



**Securities and Exchange Commission of Pakistan**  
*Company Law Division*  
*(Enforcement Department)*

[Islamabad]

**Before Mr. Tahir Mahmood, Executive Director (Enforcement)**

**Order**

**In the matter of**

**M/s SOUTHERN NETWORKS LIMITED**

**Under Section 208 And Section 492 Read With Section 476**  
**Of The Companies Ordinance, 1984**

Show Cause Notice No. and Date: EMD/233/652/2004-9182-9189  
Dated 17.03.2006

Date of final hearing: 16.07.2007

Present: Mr. Nisar Ahmed, Director on behalf of Chief Executive and  
Directors of M/s Southern Networks Limited

Date of Order: 19.11.2007

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This order will dispose of the proceedings initiated against the Chief Executive and Directors of M/s Southern Networks Limited (the "Company") for making unauthorized investment in SunBiz (Pvt.) Limited (SPL), its associated company, in violation of the provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance").

2. In order to dispose of the aforesaid matter, it is necessary to have a quick glance into the background facts leading to the issue of the Show Cause Notice by the Enforcement Department of this Commission. Examination of Company's Annual Audited Accounts for the year ended 30.06.2005 (the "Accounts") revealed that the Company has made a total investment of Rs.24.1 million in SPL comprising equity investment of Rs.14.996 million and advance against equity of Rs.9.103 million. However, further analysis of



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the notes to the accounts revealed that the shareholders of the Company had approved a total investment of Rs.20 million only which was to be made in SPL by way of equity. In view of the aforesaid, it was noticed that the Company has acted against the mandate of the shareholders and provisions of Section 208 of the Ordinance. Relevant notes to the accounts are reproduced hereunder for ready reference:

i) **Note 17.1 to the Accounts:**

*“The company holds 69.75% shares in SunBiz (Private) Limited which it intends to dispose in the next financial year. The fair value of the above investment as on 30 June 2005 is substantially the same as its cost.”*

ii) **Note 17.2 to the Accounts:**

*The company’s **total investment** in the above company at 30 June 2005 **including advance against equity** (note 19) **amounted to Rs.24.1 million**. The shareholders of the company have, under section 208 of the Companies Ordinance, 1984 (dealing with investments in associated companies and undertakings), **approved the total investment of Rs.20 million only**. Accordingly, the company is **arranging a specific approval** through special resolution from the shareholders of the company under the above referred section **for the additional exposure of Rs.4.1 million, in the forthcoming annual general meeting.**”*

iii) **Note 19 - Advances Against Equity Rs.9,103,311 (2004:Rs.1,991,350):**

*This represents advance to SunBiz (Private) Limited, a subsidiary company, **against future issue of shares**. After the issuance of shares, the holding shall be disposed as explained in note 17 to these financial statements.”*

3. Further examination of the record of the Company revealed that the investment in SPL was approved by the shareholders in their Extraordinary General Meeting (EOGM) held on 25.11.2003. As per minutes of the aforesaid meeting the SPL was incorporated as subsidiary of the Company with an authorized capital of Rs.30 million and **paid up capital of Rs.20 million** up to which **Rs.15 million shall be invested as equity by the Company**. However, the resolution passed on 25.11.2003 as submitted by the Company in Form 26 of the Companies (General Provisions and Forms) Rules, 1985 to the Commission stated that SPL has an authorized capital of Rs.30 million and **paid up capital of Rs.30 million** up to which **Rs.20 million shall be invested as equity by the Company**. The aforesaid indicated violation of Section 492 of the Ordinance.

4. Consequently, a show cause notice dated 17.03.2006 was issued to the Chief Executive, and all the other Directors calling upon them to show cause as to why penal action may not be taken against them under Section 208 and Section 492 read with Section 476 of the Ordinance for violating the statutory requirements of the Ordinance.



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5. The submissions made by the Company in its replies to the show cause notice are summarized as under:

- i) The Company has regretted that extract of EOGM minutes dated 25.11.2003 did not mention the correct figures. Correct figures are as per Form 26. Therefore, provisions of Section 492 of the Ordinance do not apply to its case.
- ii) SPL, subsidiary of the Company, was sponsored and incorporated by the Company with the object to run satellite TV channel for which the Company holds a valid license in its own name while the operations were carried out by SPL. The investments made in SPL were to keep SPL running, therefore, the question of charging of any borrowing cost does not arise.
- iii) Investment made was not in the form of loan but in the form of equity in SPL.
- iv) No shares worth Rs.9,103,311 were issued by SPL against the amount injected by the Company in SPL. The reason for not issuing the shares was that negotiations with the prospective buyer [i.e. AKD Securities (Pvt.) Ltd.] for the sale of total shareholding in SPL were going on and the prospective buyer was an existing shareholder of SPL.
- v) The license was protected by the Company to keep SPL going and by doing so successfully entered into an agreement for sale of shares of SPL. The total investment in the form of shares in SPL was sold at par and sum injected for keeping the company running was also refunded in full. The transaction was completed on 16.2.2006.
- vi) The Company agreed on the disapproved portion of the total investment that is Rs.4.1 million (Rs.24.1 million minus Rs.20 million). However, the Company obtained post facto approval for Rs.4.1 million in its Annual General Meeting (AGM) held on 28.10.2005.
- vii) The amount of injection to keep SPL running rose to about Rs.24.8 million when the deal with the prospective buyer was finalized. The company has obtained shareholders' approval for sale/transfer of total shareholding in SPL to one of existing shareholder of SPL in its EOGM held on 31.1.2006.
- viii) The Company requested to drop proceedings in the matter since deal for sale of SPL has already been transacted and proper authorization was accorded by the shareholders in the EOGM held on 31.01.2006.

6. After granting of various adjournments to the Company against its requests, the case was finally heard on 16.07.2007. Mr. Nisar Ahmed, Director appeared and reiterated the same arguments as were earlier stated in the afore stated written replies. He admitted the aforesaid default and requested for a lenient view in the matter. Mr. Nisar also provided minutes of the EOGM held on 31.01.2006. Moreover, he did not bring with him the power of attorney required to be signed by all directors which had authorized him to represent



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the hearing by Mr. Nisar Ahmed on their behalf. However, he promised to submit the same after the hearing which he failed to do so.

7. I have thoroughly considered the arguments presented before me in writing and as well as at the time of hearing and perused the documents on record. I have also examined the relevant provisions of the Ordinance. There are two issues which require determination before deciding this case:

- a) What was the exact amount of investment approved by the shareholders for investments in SPL and whether the Company has made misstatement in minutes of EOGM held on 25.11.2003 or Form 26?*
- b) Whether the Company has made violation of Section 208 of the Ordinance?*

8. As regards the first issue, I accept the Directors' plea that the amount of investment approved by the shareholder was inadvertently mentioned as Rs.15 million in the minutes of the EOGM and that the correct amount was Rs.20 million as disclosed in Form 26 and Accounts of the Company.

9. Regarding the second issue, I am of the considered view that the Company had violated the provisions of Section 208 of the Ordinance and I hold on this issue based on the following analysis of the aforesaid submissions of the Company:

- i) The shareholders of the Company approved equity investment of Rs.20 million in SPL. The Company's plea that investment was made in the form of equity and not in form of loan/advance is not valid. In addition to equity investment of Rs.14.996 million in SPL the Company provided advance of Rs.9.103 million to SPL termed as "advance against equity". However, SPL never issued shares against this advance and the said advance was disposed of to AKD Securities (Pvt.) Limited pursuant to agreement dated 3.02.2006. The advances against equity amounting to Rs.9.103 million were un-authorized by shareholders which was a violation of Section 208 of the Ordinance.
- ii) The reason for financing by way of advance to keep SPL running is not a reason for not complying with requirement of Section 208 of the Ordinance. Interest at a rate not less than the borrowing cost, as required under Section 208 of the Ordinance should have been charged by the Company on interest free advance of Rs.9.103 million provided by the Company. Therefore, by not charging interest on the said advance resulted in a loss to the Company and its shareholders.
- iii) It is noted that no shares were issued due to reasons of negotiation with prospective buyer, an existing shareholder; however, this is again no reason for not following the terms of approval of shareholders at the EOGM of 25.11.2003. In case of any default on part of the associated



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company with regard to issue of shares against the advance given by the Company, the Company would have financially suffered to a great deal and would adversely affect the interest of shareholders. However, the Company has disposed off the said investment and advance as can be seen from Note 22.1 to the accounts of the Company for the year ended 30.06.2006 as follows:

*“The Company’s total investment in the above company as at June 30, 2005 including advance against equity (Note 19) has been disposed off to the AKD Securities (Pvt.) Limited in pursuant to agreement dated February 03, 2006.”*

- iv) It appears from the records that no such notice of EOGM held on 31.01.2006 had been submitted to this office, which on inquiry, minutes pertaining to the said meeting were submitted by the Company at the time of hearing and it was noted that among other agenda items therein was an approval for disinvestment sale of 149,960 shares of Rs.100 each that were in the name of the Company. Non-submission of the said notice to this Commission indicated violation of Commission’s Circular 5 of 2002.
- v) The Company subsequently obtained approval in Annual General Meeting held on 28.10.2005 of enhanced investment in SPL up to Rs.40 million with the purpose to inject additional capital in SPL in form of shares which was further endorsed by the extracts of material information given as required by SRO865(1)/2000 dated 6.12.2000 as follows:

<i>Serial No.</i>	<i>Particulars</i>	<i>Material Information</i>
<i>5</i>	<i>Price at which shares will be purchased</i>	<i>Rs.10 each share</i>
<i>10</i>	<i>Benefits likely to accrue to the company and the shareholders from the proposed investment</i>	<i>The company is subsidiary of SNL and members will benefit from Dividend Distributions</i>

In this regard, it is reiterated that the Company again did not obtain approval for the advance given to associated company amounting to Rs.9.103 million.

10. After having considered the admitted default of the Chief Executive and Directors of the Company and the perusal of the documents and information placed on record, it is evident that the aforesaid loan facility was extended to the associated company without seeking prior approval of the shareholders through a special resolution and without charging any interest on such credit given, in violation of the requirements of Section 208 of the Ordinance.

11. For the foregoing reasons, it is established that the Chief Executive and the Directors have violated the provisions of Section 208 of the Ordinance and have not exercised due care while extending the said



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credit to the associated company. I have, however, noted that the Directors of the Company have admitted the default and tried to make good the default by getting post facto approval from the shareholders which in fact related to equity and not advances. Mr. Nisar Ahmed has also assured that Company would ensure strict compliance of the provisions of the Ordinance in future.

12. Considering the fact that the Company has expressed regret on inadvertent error, I am inclined to take a lenient view of the default. I, therefore, drop the proceedings under Section 492 of the Ordinance instead of imposing maximum penalty of Rs.100,000 provided therein. Moreover, I, instead of imposing maximum penalty as prescribed by Section 208 (3) of the Ordinance, take a lenient view of the default and impose a fine of Rs.75,000 (Rupees seventy five thousand) each, on Chief Executive, Mr. Tahir A. Khan and the Directors namely, Mr. Ali Mahmood, Mr. Amjad Awan, Mrs. Sughra Ali Mahmood, Mr. Taj ud Deen Kurji, Mr. Salman Rahim, Mrs. Zainab Umer and Ms. Nizhat Shahban. The afore-named Directors are directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities & Exchange Commission of Pakistan in the Habib Bank Limited within 30 days of the date of this order and furnish a receipted challan to this Commission in this regard failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It should also be noted that the said penalty is imposed on the Chief Executive and Directors in their personal capacity and they are required to pay the said amount from their personal resources. In addition to the above, the Company's default with regard to non-filing with this Commission of the notice of EOGM held on 31.1.2006 is being condoned for the time being, however, the Company and its Directors are hereby warned to be careful in future while complying with the requirements of law.

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

**Announced**  
19.11.2007  
**Islamabad**