



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department

Before

Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Interloop Limited

Date of Hearing

August 23, 2021, September 10, 2021

Order-Redacted Version

Order dated June 29, 2022 was passed by Director/Head of Department (Adjudication-I) in the matter of Interloop Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 04, 2021
2. Name of Company	Interloop Limited
3. Name of Individual*	The proceedings were initiated against Interloop Limited and its seven directors.
4. Nature of Offence	Under sub-regulation (3) and (5) of regulation 5; and regulation 8 of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 read with Sections 199 and 479 of the Companies Act, 2017.
5. Action Taken	<p>Key findings were reported in following manner:</p> <p>I have reviewed the facts of the case and considered the written submissions made by the Respondents and the arguments made during the hearing, in light of the aforesaid legal provisions and state that:</p> <p>(A). with respect to the share deposit money:</p> <p>(i). regulation 5(3) of the Regulations requires that the share deposit money shall be transferred only after the announcement of the issue of shares by the associated company, otherwise transfer of such deposit prior to announcement of an issue of shares shall be treated as loan and return on the same is required to be charged from the date of transfer till the date of announcement of issue of shares;</p> <p>(ii). in terms of subsection (2) of Section 199 of the Act, rate of return on such loan is required to be charged, and no exemption from the said requirement is available;</p> <p>(iii). the said share deposit money was disclosed by the Company in its Annual Audited accounts for the year ended June 30, 2019 as investment in its subsidiary company, IL Apparel. The board of directors of IL Apparel announced right issue on November 19, 2019 i.e. after the Company had transferred the said share deposit money; and</p> <p>(iv). in the absence of announcement of issuance of shares by IL Apparel, the investment in IL Apparel in the form of share deposit money, must have been treated as an investment</p>



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in the nature of loan advance, and the Company must have charged return on the same in accordance with the requirements of sub-section (2) of Section 199 of the Act. But, the Company didn't charge any return on the same from IL Apparel.

B). with respect to the guarantees:

(i). the Company under note 30.1.3 to its 2019 Accounts, disclosed corporate guarantee amounting to Rs. 1,130 million given to the banks on behalf of IL Apparel; and

(ii). regulation 5(5) of the Regulations states that in case of unfunded facilities (for example) a guarantee, letter of indemnity, etc.) the rate of return to be charged shall be determined based on the rate of interest, mark up, profit, fees or commission etc., as the case may be. But, the Company did not charge return on the said guarantee the plea that no return is required to be charged on corporate guarantees given to the banks which implies that, the Company failed to comply with the requirements of regulation 5 (5) of the Regulations.

(C). The Respondents have raised the question of applicability of sub-section (2) of Section 199 of the Act on the companies that are exempted from requirements of sub-section (1) of Section 199 of the Act by virtue of notification S.R.O. 1239(1)/2017 dated December 06, 2017 (SRO).

In this regard, it is stated that the exemption provided through the said SRO, in the case of investment in wholly owned subsidiaries is only to the extent of special resolution as mentioned in subsection (1) of Section 199 of the Act, and does not provide exemption from the requirements of sub-section (2) thereof.

In terms of sub-section (2) of Section 199 of the Act, a company shall only invest in its : associated company including a wholly-owned-sub subsidiary in accordance with an agreement in writing and the terms and conditions of such agreement, among others, include that the return on loan shall not be less than the borrowing cost of the investing company or the rate specified by Commission, whichever is higher.

Therefore, I am of the view that the Company cannot provide loan to its wholly owned subsidiary without any return thereon and that too must be specified through an agreement in writing.

(D). Although, contraventions of the aforesaid legal provisions have been made but I didn't see on record anything evidencing that the aforesaid contraventions were willful, intentional and/ or concocted. I also didn't see on record that any undue benefits at the cost of the minority shareholders of the Company have been accrued by IL Apparel, a wholly owned subsidiary of the Company. Further, I understand that the Regulations are counterproductive as for as capital formation against Share Deposit Money is concerned. Instead of restricting financing to wholly owned subsidiaries in the form of Share Deposit Money, which is one of the useful tools of capital formation in the country, mis-use, observed if any of such financing must be discouraged and penalized.



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	<p>Keeping in view the above, I hereby conclude the proceedings initiated against the Respondents through the SCN without imposing any monetary penalty. The Company is, however, directed to rectify the aforesaid non-compliances within a period of ninety days from the date of this order, if not yet done so, and report the same to the concerned Supervision Department of the Commission.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.</p>
6. Penalty Imposed	Nil
7. Current Status of Order	No appeal has been filed by the respondents.