



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 1 of 2017

1. Mr. Rashid Ahmed Khan
 2. Khawaja Anver Majid
 3. Khawaja Abdul Ghani Majid
 4. Khawaja Mustafa Zulqarnain Majid
 5. Mr. Aurangzeb Khan
 6. Khawaja Ali Kamal Majid
 7. Khawaja Nimr Majid
 8. Mr. Nihal Anvar
 9. Mr. Dawoodi Morkas
- (All directors of Ansari Sugar Mills Limited)

Appellants

Versus

Executive Director, Corporate Supervision Department, SECP.

Respondent

Date of hearing:

August 20, 2020

Present:

For Appellants:

Mr. Nasir Ahmed, Rao & Company, Chartered Accountants

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Sardar Sohaib Amin, Assistant Director (Adjudication-I), SECP.

ORDER

1. This Order shall dispose of Appeal No. 1 of 2017 filed by nine directors of Ansari Sugar Mills Limited (the Appellants) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated December 8, 2016 (the Impugned Order) passed by the Executive Director, CSD (the Respondent) under Section 208 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).



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2. The brief facts of the case are that due to common directorship of Khawaja Abdul Ghani Majid and Khawaja Mustafa Zulqarnain Majid, M/s. Ansari Sugar Mills Limited (the Company) and M/s. Pak Ethanol (Private) Limited (the PEPL) are associated companies. The examination of annual audited accounts of the Company for the year ended September 30, 2013 revealed that it has provided accumulated abnormal trade credit of Rs. 439,966,204/- to PEPL during the last three years. It appeared that abnormal trade credit was extended in contravention of Section 208 of the Ordinance, whereby the Company was required to get the authority of a special resolution. Therefore, a show-cause notice dated October 31, 2014 (the SCN) was served on the Appellants. The Appellants submitted a reply to the SCN vide letter dated March 19, 2015 whereas, hearings in the matter were held on June 2, 2016 and November 7, 2016. The Respondent being dissatisfied with the response of the Appellants, imposed a fine of Rs. 5.5 million (Rupees Five Million and Five Hundred Thousand only) in aggregate on the Appellants for contravening the provisions of Section 208 of the Ordinance.
3. The Appellant *inter alia* filed this Appeal on the grounds that the Respondent has no authority to interfere in a past and closed matter and internal business decisions carried out with good faith and honestly in the interest of investors. The Appellants stated that the accumulated balance of Rs. 439 million was caused due to an increase in sale-volume and sale-price dispute between the Company and PEPL. The Appellants stated that upon settlement of the sale-price dispute, Rs. 41 million on account of 2011 along with receivable of 2012 was received in the first quarter of 2014. Whereas, receivables of 2013 were also received in 2014 and in the first quarter of 2015. The Appellants further stated that the Company has not made any investment, including loan, advances, equity or any amount. The Appellants stated that they had no intention to transfer the Company's funds to PEPL because in 2013 the Appellants themselves had injected Rs. 417 million interest-free subordinated loan to the Company, to overcome recovery shortfall from PEPL. The Appellants further stated that appropriate disclosures were made in the accounts, therefore, the shareholders were aware of the quantum of trade credit, extended to PEPL.
4. The Respondent has rebutted the Appellants' arguments and stated that in financial year 2013, the Company's sales were only Rs. 138 million whereas, receivables from PEPL were Rs. 439 million. The Respondent stated that the Company provided undue benefit to PEPL by providing abnormal trade credit and there was no specific period for recovery or payment of trade credit extended to PEPL. The Respondent stated that the Company was required to ensure recovery of abnormal trade credit, through mortgage of property or through court's recovery proceedings, however, it failed to proceed in a required manner. The Respondent further stated that as per Section 208 of the Ordinance, normal trade credit is not investment, however, abnormal trade credit will be called investment.



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5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof.
6. The Bench is of the view that abnormal trade credit falls under the definition of investment because the explanation of Section 208 of the Ordinance had only excluded "normal trade credit" from the definition of investment. The Bench has observed that Section 208 has not defined "normal trade credit" or "abnormal trade credit", however, as per industry and business best-practices, scope of the aforementioned terms could be understood. The Bench is of the view that as per, industry and business practices, extension of trade credit for specific time period is called "normal trade credit" whereas, offering trade credit without mentioning recovery and payment time period is called "abnormal trade credit". The Bench has observed that in the present case the Appellants have failed to establish that trade credit was extended for a specific period and upon PEPL's failure to pay trade credits, legal proceedings for recovery were initiated or PEPL's assets were retained as security or under mortgage. The Bench appreciates that the Appellants have injected interest free funds in the Company, however, this gesture may not exonerate the Appellants from the consequences of breach of the requirements, contained under Section 208 of the Ordinance. In the circumstances, the Bench has no doubt that the Appellants have failed to make out their case and substantiate their claim that trade credit extended to the PEPL is not abnormal trade credit.
7. In view of the forgoing, the Bench find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on: **06 NOV 2020**