



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 Systems Limited

Date of Hearing

January 25, 2022, February 09, 2022, March 11, 2022,
March 28, 2022

Order-Redacted Version

Order dated July 06, 2022 was passed by Director/Head of Department (Adjudication-I) in the matter of Systems Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated December 24, 2021
2. Name of Company	Systems Limited
3. Name of Individual*	The proceedings were initiated against Systems Limited and its eight 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 fact of the case, written submissions and arguments made during the hearing in light of the aforesaid applicable legal provisions of the Act and observed that:</p> <p>i) <u>In the matter of UUS-JV:</u> The Company has acknowledged that the requirements of Section 199 of the Act were not complied with at the time of issuing guarantee dated June 09, 2017 in favour of CAA on behalf of associated company namely UUS-JV. Later, the Company has obtained post facto approval of its members regarding the aforesaid guarantee in the EOGM held on December 01, 2017.</p> <p>ii) <u>In the matter of SUS-JV:</u> The Company under note 10.2 to the 2019 Accounts disclosed loan of Rs. 26.721 million outstanding against SUS-JV. The Company submitted that it holds 95% shareholding in SUS-JV along with 100% control and classified it as wholly owned subsidiary, therefore, provisions of sub-section (1) of Section 199 of the Act were not applicable. In this context, I would like to draw attention to clause 74 of Section 2(1) of the Act which states that:</p>



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	<p style="text-align: center;"><i>"a company shall be deemed to be a wholly owned subsidiary of another company or the statutory body if all its shares are owned by that other company or the statutory body."</i></p> <p>In view of aforesaid definition, it is evident the SUS-JV is not wholly owned subsidiary of the Company but holds 95% shares therein and 100% control thereof. So, it was mandatory for the Company to seek shareholders' approval before sanctioning any loan to the said associated company, i.e. SUS-JV. Nonetheless, the Company has acknowledged that the requirements of Section 199 of the Act were not complied with at the time of extending loan to SUS-JV and later, it obtained post facto approval in respect of the aforesaid loan to SUS-JV in AGM held on May 29, 2020.</p> <p>It is imperative to assert that sub-section (1) of Section 199 of the Act is prohibitory in nature, which prevents a company from making any investment in its associated company or associated undertaking except under the authority of special resolution, which shall indicate the nature and the amount of the investment and the terms and conditions thereof.</p> <p>Keeping in view the above, it is stated non-compliances of Section 199 (1) of the Act in the matter of issuing guarantee on behalf of UUS-JV and extending loan to SUS-JV have been established and conceded. Therefore, the Respondents are liable to be penalized under sub-Section (6) of Section 199 of the Act. However, taking cognizance of subsequent ratification of the said non-compliances by obtaining post facto approvals in matter of UUS-JV and SUS-JV in the EOGM held on December 01, 2017 and the AGM May 29, 2020, respectively, I in terms of the power conferred under sub-section (6) of Section 199 of the Act hereby conclude the proceedings initiated through the SCN, without imposing any monetary penalty. The Respondents are, however, directed to ensure compliance with all the applicable regulatory requirements including Section 199 of the Act 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	Nil
7. Current Status of Order	No appeal has been filed by the respondents.