



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

TAF Foundation

Number and date of CSD/ARN/373/2016- 1090-1093 dated October 4, 2016
notice:

Date of hearing: November 2, 2016, August 7, 2017 and January 24, 2018

Present: Ms. Aatiqa Lateef (Chief Executive Officer), Muhammad
Danish Gazdar (Company Secretary) and Mr. Rashid
Naseeb (Authorized Representatives)

ORDER

Under Section 496 read with Section 476 of the Companies Ordinance, 1984

This Order shall dispose of the proceedings initiated against the Directors including the Chief Executive (*the "Respondents"*) of TAF Foundation (*the "Company"*) through Show Cause Notice ("*SCN*") dated October 4, 2016 issued under the provisions of Section 496 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that review of the audited financial statements of the Company for the period ended June 30, 2015 (*the "Accounts"*) revealed that the Company provided Qarz-e-Hasna amounting to Rs. 3.645 million to Byco group staff. In this regard, it was observed that no such provision exists in the Memorandum of Association of the Company allowing grant of such loan facility. It was mentioned in Note 5 to the Accounts states that:

"The company has given Qarz-e-Hasna to Byco group staff during the year. However, no provision exists & allow in memorandum of the association, therefore memorandum needs to be amended after the approval of Board of Directors and subject to prior approval of SECP. Board of Directors intended to get object clause of memorandum of association altered/amended and initiate the process during the upcoming year".

3. The Auditors of the Company namely Nisar-ul-Haq & Company also opined in their Report to the members of the Company that:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

"The foundation has granted Qarz-e-Hasna during the year. While no provision allowing such disbursement by any clause of memorandum of association, therefore the governing documents need to be amended with the approval of SECP".

4. In view of the foregoing, it was observed that the Company conducted a business, which was ultra vires of the Company and attracts the provisions of Section 496 of the Ordinance. Therefore, SCN dated October 4, 2016 was issued to the Respondents to clarify their position and as to why penalty may not be imposed on them in term of provisions of Section 496 of the Ordinance.

5. Ms. Aatiqa Lateef, CEO of the Company, vide her letter dated October 25, 2016 responded the SCN. Brief facts of the reply are states below:

- Qarz-e-Hasna cannot be treated as a conventional loan, disbursed with the intent of earning a profit or interest or making any other commercial gain for that matter. Rather Qarz-e-Hasna is more similar and comparable to donation or charity disbursed purely with the intent of providing financial assistance to the needy.
- The undersigned approved the Qarz-e-Hasna to certain needy individuals in the year 2015. These disbursements were made purely in furtherance of the objective of the Company, which is to establish, maintain, run, manage and administer aid program providing relief and help the needy, the poor and the destitute and were undertake not with the objective of making any commercial gain (by earning a profit, interest or other return on the disbursed amount), but rather disbursed with the intent of providing interest free financial assistance to the needy.
- However, after the Company had disbursed Qarz-e-Hasna to certain individuals, the Company's auditors, while taking a literal interpretation of the term Qarz-e-Hasna, informed the Company in the notes forming part of the audited financial statements of the Company for the year 2014-2015, that no provision exists in the Memorandum of Association of the Company allowing grant of such a facility. Further discussions and meetings with the auditors revealed that there was a likelihood that the charitable nature of Qarz-e-Hasna may be lost in the literal translation of the term leading to further confusion.
- Following these above-cited revelations, the undersigned immediately took the matter up in the meeting of the Board of Directors of the Company and resolved to abolish the practice of disbursing Qarz-e-Hasna completely to avoid any further complications on the matter. Moreover, the Company is now, in compliance with advice given by its existing auditors namely M/s Grant Thornton Anjum Rahman, writing off the disbursed

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

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

amounts of Qarz-e-Hasna as an expense incurred by the Company so that the treatment of such disbursements can become consistent with the treatment of a donation.

6. Considering the reply of the Respondents, hearing was fixed on November 02, 2016, August 07, 2017 and on January 24, 2017. Ms. Aatiqa Lateef, Muhammad Danish Gazdar and Mr. Rashid Naseeb (Authorized Representatives) appeared for the hearing. They reiterated their viewpoint as already submitted in written reply to the SCN. Authorized Representatives submitted the profile of the candidates to whom said Qarz-e-Hasna was granted, along with the Annual Audited Accounts of the Company for the year ended June 30, 2016 (the "Accounts 2016").

7. Before proceeding further, it is necessary to advert to the following relevant provisions of Section 496 of the Ordinance which states that:

If any business or part of business carried on or any transaction made, by a company is ultra vires of the company, every person who acted as a director or officer of the company and is responsible for carrying on such business shall be liable to a fine not exceeding five hundred thousand rupees and shall also be personally liable for the liabilities and obligations arising out of such business or transaction.

8. In terms of notification S.R.O 1003(I)/2015 dated October 15, 2015 the power to adjudicated cases under Section 496 of the Ordinance has been delegated to Executive Director (Corporate Supervision Department).

9. I have analyzed the facts of the case; relevant provisions of the Ordinance, arguments put forth by the Authorized Representative during the hearing. The board of directors in its meeting held on June 08, 2016 resolved that the outstanding Qarz-e-Hasna balance be and is hereby transferred to the donation expense account of the Company and any subsequent receipts in this regard shall be treated as donation income. The said resolution was implemented by the Company in the year 2016. Note 6 to the Accounts 2016 stated that the board of directors passed the resolution dated June 08, 2016 to expense the remaining loan amounting Rs 2,867,500. Further, the loan amounting Rs 777,500 received till the resolution date was treated as donation income. The Auditor of the Company namely M/s Grant Thornton Anjum Rahman Chartered Accountant also issued unqualified Audit Report to the members on the Account 2016.

10. In view of above, I would like to mention that the Respondents should demonstrate more cautious approach while spending funds of the Company. However,

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

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

in view of the stance of the Respondents that there was no mala fide or unlawful gains on the part of the Respondents or to cause loss to the Company and there is no complaint on the record against the Company. I am inclined to take a lenient view of the matter and in exercise of the powers conferred by aforesaid provisions of the Ordinance, hereby, warn the Respondents to ensure meticulous compliance of law in future.

ABID HUSSAIN

Executive Director

Corporate Supervision Department

Announced:

February 06, 2018

Islamabad