Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Treet Corporation Limited

Dates of Hearing	February 25, 2020, March 11, 2020, July 16, 2020 and September 21, 2020

Order-Redacted Version

Order dated October 09, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Treet Corporation Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated November 11, 2019
2. Name of Company	Treet Corporation Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. Treet Corporation Limited
4. Nature of Offence	Violations of regulation 5(5) read with regulation (8) of the Companies (investment in associated companies or associated undertakings) Regulations, 2017
5. Action Taken	Key findings were reported in the following manner: I have examined the submissions made in writing and during the hearings as well as issues highlighted in the SCN. In this connection, it is summarized as hereunder: a. Disclosures given in the Accounts 2018 reveal that fund based financing facilities amounting to Rs. 900 million and non-fund based financing facilities amounting to Rs. 1,890 million were earmarked for *** against cross corporate guarantee of the Company. Moreover, disclosures in relevant financial statements of *** reflect that significant financial facilities were availed against, inter alia, security of cross corporate guarantee given by the Company. Provision of such cross corporate guarantee to FIs for earmarking of financing facilities of *** is non-fund based investment of the Company in term of Section 199 of the Act, made in ***. In this regard, provisions of cross corporate guarantee were without the rate of return to be charged and determined based on the rate of interest, mark-up, profit, fees or commission etc., as the case may be, charged by commercial banks or Islamic banks and FIs on similar unfunded facilities, which is in violation of

	regulation 5(5) of the Regulations. b. As per available record, both the Company and *** are associated companies and investments made in associated companies are subject to the compliance requirements of the Act and Regulations. In this context, review of notice and annexed statement of material facts of AGM of 2018 revealed that approval of members was sought in terms of section 199 of the Act for making investments i.e. fund based facilities amounting to Rs. 6,650 million and non-fund based facilities in term of corporate guarantee in subsidiary companies including ***. This approval obtained by the Company is retrospective approval of members in terms of section 199 of the Act, in AGM of 2018 for investments made in ***, inter alia, for issuance of corporate guarantee for earmarking of facilities in benefit of ***. It is however observed that aforesaid investments are without any rate of return to be charged and determined based on the rate of interest, mark-up, profit, fees or commission etc., as the case may be, charged by commercial banks or Islamic banks and FIs on similar unfunded facilities. Therefore, does not suffice the requirements of Regulation 5(5) of the Regulations. c. As regards to the stance that no cost was incurred by the Company for the provision of cross corporate guarantee, it is noted that the Company's assets were pledged/secured against such facilities, and the same fact was duly disclosed in statement of material facts annexed with notice of AGM of 2018. In this context, I am inclined to note that in case of interchangeable limits, the risk of default rests with the issuer of cross-corporate guarantee, i.e. the Company. The Company therefore, by issuance of such security of cross corporate guarantee (unfunded facility) in favor of FIs on behalf of ***, made investment in terms of Section 199 of the Act and requires compliance with regulation 5(5) of the Regulations. Therefore, charging of rate or return or fee or commission (as envisaged in regulation 5(5) of the Regulations) is applicable despite exemption of seeking approval of members in terms of section 199(1) of the Act, for making such investments in wholly owned subsidiary companies, as conferred in terms of SRO of 2007 and SRO of 2011. d. With regard to the exemption with the requirement of Section 199 of the Act in term of SRO of 2007 and 2011, I would like to point out that rate of return on investments is required in terms of section 199(2) of the Act and no exemption from the said requirement is available.

	e. Authorized Representative has provided facility letter dated June 21, 2018 issued by Bank Alfalah Limited, which shows that the bank is charging a commission or fee of 0.05% per quarter (flat) for unfunded facilities. Therefore, the Company's stance that no cost is associated with this unfunded facility is not tenable as the Company by not charging such return on similar unfunded facilities is forgoing such return, which in fact is a cost being incurred by the Company. f. The respective case laws furnished by the Authorized Representative during the course of proceedings, have been perused. The said case laws are relevant to applicability of the requirements of section 208 of the repealed Companies Ordinance, 1984. However, the instant case is non-compliance of the requirements of regulation 5(5) of the Regulations. I am of the view that in terms of regulation 5(5) of the Regulations such investments are subject to rate of return or commission or fee as the case may be. The stance taken during the hearings, that in case the investor company incurs no cost, rate of return would tantamount to unjust profiteering. In this regard, I am of the view that such rate of return or commission is to protect the benefit of the shareholders of the investor company. Moreover, it is hereby emphasized that as per the requirement of regulations 5(5) of the Regulations; the Company is required to determine the rate of return to be charged based on interest, mark up, profit, fee, commission etc. as charged by the commercial bank or Islamic bank and FI on similar unfunded facilities. 2. In view of the foregoing, I, hereby conclude that the Company by issuing cross corporate guarantee in favor of FIs on behalf of associated *** has made investment in term of Section 199 of the Act and the same is without any return to the Company, in violation of regulation 5(5) of the Regulations. The Respondents have violated the requirements of regulation 5(5) of the Regulations and are therefore liable to be penalized in terms of regulation 8 of the Regulations. Keeping in view a penalty of Rs. 500,000/- only (Rupees five hundred thousand) was imposed on the chief executive, of the Company. Penalty order dated October 09, 2020 was passed by Executive Director (Adjudication-I).
6. Penalty Imposed	A Penalty of Rs. 500,000/- only (Rupees five hundred thousand) was imposed on the chief executive, of the Company.
7. Current Status of Order	No Appeal has been filed by the respondents.