



# Securities and Exchange Commission of Pakistan

## Adjudication Division Adjudication Department

### Before

### Abid Hussain, ED/HOD (Adjudication-I)

### In the matter of Show Cause Notice issued to Burshane LPG (Pakistan) Limited

Date of Hearing

June 01, 2021, July 06, 2021, August 16, 2021, September 10, 2021, November 23, 2021, January 13, 2022, February 01, 2022, March 02, 2022, September 05, 2022, September 15, 2022, and September 23, 2022

### **Order-Redacted Version**

Order dated October 11, 2022 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Burshane LPG (Pakistan) Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated April 20, 2021
2. Name of Company	Burshane LPG (Pakistan) Limited
3. Name of Individual*	The proceedings were initiated against Burshane LPG (Pakistan) Limited and its ten directors.
4. Nature of Offence	Under Section 183 and 199 of the Companies Act, 2017 read with Section 479 thereof.
5. Action Taken	<p>Key findings were reported in following manner:</p> <p>I have reviewed the facts of the case and considered both the written submissions of the Respondents and verbal arguments made by the Representative, in light of the aforementioned legal provisions and state that:</p> <p>(i) with regard to compliance with Section 183 of the Act, the Respondents, vide letter dated March 03, 2022 has acknowledged that advances/ loans amounting to Rs. 132,920,764/- and Rs. 63,400,000/- were extended to RIBL, an associate company, during the FY2019 and FY2020 respectively without approval of the Board.</p> <p>In this regard, it is stated that extending the said advances/loans without approval of the Board is violation of Section 183 of the Act;</p> <p>(ii) with regard to the Respondents' submission that subsequently approval of the Board was obtained in meeting held on September 11, 2020 to ratify the aforesaid non-compliance, it is stated that <i>post facto</i> approval does not</p>



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exonerate the Respondents of their obligations under and the cited contravention of Section 183 of the Act;

(iii) with regard to non-compliance of Section 199 of the Act, it is stated that in terms of sub-section (1) of Section 199 of the Act, a company can make investment in its associated companies and/or associated undertakings but only under the authority of special resolution. Mr.\*\*\*\*, CEO of the Company, held 85% shares in RIBL, and was director on the board of RIBL since June 3, 2019. Therefore, RIBL was an associate of the Company since June 03, 2019. Therefore, any investment by the Company, in RIBL on or after building up its relationship of associated company with RIBL, was subject to compliance with Section 199 of the Act.

During the year ended June 30, 2019; out of total advance/ loan amounting to Rs.132.920 million extended to RIBL, the Company extended Rs.20.520 million on or after June 03, 2019. Whereas, during FY2020, an amount of Rs 63.40 million was extended to RIBL. Therefore, aggregate amount of Rs 83.920 million was extended as advance/ loan to RIBL, without approval by way special resolution;

(iv) the Respondents' plea that approval of the shareholders for extending loan to RIBL was not obtained considering it a mere formality as the sponsors held 74.2% of the Company's shares.

In this regard, it is stated that in the absence of any specific exemption, this plea doesn't seem plausible;

(v) the Respondents have not contested the allegation that the loan was issued without entering into an agreement in writing. This means that this contravention is admitted by them;

(vi) the Respondents stance that no loss of markup occurred on the aforesaid advances/ loans, is not maintainable as the company could have earned more revenue by investing the same in any financial instrument given the high market rates. This fact is also endorsed by the inspectors in their inspection report wherein inspector reported that the Company should charge additional mark up of Rs 5.875 million on this investment with RIBS;

(vii) The Authorized Representative during the hearing proceedings also argued that these transactions did not result in any loss/damage to the Company and its shareholders; thus it does not involve any *mens rea* on the part of the Respondents. The said argument of the Authorized Representative is not plausible owing to the facts that the aggregate investment of Rs 197 million was made in tranches, with RIBS. It is noted that the investment in RIBS was started from April 23, 2019 and up to May 30, 2019; total



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	<p>investment of Rs. 112.938 million was made. All these investments were made without approval by the Board. Besides, record available with the Commission shows that no interest was charged on these investments during the year ended June 30, 2019. Thereafter, the Company during the month of June 2019 made further investment of Rs. 20.521 million, despite the fact that CEO of the Company became the major shareholder in RIBS and both the companies become associated on June 03, 2019. Subsequently, the Company made additional investment of Rs. 63.400 million in RIBS and the said investment was made neither with the approval of board nor the shareholders of the Company. This clearly indicates <i>mala fide</i> intent on part of the CEO of the Company and other Respondents, that despite knowing the fact that these investments required board approval as well as shareholders' approval after June 03, 2019; kept on making investment in RIBS; and</p> <p>(viii) I have checked the legal record and have observed that no restraining order in Constitution Petitions bearing No. 1257 of 2022 and 1286 of 2022 has been passed by the Honorable Sindh High Court, therefore the case can be decided on merits.</p> <p>Keeping in view the above, it is stated that the Respondents have contravened Sections 183 and 199 of the Act by providing advance/loan to RIBL, an associated company, without: (i) approval of the Board; (ii) approval of the members; (iii) entering into an agreement, in writing; and (iv) charging appropriate rate of return. Further in the light of above discussion the Chief Executive has played the main role in providing the funds of the company to RIBL without following the due course as provided in the law. Hence, I in terms of the powers conferred under Sections 183(6), 199(6), and 479 of the Act, hereby, impose an aggregate penalty of Rs. (Rupees Two Million only) on the Respondents.</p> <p>All the remaining Respondents are warned and advised to ensure compliance with all the applicable regulatory requirements in letter and spirit, in future.</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	A cumulative Penalty of Rs. 2,000,000/- (Rupees two million only) was imposed on the Company, Chairman and CEO.
7. Current Status of Order	No appeal has been filed by the respondents.