



Corporate Supervision Department  
Company Law Division

Before Abid Hussain - Executive Director

*In the matter of*

Southern Electric Power Company Limited

Number and date of notice: CSD/ARN/302/2016-593-94 dated August 22, 2016

Date of hearing: September 21, 2016

ORDER

UNDER SECTION 309 READ WITH SECTION 305 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of proceedings in the matter of show cause notice dated August 22, 2016 (*the "SCN"*) under Section 309 read with Section 305 of the Companies Ordinance, 1984 (*"Ordinance"*) issued to Southern Electric Power Company Limited (*"Company"*) and directors of the Company (*the "Respondents"*).

2. The facts leading to this case, briefly stated, are that the Company Registration Office, Islamabad (*the "CRO"*) has approached this office for grant of sanction in terms of clause (b) of section 309 read with clause (c) of section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the ground that operation of the Company has been suspended since September 2012.

3. The SCN dated August 22, 2016 was served on the Company and its directors, under Section 309 of the Ordinance indicating the aforesaid ground to present a petition for winding up of the Company. In order to provide opportunity of personal hearing; the case was fixed on September 08, 2016. Hearing could not be held on September 08, 2016 and was held on September 21, 2016. On the date of hearing Mr. Salman Rahim and Khalid Rashid appeared and requested a three months' time to present correspondence between the Company and other agencies of Government of Pakistan. Accordingly, fifteen days' time was granted to present all the correspondence made between Company and other agencies of Government of Pakistan. They further submitted following points for consideration during the hearing;

- 1) *Company is a power generating Company capable of producing about 108 Mtw of electricity,*
- 2) *It is a national asset in which general public has invested a large amount of money and all efforts must be made to attempt to keep it a running concern,*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - I -

- 3) Company stopped production in September 2012 due to acute shortage of funds caused by WAPDA not paying its Capacity Purchase Price ("CPP"), its sole source of income contrary to the Power Purchase Agreement ("PPA"),
- 4) This led to dispute between two parties under the PPA which to date remain unresolved and to Arbitration Proceedings initiated by the company, which remains in abeyance with the consent of both the parties,
- 5) The Company made all efforts to resolve the dispute amicably as it was unable financially and otherwise to pursue the expensive and time consuming remedies available to it under PPA,
- 6) It is not contested that the company is in default of payments to many institutions, persons, banks and others. However, its lenders, while claiming such defaults have not moved to seek the remedies available to them under law and contracts,
- 7) Since 2012 the sponsors and the management have made every effort to have the plant restated but to no positive success so far. However, present Government remains keen to have all sources of power available to it but the nature of disputes between the parties are complicated and required careful consideration,

4. It is necessary to advert to the following relevant provisions of the Ordinance;

*Clause (c) of section 305 of the Ordinance states that a company may be wound up by the Court if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;*

*Section 309 of the Ordinance states that an application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorized by the Commission in that behalf.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 309 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

It is important to highlight here that the Ordinance has been repealed while promulgating Companies Ordinance, 2016 ("Ordinance 2016"). However, provisions of Section 509(1)(f) of the Ordinance 2016 clearly provides that pending proceedings shall be concluded as provided in the Ordinance :

**"509. Repeal and savings.—** (1) The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIII A consisting of

7th Floor, NIC Building, 63-Jinnah Avenue  
Islamabad, Pakistan

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: [webmaster@secp.gov.pk](mailto:webmaster@secp.gov.pk), Website: [www.secp.gov.pk](http://www.secp.gov.pk)



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 2 -

sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIII A along with all related or connected provisions of the repealed Ordinance shall be applicable *mutatis mutandis* to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:

Provided that repeal of the repealed Ordinance shall not-

affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed”.

5. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company was incorporated on December 20, 1994 as a public limited company under the Ordinance. The principle business of the Company is to generate and sell electricity. The operations of the company were suspended since 2012. The statutory auditor of the Company i.e. KPMG Taseer Hadi and Company Chartered Accountants, has given an adverse opinion in its audit report to the members on the annual audited financial statements for the year ended on June 30, 2015. The auditor has also added following emphasis of matter paragraph in his report:

*The company has incurred a net loss of Rs 1,759.024 million during the year and its equity is eroded as at June 30, 2015 which stands at Rs 8,909.377 million negative. As of balance sheet date the Company's current liabilities exceeded its total assets by Rs 8,685.462 million. Operation of the Company's plant is dependent upon the fuel advance facility from Water and Power Development Authority/National Transmission and Dispatch Company Limited (WAPDA), who has discontinued the same since August 2012 and by virtue of which, the company's power project is closed for operations. Consequently, WAPDA levied Liquidated Damages to the Company during the year amounting to Rs 1,276.627 million for failure to dispatch electricity. Due to this reason, the Company has not been able to generate sufficient cash flows from plant operations resulting in default on repayments of its obligations to the lenders. Furthermore, the directors have not indicated any commitment to provide or arrange working capital facility. However, these financial statements are prepared under the going concern assumption, because of the circumstances and events as mentioned in this paragraph along with other matters as set forth in Note 1.2 to the financial statements, in our opinion the Company cannot be considered to be a going concern and thus the preparation of its financial statements on going concern basis*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 3 -

*is inappropriate. In our opinion the financial statements should reflect adjustment to reduce the value of assets to their recoverable amount and to provide for any further liabilities that might arise. These adjustments are likely to be substantial, but we are unable to determine the total of the required adjustments and provision with a reasonable degree of accuracy."*

6. Further, the documents provided by the Company regarding correspondence of the Company with WAPDA have been analyzed and following has been observed:

- 1) *The Company was incorporated in 1994 under the Ordinance and started its operation in 1999 owing to various disputes with the WAPDA and other agencies of Government of Pakistan,*
- 2) *Operation of the Company were stopped in February 2008,*
- 3) *The Company filed a case at the International Criminal Court in April 2008 against WAPDA for a claim of Rs 5 billion, which is pending as per request of both parties for outside court settlement,*
- 4) *In January 2010 the plant was restarted on the basis of agreements between WAPDA and Company on the assurance given by Managing Director Pak-Kuwait Investment Company,*
- 5) *Both the parties are claiming amount payable against each other,*
- 6) *Most of the employees have left the Company apart from few which are serving without any payment of salary,*
- 7) *Pakistan Stock Exchange has suspended the trading of shares of the Company with effect from January 12, 2016.*

7. It is also clear that despite lapse of several years since business of the Company is suspended, the management of the Company has not been able to formulate a viable revival plan. For a going concern, funds are to be generated from the daily operations of its core business. In the current circumstances the chances of revival of the Company are bleak. This view is further endorsed by the examination of correspondence made between WAPDA and Company, whereby litigations are pending at various forums and revival of the business is not feasible or expected.

8. A Company incorporated under the Ordinance is a legal judicial person and Board of Directors is vested with the power to make decisions with respect to running of its business operation including purchase of assets and payment of liabilities through funds generated from the operations. Investors/ shareholders in a listed company had invested funds keeping in view of the



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 4 -

stated business of the company and accordingly evaluate its income generation capacity and successful business operations. The investment of these shareholders gets stuck in a Company which shuts down its core business and does not have any formal plans to recommence business. In such circumstances the shareholders have the right to get their monies back so that these can be invested in some other fruitful venture. For this very reason the invoked provisions of the Ordinance provide closure of business for more than one year as a basis of going to court to seek winding up of the Company. The Ordinance does not envisage any role of the Board of Directors in the process of winding up, once it is commenced and liquidator is appointed after requisite approval of the shareholders.

9. From the above discussion and after careful consideration of all the facts and circumstances of the case, I am of the view that the Company is liable to be wound up as its business has been suspended since 2012 and is unable to revive its operations so as to make the company a going concern. It is a settled principle of law that a company is liable to be wound up under clause (c) of section 305 of the Ordinance if it has suspended its business for a whole year.

10. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Registrar, Company Registration Office, Islamabad to present a petition for winding up of Southern Electric Power Company Limited.

Abid Hussain  
Executive Director

**Announced:**  
December 14, 2016  
Islamabad