



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 4 of 2020

1. Mr. Adnan Asdar Ali
2. Mr. Rashid Abdulla
3. Mr. Husain Lawai
4. Mr. S Nadeem Ahmed
5. Mr. Zubair Palwala
6. Mr. Ayaz Abdulla
7. Mr. Shahid Abdulla
8. Mr. Arshad Anis
9. Mr. Mufti Zia Ul Islam

...Appellants

versus

Executive Director, Corporate Supervision Department, SECP

...Respondent

Date of hearing:

April 10, 2025

Present:

For the Appellants:

Mr. Yawar Burki

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication-I, SECP
2. Mr. Rizwan-ul-Haq, Additional Joint Director, Adjudication-I, SECP
3. Mr. Ehtesham Uddin Ahmed, Deputy Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 4 of 2020 filed by Mr. Adnan Asdar Ali & Others (the Appellants), against the Order dated October 28, 2019 (Impugned Order) passed by the Executive



Securities and Exchange Commission of Pakistan

Director, Corporate Supervision Department (the Respondent) under Section 208 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).

2. The brief facts of the case are that the proceedings arose pursuant to the examination of Searle Company Limited's (the Company) audited financial statements for the year ended June 30, 2016, which revealed that an amount of Rs. 2.165 billion was outstanding to IBL Operations Private Limited (IBL), an associated company, under the head of trade debts, and an additional Rs. 39.642 million was recorded as other receivables, being mark-up on overdue balances. It was further observed that the Company had not charged any mark-up on delayed payments from IBL since January 1, 2011, contrary to the terms of the 'Non-Exclusive Distributor Agreement' executed between the Company and IBL, which required payment within 60 days and imposed liquidated damages for delays. In view of thereof, the Respondent issued a Show-Cause Notice dated September 26, 2018 (SCN), alleging that the Company, through its directors, had extended abnormal trade credit to an associated company without obtaining shareholders' approval through a special resolution as mandated under Section 208 of the Ordinance. It was contended that such long-outstanding receivables, coupled with non-recovery of mark-up, constituted an "investment" in the associated company within the meaning of the said provision. The Appellants submitted a written reply to the SCN and participated in the hearing proceedings. After considering the record and hearing the parties, the Respondent passed the Impugned Order under Section 208(3) of the Ordinance, imposing an aggregate penalty of Rs. 4,500,000/- on the Appellants (Rs. 500,000 on each individual) for violating the requirements of Section 208 of the Ordinance. The Respondent also issued directions under Section 475 of the Companies Act, 2017 (the Act) for placing the matter before the shareholders for ratification and for recovery of the overdue amount along with mark-up by June 30, 2020.
3. The Appellants challenged the Impugned Order, *inter alia*, on the grounds that the receivables from IBL did not constitute an "investment" within the meaning of Section 208 of the Ordinance, and therefore, the requirement of obtaining a special resolution from shareholders was not attracted. The Appellants further submitted that the amounts in question arose out of a routine commercial relationship under a 'Non-Exclusive Distributor Agreement' executed in the ordinary course of business and on an arm's length basis.



Securities and Exchange Commission of Pakistan

4. The Appellants argued that the said agreement was similar in nature and terms to those executed with other distributors of the Company, and no preferential treatment had been extended to IBL. The Appellants further asserted that the delay in recovery of outstanding dues from IBL was attributed to prevailing market conditions, and not due to any deliberate extension of abnormal trade credit. It was their stance that commercial flexibility was afforded uniformly across all distributors, including IBL, to maintain operational continuity and avoid disruption to the Company's sales and supply chain.
5. The Appellants submitted that they had made consistent efforts to recover the outstanding dues from IBL, including a partial recovery amounting to Rs. 13 million during the financial year under consideration. The Appellants emphasized that no new or additional funding had been extended to IBL, nor had any formal approval or waiver been granted by the Board for the continued delay in settlement. The Appellants also informed the Commission from time to time of the ongoing recovery process.
6. The Appellants further submitted that the discontinuation of mark-up on delayed payments from January 1, 2011, was a business decision aimed at expediting recoveries and was not an act of favouritism towards an associated undertaking. The Appellants contended that similar commercial decisions had been taken in relation to other distributors as well.
7. The Appellants also maintained that they had responded to all communications from the Respondent and had furnished all relevant documentation and explanations as required. The Appellants argued that the impugned proceedings were initiated after an unexplained lapse of over a year following the last correspondence from the Commission, thereby giving the impression that the matter stood resolved.
8. The Appellants contended that the penalty imposed through the Impugned Order was excessive, harsh, and without legal justification. The Appellants argued that the Respondent failed to properly appreciate the facts and legal position, and that the order was based on conjecture, predetermined assumptions, and a misapplication of Section 208 of the Ordinance.
9. The Appellants further argued that the Impugned Order was in breach of Article 18 of the Constitution of Pakistan and Section 24-A of the General Clauses Act, 1897, inasmuch as it failed to meet the standards of fairness, reasonableness, and proportionality.



Securities and Exchange Commission of Pakistan

10. The Respondent vehemently denied the contentions of the Appellants and submitted that the audited financial statements of the Company for the year ended June 30, 2016, revealed that an amount of Rs. 2,165.872 million was receivable from IBL, an associated company, on account of trade debts, and Rs. 39.642 million was due as mark-up under "Other Receivables." The Respondent submitted that these receivables, being extended without timely recovery and without charging mark-up in accordance with the underlying agreement, constituted abnormal trade credit, which fell within the scope of the term "investment" under the explanation to Section 208(1) of the Ordinance.
11. The Respondent submitted that the Company did not obtain a special resolution from shareholders authorizing the said investment, and therefore violated Section 208(1) of the Ordinance. The directors of the Company were thus rightly held liable and penalized under Section 208(3) of the Ordinance. The Respondent further contended that the 'Non-Exclusive Distributor Agreement' required payment within 60 days and prescribed liquidated damages in case of delay. However, the Company admitted through its letter dated May 27, 2017, that receivable days were "on the higher side" and that mark-up had not been charged since January 1, 2011, hence, non-compliance with the agreement and the law is established without any doubt.
12. The Respondent argued that the Appellants failed to substantiate their claim that similar terms were extended to other distributors. Despite repeated directions during the proceedings, the Appellants did not furnish:
- (i) distributor-wise breakup of sales for FY 2015 and 2016;
 - (ii) certified copies of agreements entered into with other distributors; and
 - (iii) ledgers of IBL and other distributors for the relevant period.

This failure, according to the Respondent, reinforced the presumption that preferential treatment was afforded to IBL, an associated company, and that the extended credit was not a routine commercial transaction but an unauthorized investment.

13. The Respondent further submitted that no significant recovery had been made out of the Rs. 2.165 billion outstanding from IBL, and the part payment of Rs. 13 million only related to overdue mark-up, not the principal receivable. The Respondent contended that this receivable constituted 85% of total trade



Securities and Exchange Commission of Pakistan

receivables and 40% of total current assets of the Company, thus posing material risk to the Company's financial position, and merited regulatory intervention.

14. The Respondent denied the claim that the matter was closed after July 2017. It asserted that clarifications sought via letters dated September 29, 2017, and May 15, 2017, remained unaddressed or inadequately answered. The Respondent also denied that the penalty imposed was excessive or unjust. The Respondent submitted that the order dated October 28, 2019, was passed after affording full opportunity of hearing, and that it was based on proper reasoning, application of judicial mind, and in accordance with Section 24-A of the General Clauses Act, 1897.
15. The Respondent refuted the claim that the order violated Article 18 of the Constitution, submitting that constitutional freedoms were subject to reasonable legal restrictions. The Respondent emphasized that regulatory compliance under Section 208 of the Ordinance was mandatory, and that mere recovery efforts or intent to regularize the position post facto could not absolve the Appellants of liability already incurred under the law.
16. The Bench has carefully examined the arguments advanced by both parties, the provisions of law under consideration, and the material placed on record. The Bench notes that the Company's audited financial statements for the year ended June 30, 2016, reflected an amount of Rs. 2,165.872 million dues from IBL under the head of trade debts and a further Rs. 39.642 million under the head of mark-up receivable. The Bench observes that the Company, by its own admission, failed to charge mark-up from IBL as of January 1, 2011, despite clear contractual provisions requiring the imposition of liquidated damages on delayed payments.
17. The Bench further finds that the 'Non-Exclusive Distributor Agreement' entered into with IBL provided for a payment period of 60 days and stipulated a mark-up of 6-month KIBOR plus 3% on overdue balances. The Bench notes that the Company's failure to enforce this term and to recover the receivables in a timely manner resulted in the provision of extended and interest-free credit to an associated undertaking, which falls within the ambit of "investment" as defined under the Explanation to Section 208(1) of the Ordinance.
18. The Bench finds that although the Appellants claimed that similar commercial terms were offered to other distributors, they failed to produce any documentary evidence in support of that assertion. The



Securities and Exchange Commission of Pakistan

Bench observes that the Respondent repeatedly called upon the Appellants to provide distributor-wise sales data, certified copies of distribution agreements, and ledgers of other distributors. The Bench notes that the non-provision of such material supports the inference that the credit terms extended to IBL were preferential and not consistent with industry practice.

19. The Bench further finds that the amount due from IBL constituted approximately 85% of the Company's total trade receivables and 40% of its current assets as of June 30, 2016. The Bench holds that this level of concentration in a single associated undertaking, absent shareholder approval and in violation of agreed terms, amounts to a material financial exposure undertaken without authority and in contravention of Section 208 of the Ordinance.
20. The Bench observes that while the Appellants contended that partial recovery of Rs. 13 million was made and that efforts were ongoing to recover the dues, such recovery, whether partial or in process, does not absolve them from the violation of statutory requirements. The Bench holds that the statutory mandate of obtaining a special resolution for investments in associated undertakings is absolute, and cannot be circumvented by post-facto explanations or commercial justifications.
21. The Bench finds that the facts of the case are closely aligned with the principles laid down in **S.M. Ahmed and Others v. Executive Director, SECP** reported as **2012 CLD 1430**, wherein it was held that: the extension of open-ended trade credit to an associated company, without enforceable terms of recovery and without charging mark-up, could not be regarded as "normal trade credit." The Bench notes that in the said case, the receivables exceeded the company's paid-up capital and annual sales, thereby demonstrating that the objective was not commercial dealing but financial assistance to an associated undertaking.
22. The Bench finds no merit in the contention that the Impugned Order violates Article 18 of the Constitution or Section 24-A of the General Clauses Act, 1897. The Bench holds that constitutional freedoms to conduct business are subject to statutory qualifications, and that the Impugned Order was passed fairly, reasonably, and with application of judicial mind.
23. In view of the foregoing analysis and findings, the Bench is of the considered view that the Appellants have failed to establish any legal or factual infirmity in the Impugned Order. The Bench holds that the



Securities and Exchange Commission of Pakistan

extended credit facility provided by the Searle Company Limited to its associated undertaking, IBL, without recovery of mark-up and in the absence of shareholder approval through a special resolution, amounted to an investment in contravention of Section 208 of the Ordinance.

24. The Bench confirms the Respondent's decision that the amount of Rs. 2.165 billion does not represent 'normal trade credit'. Instead this amount represents an investment in IBL. As a result, the Company' members' approval under Section 199 of the Act is necessary to ascertain the relevant details including nature, period and terms and conditions etc. Therefore, the Appellants are directed to place this matter in the general meeting of the members to obtain the requisite approval within 60 days of this order and file a compliance report within 90 days of this order to the Commission.
25. Accordingly, the Appeal stands dismissed. Subject to the modified direction contained in the paragraph above, the Impugned Order is upheld in its entirety. There is no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on:

11 JUL 2025