



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 43 of 2008

- i. M/s. Genertech Pakistan Limited
 - ii. Mr. Jahangir Elahi, Chief Executive
 - iii. Mr. Sheikh Muhammad Ashraf
 - iv. Mr. Tanvir Elahi
 - v. Mr. Tariq Latif
 - vi. Mr. Aamir Jahangir
 - vii. Mr. Muhammad Ashfaq Nadeem
 - viii. Mr. Shahrukh Elahi
- (Appellant no. 2 to 8 are directors of Appellant no.1)

Versus

.... Appellants

Director (Enforcement), Securities and Exchange
Commission of Pakistan

.... Respondent

Date of hearing:

6/01/12, 14/02/12, 14/03/12, 24/05/12
16/07/12, 02/01/15, 15/01/15, 13/05/15

Present:

For Appellants:

Mr. Adil Bandial, Cornelius, Lane and Mufti

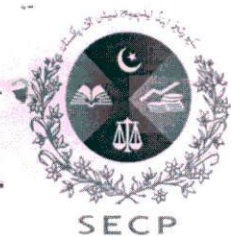
For Respondent:

- i. Mr. Ali Azeem Akram, Director Enforcement
- ii. Mr. Shahzad Afzal, Joint Director Enforcement

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ORDER

1. This order shall dispose of Appeal No. 43 of 2008 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 07/10/08 (the Impugned Order) passed by the Respondent under the Section 208 read with Section 492 and Section 476 of the Companies Ordinance 1984 (the Ordinance) against M/s Genertech Pakistan Limited (Appellant no.1) and its directors.
2. The brief facts of the case are that during the examination of the annual audited accounts of the Appellant no.1 for the year ended June 30, 2005 (the Accounts) it was observed that trade debts amounting to Rs.128.338 million have been shown as receivable from the Associated Company against the total sales of Rs.158.456 million, during the year. The Appellant no.1 claimed that the transactions with the Associated Company were normal business transactions for the supply of electricity, without any special terms, however when the data provided by the Appellant no.1 was analyzed, it was revealed that Appellant no.1 is providing abnormal trade credit and extended repayment time to its Associated Company as compare to others. The details of which is as follows:

| Particular | Period ended | | | |
|--|--------------|-----------|-----------|-----------|
| | 30-Jun-04 | 30-Jun-05 | 31-Dec-05 | 30-Jun-06 |
| Sale (to Others) | 456.988 | 438.646 | 24.78 | 52.44 |
| Sales (to Associated) | 206.866 | 158.456 | 58.287 | 51.562 |
| Debtors(Others) | 37.581 | 39.094 | 37.959 | 36.716 |
| Debtors(Associated) | 131.168 | 128.338 | 125.426 | 113.414 |
| Debt Collection period (Others)Days | 30 | 33 | 559 | 256 |
| Debt Collection period (Associated) Days | 231 | 296 | 785 | 803 |

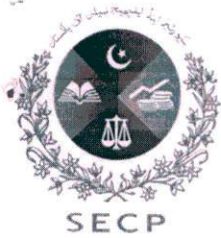
3. The above analysis revealed that the funds in question are apparently in the form of loan to the Associated Company, due to which it was mandatory for the Appellant



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no.1 to pass special resolution for the purpose of making this investment in terms of Section 208 of the Ordinance. Furthermore the amount as provided to the Respondent by the Appellant no.1 through reply dated 24/04/06 was different from the amount appearing in the published accounts for the year ended 30/06/05 and 30/06/06. The amount was also different from the amount appearing in the annual accounts of the Associated Company, which tantamount to misstatement under Section 492 of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 20/02/07 was issued to the Appellants. The Appellants submitted their reply vide letter dated 25/02/08 however the Respondent being dissatisfied with the reply, imposed a penalty of Rs.100,000 (One hundred thousand rupees) on each of the director for the violation of Section 208(3) of the Ordinance.

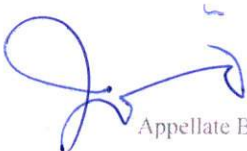
4. The Appellants, being aggrieved by the Impugned Order filed an appeal before the Appellate Bench on the following grounds and prayed to set aside the Impugned Order being unlawful, unwarranted and unjust:
- a) The Respondent has not given due consideration to the grounds and issues raised by the Appellants. The Respondent has not considered the principles of interpretation of statutes and established legal principles of Superior Courts.
 - b) The outstanding bills/amount pursuant to a sale / purchase transaction of electricity, cannot be termed as a loan to the Associated Company, hence the requirements of Section 208 (1) of the Ordinance are not applicable.
 - c) The Impugned Order is vague and ambiguous and beyond the scope of the SCN, because in SCN allegation was that the Appellants has given a 'loan' to the Associated Company whereas in the Impugned Order, Appellants were penalized on the basis 'abnormal trade credit' provided to the Associated Company.
 - d) The Respondent failed to appreciate arm's length transactions between the Appellants and the Associated Company. The Appellants never offered any abnormal trade credits to the Associated Company; rather the Associated

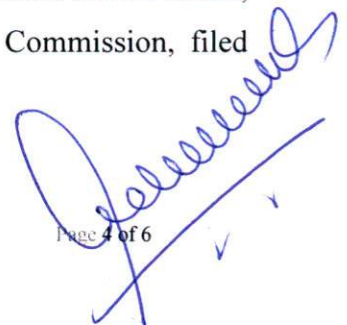


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Company committed default in its payment obligations as a result of which the Appellants discontinued the supply of electricity.

- e) In view of the well-established principle of statutory interpretation of 'ejusdem generis', the subject transaction did not fall within the ambit of the term 'investment' as used in Section 208 of the Ordinance.
 - f) The Impugned Order is not speaking order and requirements to establish violation of Section 208 were not met.
 - g) The Impugned Order has been passed without independent application of mind and adjudication of issues and on prejudged notions, without considering the evidence.
5. The Respondent rebutted the grounds of appeal and reiterated the arguments stated in the Impugned Order and prayed to dismiss the appeal. The Respondent rebutted the grounds of appeal in the following manner:
- a) Section 208 is very clear and there is no ambiguity or interpretational issue in its application. The Impugned Order and penalty have been imposed within the purview of Section 208.
 - b) Although the trade debts are on account of the outstanding bills of electricity that was supplied to the Associated Company, however, the same amount was not in the nature of normal trade credit as the debt collection period with Associated Company was higher than the ones in case of other parties.
 - c) The outstanding amount on part of Associated Company is an abnormal trade credit; therefore it becomes an investment under Section 208 which needs to be approved by the shareholders. Further, an investment under Section 208 includes loans.
 - d) Discontinuing supply of electricity appears to be not a solution for recovery as it in fact has been detrimental to the operations of the Appellant no.1. Further, the Company has not provided the copy of suit to this Commission, filed


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against the Associated Company in Civil Court Lahore for the recovery of outstanding amount.

- e) The term 'investment' under Section 208 includes among other items, loans given to associated companies.
- f) The order appropriately addresses all issues and is a speaking order.
- g) The evidence as provided by the Company was scrutinized in detail and the impugned order was finalized thereafter.

6. We have heard the parties i.e. Appellant and Respondent at length and perused the relevant record with the able assistance of the parties. It is important to mention here that during the hearing the Appellate Bench (the Bench) asked the Appellants Counsel (the Counsel) to furnish the attested copies of the civil suit (Recovery Suit) filed by the Appellants against the Associated Company for the recovery of outstanding amount, however the Counsel requested for time to provide attested copies. Further, the Counsel, while answering the question of the Bench stated that he is unable to confirm whether the Appellants have prayed in the civil suit, recovery of outstanding amount along with the prevailing markup rate. The hearing of the case was concluded on 13/05/15 and the Counsel was apprised that final order of the appeal shall be announced after examination of the required copies of Recovery Suit.

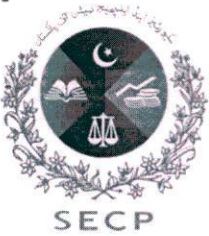
7. The Appellate Bench Registry contacted the Counsel through telephone and asked to provide the attested copies of the Recovery Suit, however further time was requested to provide the same which was allowed. Thereafter through email dated 15/06/15 the Counsel requested further time which was allowed accordingly. Lastly the Counsel was reminded through email dated 02/07/15 to provide the attested copies of the Recovery Suit by the end of working hours on 06/07/15, however no response was received.

8. In view the above we believe that Appellants have violated the Section 208 of the Ordinance and the Respondent has rightly applied the relevant provision of the law to

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penalize the Appellants for violation of Section 208 of the Ordinance. Further the transactions between the Appellants and the Associated Company cannot be considered as normal trade debt because debt collection period from the Associated Company was extended as compared with other parties. Therefore, it cannot be treated as normal trade credit, rather it is abnormal trade credit which comes within the ambit of the term "investment" as used in Section 208 of the Ordinance. The Appellants claim with respect to arm's length transactions between the Appellants and the Associated Companies cannot be acceded. As per record the Appellants have different set of rules for Associated Company and other clients. The Appellants have not provided the copies of litigation with the Associated Company for the recovery of outstanding amount. Further the Appellants have also not provided any proof that they have charged markup on prevailing rate on the outstanding amount in Recovery Suit. The Appellants have also allowed rebate to the Associated Company contrary to the agreement.

9. In the light of above stated facts and submissions made before the Appellate Bench by the parties, it has been established that the Appellants have violated the Section 208 of the Ordinance. Therefore, no case of appeal has been made out by the Appellants. In view of the aforesaid, there being no reason to interfere with the Impugned Order dated 07/10/08. Hence the appeal is dismissed.

10. Parties to bear their own cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: **11 AUG 2015**