



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 Sitara Energy Limited

Date of Hearing	March 17, 2021, June 02, 2021, August 13, 2021, November 11, 2021 and December 02, 2021
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Order-Redacted Version

Order dated April 27, 2022 was passed by Director/Head of Department (Adjudication-I) in the matter of Sitara Energy Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated May 13, 2020
2. Name of Company	Sitara Energy Limited
3. Name of Individual*	The proceedings were initiated against Seven directors.
4. Nature of Offence	Under Section 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 gone through the facts of the case, written responses submitted and arguments made during the hearing, in light of the aforesaid applicable legal provisions and observed that:</p> <p>(i) with regard to the matter of SFL; the Board has allowed trade credit period of more than eight (8) months to its associated company namely SFL. The Respondents have also affirmed that SFL was categorized as B-03 customer and the Board in its meeting held on February 23, 2013 had approved four (4) months credit period policy for B-03 customers. The Representative, subsequently provided copy of the Board's resolution passed in its meeting held on April 25, 2017 wherein credit period for B-03 customers was approved as ten (10) months. This shows that the credit period provided by the Company to SFL does not constitute an investment which attracts applicability of Section 199 of the Act and, therefore did not require the Respondent to obtain approval for the same through special resolution under sub-section (1) of Section 199 of the Act; and</p> <p>(ii) with regard to the matter of SIPL which relates to extending interest free loan amounting to Rs.57.460 million (2017: Rs. 349.435 million), there is no instance of providing evidence by the Respondence that could validate that the</p>



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Company was charging interest on the said loan, as per the requirements of sub-section (2) of Section 199 of the Act. On the contrary, the Respondents are of the view that sub-section (2) ibid is not applicable on investments made in a wholly owned subsidiary, being exempted from the applicability of sub-section (1) ibid, and, therefore, sub-section (2) ibid is not applicable in matter of the aforesaid interest free loan advanced to SIPL.

In this regard, it is imperative to assert that sub-section (1) of Section 199 of the Act is prohibitory in nature, which requires a company to obtain approval by way of special resolution before making any investment in its associated company or associated undertaking. The intent and purpose of sub-section (1) ibid is to protect the company against diversion of its funds and to pass undue benefits to its associated companies and/ or undertakings at the cost of the minority shareholders of such company. Due to this reason, the authority of special resolution is mandated by law for a company before making any such investments are made, loans and advances etc. are disbursed to associated companies and/ or undertakings.

The Respondents have raised the question of non-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 by the Commission vide the said SRO is to the extent of a special resolution only. In terms of sub-section (2) of Section 199 of the Act, a company can invest, in its associated company and/ or undertaking including a wholly-owned-sub subsidiary but strictly 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 to 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.

Keeping in view the above, I am of the considered view that:

(a) with regard to SFL: the Respondents to the SCN have provided approval of the Board regarding extended credit period to associated company i.e. SFL. Therefore, proceedings under sub-Section (1) of Section 199 of the Act are hereby closed without any penal action; and

(b) in the matter of extending interest free loan to its wholly owned subsidiary, SIPL; -he Respondents have contravened sub-section (2) of Section 199 of the Act. Therefore the Respondents are liable to be penalized under sub-section (6) of Section 199 of the Act. I, therefore, impose cumulative penalty of Rs.



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	<p>100,000 (Rupees One Hundred Thousand Only) on the Chairperson and Chief Executive Officer. The remaining Respondents are advised to ensure compliance of law in full 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. 100,000/- (Rupees One hundred thousand only) was imposed on the Chairperson and Chief Executive Officer.
7. Current Status of Order	Appeal has been filed by the respondents and is pending at Appellate Bench of the Commission.