



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 109 of 2017

1. Mr. Pervez Ahmed
 2. Mr. Ali Pervez Ahmed
 3. Mr. Hassan Ibrahim Ahmed
 4. Mr. Suleman Ahmed
 5. Mr. Atta ur Rehman
 6. Mr. Muhammad Yousaf
 7. Mr. Muntazir Mehdi
- (All directors of D.S. Industries Limited)

Appellants

Versus

Executive Director, Corporate Supervision Department, SECP.

Respondent

Date of hearing:

August 20, 2020

Present:

For Appellants:

1. Mr. Furqan Naveed, Advocate High Court
2. Mr. Salman Farooq, Company Secretary

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP
2. Ms. Zohra Sarwar Khan, Joint Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 109 of 2017 filed by seven directors of the D.S. Industries Limited (the Appellants) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated September 28, 2017 (the Impugned Order) passed by 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 examination of annual audited financial statements (the Accounts) of the D.S. Industries Limited (the Company) for the year ended June 30, 2015 revealed that in contravention of sub-section (1) of Section 208 of the Ordinance, the Company had allowed abnormal trade credit to its associated company M/s. D.S Textiles Limited (the DSTL) without authority of a special resolution and DSTL had also not paid any markup/interest on trade debts. The trade debts receivable from DSTL were not in the nature of normal trade credit, as the average collection period for such receivables from DSTL was much higher than that allowed by the Company to other customers. As per the accounts and interim financial accounts of 2014, and 2015 the following pattern of quantum of trade debts and average collection period of such debts from DSTL and other customers was observed;

Particulars	2016 (9 months)	2015	2014
i. Sales to other Customers	332,759,865	814,256,321	1,108,472,817
ii. Trade Debts of other Customers	16,730,648	17,414,081	38,892,989
Avg. Collection Period of Other Customers (Days)	14	8	13
i. Sales to DSTL	40,615,973	5,834,135	22,112,463
ii. Trade Debts of DSTL	25,765,913	37,367,212	33,737,486
Avg. Collection Period - DSTL (Days)	171	2338	557
Percentage of DSTL Sales to Total Sales	10.88%	0.71%	1.96%
Percentage of DSTL Debt to Total Debt	60.63%	68.21%	46.45%

3. As per the above, it appeared that the amounts receivable from DSTL are, *prima facie*, not in the nature of normal trade credit, as the average collection period for such receivables from DSTL is much higher than that allowed by the Company to other customers. Therefore, a show-cause notice dated August 22, 2016 (the SCN) was served upon the Appellants, however, the Appellants have not responded to the SCN. Hearing in the matter was held on April 27, 2017, which was attended by Mr. Furqan Naveed and Mr. Salman Farooq (the Representatives) who submitted a written response. The Respondent, being dissatisfied with the response of the Appellants, imposed a fine on the Appellants, in the following manner;

S.No	Appellants Names	Amount of Fine(Rs.)
1.	Mr. Pervez Ahmed (common director)	200,000
2.	Mr. Ali Pervez (common director)	200,000
3.	Mr. Hassan Ibrahim Ahmed (common director)	200,000



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4.	Mr. Suleman Ahmed (common director)	200,000
5.	Mr. Atta ur Rehman	100,000
6.	Mr. Muhammad Yousuf	100,000
7.	Mr. Muntazir Mehdi	100,000

4. The Appellant *inter alia* filed this Appeal on the grounds that the trade debt identified in the SCN by the Respondent has been fully received by the Company on December 1, 2016 and the Company has not made any “investment” in DSTL. The amounts in question are neither loans, advances or equity. The Representatives further stated that, if certain companies had paid trade debts earlier than others, does not imply that unpaid trade debts are “investments”. Furthermore, the directors of DSTL, Mr. Pervaz Ahmed and Mrs. Rehana Pervez had injected up to Rs. 173,929,930 into the Company, therefore, the alleged amount of trade debt (Rs. 37.367 million) is insignificant.
5. The Respondent had denied the Appellants’ assertions and stated that the Company had extended abnormal trade credit to DSTL and receivables from DSTL were even more than sales to DSTL during the years 2014 and 2015 and in the first nine months of 2016. The Respondent further stated that in 2014 sales to DSTL were Rs. 22.11 million whereas, receivables were Rs. 33.37 million; in 2015 sales to DSTL were only Rs. 5.83 million whereas, receivables from DSTL stood at Rs. 37.36 million and in the first nine months of 2016, sales to DSTL were Rs. 40.615 million as compared to receivables from DSTL of Rs. 25.76 million. The Respondent submitted that the Company had provided undue benefit to DSTL and allowed unprecedented collection period, which was much higher than that allowed by the Company to other customers. The Respondent stated that sponsor loans does not absolve the Company or its directors from the consequences of default committed under Section 208 of the Ordinance. The Respondent further stated that as per Section 208 of the Ordinance, normal trade credit is not investment, however, abnormal trade credit will be treated as investment.
6. 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.
7. The Bench observed that as per data provided under para two of this order, in 2015 average collection period of trade debts from normal customer was eight days, whereas, average collection period of trade debts allowed to the DSTL was 2338 days. The Bench has also noticed that in 2015 amount of sales to



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DSTL was Rs. 5,834,135, whereas, the amount of trade debts receivables was Rs. 37,367,212, which was higher than the sales in the year. The Bench also observed that in 2015, the amount of sales to other customers was Rs. 814,256,321, whereas, the amount of trade debt receivables was Rs. 17,414,081, which was less than the sales in the year. The Bench has no doubt that abnormal trade credit falls under the definition of investment contained under Section 208 of the Ordinance. 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 a 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 instant case, the Appellants had extended abnormal trade credit to DSTL, by allowing an unprecedented collection period, hence, such transaction will be treated as investment, under Section 208 of the Ordinance. The Bench has further observed, that for investment in the DSTL, the Appellants and the Company were required to get approval of such transactions through a special resolution, however, requirements contained under Section 208 of the Ordinance had been breached. 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 DSTL was not abnormal trade credit.

8. 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**