



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 34 of 2018

1. Noor Aurangzeb
2. Rais Umair Habib Ahmed
3. Ehmer Iqbal

(Appellants are present directors of Drekkar Kingsway Limited)

Appellants

Versus

Executive Director (Corporate Supervision Department) SECP.

Respondent

**Date of hearing:**

25/02/19

**Present:**

For Appellants:

Zahir Shah-Advocate

For Respondent:

- i. Syed Ali Adnan- Additional Director (CSD-SECP)
- ii. Mr. Jawad Ahmad- Assistant Director (CSD-SECP)

## **ORDER**

1. This Order shall dispose of Appeal No. 34 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated 11/6/18 (the Impugned Order) passed by the Executive Director, CLD-CSD (the Respondent) under Section 208 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance).
2. Brief facts of the case are that Drekkar Kingsway Limited (*the Company*) half-yearly accounts for the period ending December 31, 2015 (*the Accounts*) had an entry, titled as "loan to associated Undertaking". The amount of loan was Rs. Rs.29.193 million. The



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terms and conditions of loan were described under Note 7 to *the Accounts*. M/s. Howarth Hussain Chaudhry & Company, Chartered Accountants of the Company (*the Auditor*) had mentioned in their report on the *Accounts* that loan was given to the associated undertaking without complying with the requirements of Section 208 (special resolution) of the Ordinance. M/s. Noor Capital (Pvt.) Limited was identified as *an* associated undertaking which was established on the basis of common directorship of Ehmar Iqbal (*appointment in the Company on October 30, 2015*) and Noor Aurangzeb, (*remained director in the Company till October 30, 2015*) in Noor Capital (Pvt.) Limited and the Company. This information was gathered from the examination of accounts of the Company for the period ended March 31, 2016, Form A and Form 28. Therefore, the Respondent issued a Show Cause Notice dated July 27, 2016 (the SCN) to Rais Umair Habib Ahmed (Appellant No.2) and six other directors of the Company. Thereafter, an addendum to the SCN dated March 17, 2017 (the Addendum) was issued to Noor Aurangzeb (Appellant No.1), Ehmer Iqbal (Appellant No.3) and three other directors of the Company. The Appellants replied to the SCN and the Addendum vide letters dated August 31, 2016 and May 4, 2017, respectively. It was asserted by the Appellants that no director is holding twenty percent shares or voting power in both entities therefore, the Company and Noor Capital (Pvt.) Limited, cannot be treated as associated companies or undertakings in terms of Section 2(2)(i) of the Ordinance. The Respondent, being dissatisfied with the response of the Appellants and other directors, imposed an aggregate fine of Rs. 3,000,000/- on twelve directors of the Company. The Appellants were penalized in the following manner;

S.No	Names	Penalty(Rs.)
I.	Rais Umair Habib Ahmed	200,000
II.	Ehmer Iqbal	500,000
III.	Noor Aurangzeb	500,000
	<b>Total</b>	<b>1,200,000/-</b>

3. The Appellants have filed this Appeal before the Appellate Bench (the Bench) *inter alia* on the ground that the Company and Noor Capital (Pvt.) Limited are not associated companies or associated undertakings. The Counsel, has not argued the case and relied



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upon the submissions contained in the memorandum of Appeal. Appellants are of the view that, as per Section 2(2)(i) of the Ordinance it is mandatory for a common director to have, directly or indirectly, hold or control of atleast twenty per cent of the voting power shares in two companies or undertakings, to declare them associated to each other. The Appellants stated that considering Noor Capital (Pvt.) Limited and the Company as associated companies, on the basis of presence of a common director (without holding or control of twenty per cent of the voting power) would render Section 2(2)(ii) redundant, which provide “common management” in two associated companies. Lastly, Appellants relied upon a case cited as 2002 MLD 209 whereby, it had been held by the honorable court that, “The general rule is that all the relevant provisions in the Statute are to be considered in their totality in a way that the scheme envisaged in the law is applied in its totality without doing violence to any other provision of law, and without rendering any other section in the statute to be redundant, superfluous, nugatory or otiose.”

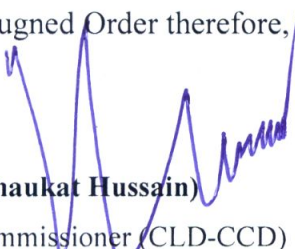
4. The Respondent’s representatives rebutted the grounds and arguments of the Appellants, relied upon the findings of the Impugned Order, and prayed to dismiss the Appeal.
5. We have heard the arguments and perused the relevant record with the able assistance of the parties. The Appellants have misconstrued the requirements contained in Section 2(2)(i) of the Ordinance. As per Section 2(2)(i) of the Ordinance, presence of a person in two companies or undertakings, either as owner or partner or director, makes both companies or undertakings, associated of each other, therefore, Noor Capital (Pvt.) Limited and the Company are associated companies. Section 2(2)(i) of the Ordinance present two instances whereby, associated relation of two companies or undertakings may be established; Firstly, if a person is either owner or partner or director in two companies or undertakings. Secondly, if a person, directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in two companies or undertakings. In the present case, Ehmar Iqbal and Noor Aurangzeb were directors in Noor Capital (Pvt.) Limited and in the Company, therefore, common directorship is sufficient to prove the associated relation between the two companies. Furthermore, the Appellants have also not



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denied the fact that Ehmar Iqbal and Noor Aurangzeb were not directors in Noor Capital (Pvt.) Limited and in the Company rather, they contested on the point that they were not holding twenty per cent of the voting power shares in both associated companies. It is also important to note here that Appellants Counsel Ahmed Bashir & Associates, in reply to the SCN, admitted that “*Mr. Ehmer Iqbal is the only person who is the chief executive of the Appellant and also director of Noor Capital (Pvt.) Limited.....*”. This admission strengthens and supports Respondent’s stance.

6. Appellants relied upon a case law, which is about the general rule that all the relevant provisions in a Statute are to be considered in their totality. The Bench is of the view, that the Respondent had considered the relevant provision of the Ordinance i.e. Section 2(2)(i) of the Ordinance. It is important to understand that Section 2(2) of the Ordinance contains, different instances whereby two companies or undertakings may be treated as associated. Furthermore, this provision also excludes certain entities from the application of this Section. The provisions contained in Section 2(2) of the Ordinance have no overriding effect on each other. Therefore, the cited case law does not support the assertions of the Appellants.
7. In view of the above circumstances, there is no reason to interfere with the merits of the Impugned Order therefore, we hereby dismiss this Appeal without any order as to cost.

  
(**Shaukat Hussain**)  
Commissioner (CLD-CCD)

  
(**Shauzab Ali**)  
Commissioner (SMD)

Announced on: **15 APR 2019**