August 03, 2005 to show cause in writing as to why penalties as provided under Section 208 of the Ordinance may not be imposed on them for violation of the aforesaid provisions of the Ordinance.

5. Mr. Sohail Farooq Shaikh, the Chief Executive of the Company appeared before me on August 03, 2005 to argue the case and submitted a written reply. Written as well as verbal submissions made by Mr. Shaikh at the time of hearing are summarized below:

- a) The Shareholders have approved lending and borrowing with its associated undertaking (Colony) Sarhad Textile Mills Limited up to Rs.20 million @ 14 % per annum and principal amount of lending as on June 30, 2004 stands at Rs.10.406 million which is within the approved limit.
- b) Amount due on account of joint office expenses, which stood at Rs.17,491,338/- as on June 30, 2004, does not fall under the definition of loan/advances as defined in Section 208 of the Ordinance. Since both the companies occupy office space at the same location/premises, it was natural to share the expenditure, thus in such circumstances the cost is also reduced.

- c) The financial position of (Colony) Sarhad Textile Mills Limited is very poor so recoverability of the said amounts is highly doubtful.

6. The arguments advanced by the Chief Executive have been analyzed and are discussed hereunder:

Agreeably, the principle amount of borrowing is well under the limit of Rs.20 million however, mark-up on borrowing (Rs.22,272,071/-) and unpaid joint office expenses (Rs.17,491,338/-) also form a part of “investment in associated undertaking” and thus are covered under the ambit of Section 208 of the Ordinance. Section 208 of the Ordinance explains investment as:

*“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.”*

Furthermore, Appellate Bench (the “bench”) of Securities and Exchange Commission of Pakistan has decided a similar case against Gharibwal Cement Company Limited in 2003. The bench clarified “normal trade credit” as a credit given in normal course of business and such credit extended should be a current liability for the receiver. Open ended credit without specific purpose cannot be termed as “normal trade credit”.

Joint office expenses charged to associated concern by the Company are not being recovered on a periodical basis and the outstanding balance there against is increasing every year which proves that the associated concern is given a preferential treatment vis a vis normal trade debtors of the company and as such it cannot be treated as a normal trade credit, and hence fall under the ambit of investment as explained in Section 208 of the Ordinance. Similarly, as is a practice while extending any loans and advances, the mark up on loans and advances is paid by the borrower at regular periodical intervals and forms a part of loan/advance till such time it is paid. Moreover, the outstanding balance of mark up is also increasing every year and no payment thereof is being made by the associated concern. On that account also it cannot be treated as a normal trade credit.

7. After analyzing the facts of the case and arguments put forward by the Chief Executive, I am of a considered view that these do not carry force and are not acceptable. Violation of section 208 of the Companies ordinance is established and all directors are responsible for the said violation. However, giving the benefit of doubt to the directors in interpretation of the requirements of law, I am constrained to take a lenient view and instead of imposing a maximum penalty of Rs. 1,000,000/- on each director, proceed to decide as follows:

- Impose a fine of Rs. 5,000 on Chief Executive only.
- The Chief Executive and directors are directed, in terms of Section 473 of Companies Ordinance, to make good the default made by them and are advised to recover the

outstanding amount from associated undertaking which is in excess of amount approved by the shareholders and provide a written time schedule for the recovery which should not extend beyond 31 December, 2006.

- Failing recovery of the amount in excess of authorized investment within the time frame as explained above, all the directors would be liable to make good the loss incurred by the Company and deposit the same from their personal resources
- All the directors are reprimanded to be careful in future.

8. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited or pay through a demand draft in the name of Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

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***Javed K. Siddiqui***  
Executive Director (C.L)