



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Say No to Corruption

Before Shahzad Afzal Khan – Director/Head of Department

In the Matter of

Macpac Films Limited

Number and Date of SCN: CSD/ARN/288 /2016 – 29 dated May 08, 2023

Dates of Hearing: June 08, 2023

Present: Mr. Najmul Hassan – Chief Executive Officer;
Mr. Aquil A Khan – Company Secretary; and
Ms. Um-e-Farwa – Head of Internal Audit.

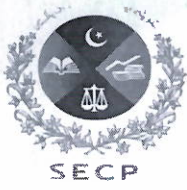
ORDER

UNDER SECTION 199 OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings initiated against the following directors (collectively referred to as the “Respondents”) of Macpac Films Limited (the “Company”) through Show Cause Notice (the “SCN”) dated May 08, 2023 issued under Section 199 of the Companies Act, 2017 (the “Act”):

Sr. #	Name of Respondent
1.	Mr. Naeem Ali Muhammad Munshi
2.	Mr. Najm ul Hassan
3.	Mr. Ehtisham Maqbool Elahi
4.	Mr. Shariq Maqbool Elahi
5.	Mr. Fahad Munshi
6.	Mr. Muhammad Omer Sabir
7.	Macpak Films Limited through the Chief Executive

2. Brief facts of the case are that the annual audited financial statements of the Company for the year ended June 30, 2022 revealed that from the years 2019 to 2020, the trade debtors’ turnover days of Toyo Packaging (Private) Limited (Toyo), an associated company, exceeded the trade debtors’ turnover days of other trade debtors as per following details:



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Years	2019	2020	2021	2022
Toyo Packing (Pvt) Ltd				
Average Debtors	79,487,368	91,000,765	102,844,240	137,184,882
Sales - Toyo	228,528,807	142,334,218	124,903,724	205,544,477
Turnover days (Toyo)	127	233	301	244
Other Debtors - Unrelated				
Average Debtors	331,196,685	251,906,801	236,851,683	417,286,358
Sales - Others	2,152,950,541	2,007,856,622	2,870,420,942	3,927,178,145
Turnover days (Others)	56	46	30	39

3. Furthermore, major portion of the Trade Debtors at the year end from Toyo were past due, as compared to other debtors as mentioned below:

Year		Total Due	Not Past Due	Past Due	Past Due more than 6months
2019	Toyo Receivables	106,155,868	5,403,426	100,752,442	1,309,383
			5.09%	94.91%	1.23%
	Other Receivables	324,791,345	131,355,163	193,436,182	14,166,782
			40.44%	59.56%	4.36%
2020	Toyo Receivables	75,845,662	12,099,438	63,746,224	25,824,410
			15.95%	84.05%	34.05%
	Other Receivables	179,022,256	94,160,076	84,862,180	10,980,387
			52.60%	47.40%	6.13%
2021	Toyo Receivables	129,842,817	7,493,786	122,349,031	75,211,960
			30.01%	5.77%	94.23%
	Other Receivables	294,681,109	199,769,857	94,911,252	31,109,984
			68.11%	67.79%	47.51%
2022	Toyo Receivables	144,526,947	21,030,623	123,496,324	25,823,056
			21.00%	14.55%	85.45%
	Other Receivables	539,891,607	359,302,379	180,589,228	63,463,291
			78.44%	66.55%	33.45%



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4. The Securities and Exchange Commission of Pakistan (the "Commission") vide letter dated February 20, 2023 sought clarification from the Company to which the Company vide letter dated February 27, 2023 *inter alia* stated that:

"The Company is in compliance with Sec-199 of the Act as the amount due is normal trade credit from Toyo Packaging (Pvt.) Ltd. The related party aging is provided on Note-13.4 and it is evident that amount outstanding for more than 180 days has reduced significantly when compared to last year and in relation to outstanding balance of other than related parties.

Further, all the related party transactions are duly considered in the Audit Committee and approved by board of directors on the recommendation of the committee."

5. The aforesaid stance of the Company is not plausible since the Company and Toyo are associated companies in terms of Sub-section (4) of Section 2 of the Act owing to the common directorship of Mr. Shariq Maqbool Elahi and Mr. Ehtisham Elahi. Therefore, the Company *prima facie* provided abnormal trade credit to Toyo, which falls within the definition of investment in terms of Section 199 (1) of the Act without the authority of special resolution.

6. In view of the above, proceedings under Section 199 of the Act were initiated against the Respondents through serving the SCN requiring them to show cause in writing within ten (10) days, as to why penalty, as provided, should not be imposed on them.

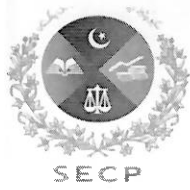
7. In response to the SCN, the Company vide letter dated May 18, 2023, submitted that:

"....

This is in respect of the subject SCN. Our responses and explanations to the SCN are respectfully submitted as under;

As explained in our previous submissions to the SECP that Macpac Films Limited (the Company) being a responsible corporate entity strictly adheres to the policy of complying with the laws and regulations governing the corporate sector in letter and spirit. In line with the above the Company ensures that all the transactions with related parties and investments in associated companies are carried out strictly in accordance with the provisions of the Companies Act, 2017 (the Act) and the related Regulations.

It is submitted that the outstanding amounts in question from Toyo Packaging (Pvt.) Ltd (the Associated Company) were allowed as normal trade credits strictly on an arm's length basis with due approval of the Board in accordance with the provisions of section 208. It is admitted that due to difficult business conditions, particularly, during the COVID era, part of the trade debts exceeded the ageing limits. However, considerable improvements have taken place in the post COVID era, which is evident from the fact that the related party ageing as provided in Table 1 below indicates the past due percentage has reduced in FY 2022 compared to previous year and total dues from the Associated Company have also



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reduced in percentage terms. The aforesaid position has also been presented at Note 13.4 pg 98 of the Annual Financial Report 2022.

NOTES TO THE FINANCIAL STATEMENTS For the Year ended June 30, 2022

13.4 Ageing of trade debts as at the reporting date is as under.

	Total	Neither past due nor impaired	Past due but not impaired			
			> 30 days up to 60 Days	> 60 days upto 90 days	>90 days upto 180 Days	>180 days
(Rupees)						
Related parties						
Hilal Foods (Private) Limited	1,230,443	-	1,230,443	-	-	-
Kings Foods (Private) Limited	632,650	-	-	-	-	632,650
Shalimar Foods Products	1,971,251	-	800,444	1,394,767	-	-
Toyo Packaging (Private) Limited	144,526,847	21,030,623	26,018,497	27,695,322	48,958,840	26,823,056
	148,354,271	21,030,623	21,848,384	29,090,709	48,958,840	27,455,706
Other than related parties						
2022	537,831,897	398,302,378	33,173,774	2,999,828	80,992,235	63,353,291
	621,275,878	380,333,002	55,022,158	32,090,537	129,951,075	90,816,997

	Total	Neither past due nor impaired	Past due but not impaired			
			> 30 days up to 60 Days	> 60 days upto 90 days	>90 days upto 180 Days	>180 days
(Rupees)						
Related parties						
Hilal Foods (Private) Limited	6,128,784	1,776,876	4,351,908	-	-	-
Kings Foods (Private) Limited	632,650	-	-	-	-	632,650
Shalimar Foods Products	1,394,766	-	-	504,670	890,117	-
Toyo Packaging (Private) Limited	129,842,817	7,493,786	10,548,131	10,893,147	25,895,793	75,211,960
	137,999,038	9,270,662	14,900,039	11,397,817	26,585,910	75,644,610
Other than related parties						
2021	294,881,109	199,769,657	49,540,752	8,119,481	6,141,035	31,100,984
	432,880,148	209,040,519	64,440,791	19,517,298	32,726,945	106,954,594

We further wish to bring to your kind notice that during the current financial year there has been further reduction in the outstanding amounts of Associated Company and the amount of ageing of more than 180 days has been reduced to NIL. Details attached in Table 2 below. We intend to continue our efforts to bring about further improvement in this area in the coming months and the positive outcome of these efforts will be depicted in the annual Financial Report 2023.

Table

2:

Table 2: Ageing of trade debts as at March 31, 2023 is as under:						
	Total	Neither past due nor impaired	Past due but not impaired			
			> 30 days up to 60 Days	> 60 days upto 90 days	>90 days upto 180 Days	>180 days
(Rupees)						
Related parties						
Toyo Packaging (Private) Limited	128,183,868	27,904,758	23,161,973	27,367,593	49,749,543	-
	128,183,868	27,904,758	23,161,973	27,367,593	49,749,543	-



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It would also be pertinent to mention here that there is a toll manufacturing arrangement in place whereby Toyo Packaging supplies us raw material for the purpose of toll manufacturing arrangement not only helps maximising capacity utilization of the Company, but also increases profitability through efficient utilization, which would otherwise be difficult due to our own working capital challenges and fixed cost dilution.

Moreover, we would also like to highlight that our pricing to the Associated Company is higher as compared to the pricing charged to other trade debtors in similar models. This is based on the principle that longer the credit period, higher the rate and vice versa. Table 3 below gives a comparison of processing rates charged to Toyo Packaging and Kamil Packaging for four different products in the year 2022-2023. You would please note that the processing rates charged to the Associated Company is higher by up to 23%.

Table 3:

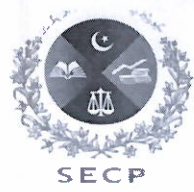
PROCESSING COMPARISON RATES																			
S#	Grade	2022									2023								
		Sep-22			Oct-22			Nov-22			Feb-23			Mar-23			Apr-23		
		TP	KP	Diff %	TP	KP	Diff %	TP	KP	Diff %	TP	KP	Diff %	TP	KP	Diff %	TP	KP	Diff %
1	CFF Melofized	110	100	10.0%	110	100	10.0%	110	100	10.0%	110	100	10.0%	150	125	20.0%	150	125	20.0%
2	CFF Transparent	85	70	21.4%	85	70	21.4%	85	70	21.4%	85	70	21.4%	115	95	21.1%	115	95	21.1%
3	BOFF Plain	142	140	1.4%	142	-	-	142	-	-	142	-	-	172	165	4.2%	172	165	4.2%
4	BOFF Sealable	145	140	3.6%	145	140	3.6%	145	140	3.6%	145	140	3.6%	175	165	6.1%	175	165	6.1%

Toyo Packaging (TP), Kamil Packaging (KP)

In view of the above explanations, we request the honourable Commission to accept the Company's submission and give us an appointment to meet with you in person to be able to answer your queries in a more comprehensive and candid manner."

8. To provide opportunity of personal representation, hearing in the matter was fixed for June 08, 2023, wherein Mr. Najmul Hassan – Chief Executive Officer, Mr. Aquil A Khan - Company Secretary and Ms. Um-e-Farwa - Head of Internal Audit appeared before the undersigned on behalf of the Respondents as their Authorized Representatives ("Representatives") and submitted that:

- Macpac has always been compliant and there never has been any question of mala fide in any course of business.
- The delay in payments was mainly due to the financial crunch caused by COVID pandemic.



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- Extra revenue is being earned from TOYO for providing 60 days of credit line which is 30 days more in comparison to other similar clients opting for Toll Manufacturing.
- Postdated cheques have been received from TOYO for ensuring timely payments and realizing overdue receivables.

9. Furthermore, the Company also vide letter dated June 19, 2023, submitted that:

“....

Further to our response dated May 18, 2023, explanations/clarifications offered by us on June 8, 2023 and in pursuance of the direction of the Honorable Commission, we would like to submit the following additional response for your kind perusal and consideration.

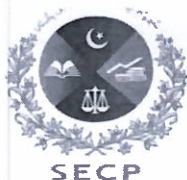
MFL business principles and policy framework

It is respectfully submitted that as part of its business principles and policy framework, Macpac Films Limited (MFL) always ensures that it strictly adheres to the applicable laws and regulations in its day to day business operations including transactions with related parties. In line with the aforesaid business philosophy, the relationship between MACPAC Films Limited (MFL) and Toyo Packaging (Private) Limited (Toyo), an associated company, is purely based on commercial, bonafide, and an 'arm's length' basis and there has never been any malafide intention or infringement on the rights of shareholders of MFL.

Background information

It is further respectfully submitted before the Honorable Commission that the trade debts in question had been extended to Toyo as normal trade credits. However, during COVID, the macro-economic position of the country fast deteriorated affecting industries and overall business activities including the packaging industry and there were default risks prevailing all over. In order to mitigate the risk of default, a review of the credit policy was carried out whereby high-risk customers were converted into 100% advance payment and credit sales were diverted to low-risk customers including but not limited to Continental Biscuits (CBL), Saima Packaging (SP) and Toyo Packaging (Toyo) as well. Copies of related support documents are attached as Annexures A(1) & A(2).

As a result of this, the ageing of trade debts or receivables from Toyo temporarily increased as compared to other market receivables (which were reduced primarily due to change in credit terms from credit to advance/ against documents. Copies of support documents are attached as Annexures B(1) & B(2).



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Strategic move taken during COVID and Post COVID era including toll manufacturing arrangements resulted in boosting portability

Furthermore, we would also like to bring into the notice of the Honorable Commission that following the outbreak of COVID-19 pandemic, management of MFL took rigorous strategic moves to manage its working capital for utilising plant capacities at maximum along with the risk of dollar/PKR parity. To manage this in the best interest of the shareholders, MFL extended its toll manufacturing contracts with quantity commitments with the tolling customers [Kamil Packaging Karachi, Five Star Packages Faisalabad, Toyo Packaging Karachi]. With this option, Toyo also provides all raw materials which constitute 70% of total cost. The sale which we do in the market constitutes 100% with stated ageing whereas Toyo provides raw material on its own (i.e., 70% cost in advance) and therefore, 30% amount remains outstanding with this ageing. However, if we average this, the net ageing would be much less than the actual stated ageing. This measure has minimized the risk of FOREX exposure for the Company as the same has been shifted to tolling parties which ultimately resulted in boosting the profitability with efficient plant capacity utilization to the ultimate benefit of the shareholders. The below appended table shows how toll manufacturing has contributed to increase the profitability of the company.

Table 1

CAPACITY AND PRODUCTION

Operational capacity	2021		2020	
	Rated Capacity	Actual production	Rated Capacity	Actual production
BOPP – Port Qasim Authority	15,000	10,855	15,000	7,802
CPP – Port Qasim Authority	7,000	5,107	7,000	2,458



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Higher prices charged to Toyo as compared to other tolling customers

STATEMENT OF PROFIT OR LOSS

FOR THE YEAR ENDED JUNE 30, 2021

	Note	2021 Rupees	2020 Rupees
Sales - net	30	3,025,322,805	2,164,953,856
Cost of sales	31	(2,567,173,013)	(2,107,605,178)
Gross profit		458,149,792	57,348,678
Administrative expenses	32	(113,564,095)	(88,211,804)
Marketing and selling expenses	33	(26,300,025)	(26,941,488)
Finance costs	34	(91,710,220)	(157,005,124)
Other operating expenses	35	(14,622,409)	(148,954,959)
Impairment loss on trade debts		*	(992,704)
Other income	36	62,059,520	203,348,947
Profit / (Loss) before taxation		274,012,563	(161,408,454)
Taxation	37	(87,347,510)	98,553,356
Profit / (Loss) after taxation		186,665,053	(62,855,098)
		2021 Rupees	2020 Rupees
Profit / (Loss) per share - basic and diluted	38	3.15	(1.06)

The annexed notes 1 to 51 form an integral part of these financial statements.

It is also reiterated that MFL being cognizant of the fact that Toyo is an associated company and a related party, we have not only tried to act strictly on an 'arm's length' basis in all our dealings with Toyo, but have also been charging extra for our products supplied to Toyo as compared to other tolling customers. To substantiate this, we have been charging Rs 125/kg (in one CPP product with one-month credit Period) to Kamil Packaging whereas the rate charged to Toyo is Rs 150/kg (60 days credit line). This difference of Rs 25/- resulted into 20% extra price for one month as against 2% per month extra financing or borrowing cost [Kibor plus 2%. i.e., 24% p.a]. In fact, this is the highest price which is being charged to Toyo, particularly, keeping in view the fact that Toyo being a related party to MFL should not be allowed any undue advantage in the form of trade debts. As explained to the Honorable Commission that MFL was following this strategy solely with the objective to increase overall profitability in the best interest of our valued shareholders. Below mentioned tables, Table 2 & Table 3 reflect the prices being charged to related party [Toyo Packaging] as compared to other than related party [Kamil Packaging & Five Star Plastic respectively].



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Table 2

Kamil Packaging Pvt Ltd Vs Toyo			
	Kamil Packaging Pvt Ltd	Toyo Packaging Pvt Limited	Extra Price %age charged to RP
Processing Rates			
BOPP Films [Plain]	165	172	4%
CPP Films (Metalized)	125	150	20%

Though it is reflected from Table 3 below that Five Star Plastic is being charged more or less the same price as Toyo but it is to clarify here that MFL has committed to Five Star Plastic the highest monthly quantity [350MT] of BOPP films which has high margins & demand in the market; and the price of Five Star is based on the principle of 'higher the quantity higher the price'; however, if we reduce their quantity commitment to the same level as Toyo [100 MT] then the price would be relatively on a lower side.

Table 3

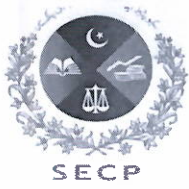
Five Star Plastic Vs Toyo			
	Five Star Plastic Industries	Toyo Packaging Pvt Limited	Extra Price %age charged to RP
Processing Rates			
BOPP Films [Plain]	170	172	1%
CPP Films (Metalized)	150	150	0%

Copies of the related support documents in respect of Kamil Packaging, Toyo Packaging and Five Star Plastic Industries are attached as Annexures C(1), C(2) & C(3) respectively.

We would further like to add here that Toyo is acquiring only 50% of their demand from MFL and remaining 50% it has to acquire from the market. This is because as a matter of policy, MFL does not want to increase its market share beyond the current limit in Toyo being a related party.

Current status & future plan

In our response dated May 18, 2023, we have further stated that MFL by way of vigorous follow up with Toyo, has been constantly bringing down the trade debts outstanding from Toyo. Accordingly, the two companies agreed to a payment plan in December 2022 whereby Toyo has already made a payment of a total sum of Rs 37.5m (Rs 7.5m per month from January 2023 till



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May 2023). This is in addition to regular monthly payments. It is agreed between the companies that by August 2023 all the remaining payments would be made and by September 2023, Toyo will come within the normal credit limit of 30 days. The related email showing the payment schedule as agreed between the two companies is attached as **Annexure D(1)**.

Post-dated cheques

As a confirmation of its commitment to the aforesaid payment schedule, Toyo has also provided to MFL post dated cheques against each of these payments. Copies of post-dated cheques are attached as **Annexures D(2)**.

Background information relating to outstanding amount of Rs 25,130,684/-

As regards the outstanding amount of Rs 25,130,684/- adjustment by Toyo against MFL in the above referred repayment schedule, it was explained in detail to the Honorable Commission that one of the common customer of both the entities to whom money is payable by MFL against his return of rejected material [paid in advance to MFL] has withheld a payment of Toyo on the ground of group company [common directorship], although both the companies, MFL & Toyo, have pointed out the customer several times to treat them as separate entities. MFL is unable to settle the related payment just because SBP did not grant us the permission of remitting this amount, though both the entities, MFL & Toyo have written letters to relevant banks to settle the matter. Copies of the letters are attached as **Annexures E(1) & E(2)**.

Way forward

We would like to extend our gratitude to the Honorable Commission for allowing us the opportunity to explain the aforesaid position and as advised by the Honorable Commission, we will try our level best to resolve this issue as soon as possible, accordance with the applicable laws & regulations/accounting standards in consultation with our external auditor, KPMG and also seek legal opinion, if required.

Conclusion

In light if the aforesaid explanations and submissions, the Honorable Commission may please note that MFL, in line with its business principles and policy, has not only followed the 'arm's length' principle in letter and spirit in its dealings with Toyo, but also acted over and above which has resulted in overall positive impact for the shareholders of MFL.

Prayer

We would, therefore, most respectfully pray to the Honourable Commission to take a lenient view, of this matter and allow us to further improve this position to be reflected in the financial statements of the Company in the future."



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10. Section 199 (1) of the Act is reproduced as hereunder:

"A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period, amount of investment and terms and conditions attached thereto.

Explanation: The term investment shall include equity, loans, advances, guarantees, by whatever name called, except for the amount due as normal trade credit, where the terms and conditions of trade transaction(s) carried out on arms-length and in accordance with the trade policy of the company."

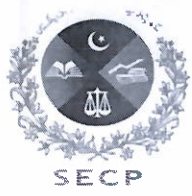
Section 199 (6) of the Act is reproduced as hereunder:

"Any contravention or default in complying with requirements of this section shall be an offence liable to a penalty of level 3 on the standard scale and in addition, shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirement of this section."

11. I have gone through the facts of case and considered both the written and verbal submissions of the Representatives in light of the relevant provisions of the law and state that the requirements of Section 199 of the Act are explicit, requiring companies not to make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution. The Representatives admitted that there has been an oversight and has acknowledged non-compliance of Section 199 of the Act. The Representatives requested to condone the negligence, citing the reason of financial crunch during the COVID-19 pandemic era resulting in the increase in debtors' turnover days for its receivable from an associated company namely; Toyo. The Representatives further added that the non-compliance was not willful, therefore, requested to condone the inadvertent omission.

12. Keeping in view the above, it is stated that the contravention of the provisions of Section 199 (1) of the Act, at the relevant point of time, has been established and same has been admitted by the Representatives as well. The Respondents are, therefore, liable for penalty under Section 199(6) of the Act. In view of foregoing, I hereby impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Company and Warn the remaining Respondents.

13. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.



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14. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondent in respect of any default, omission or violation thereof.

Shahzad Afzal Khan
Director/ HOD
Adjudication Department-I

Announced:
June 27, 2023
Islamabad