



**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 45 of 2007**

Mr. Tahir A. Khan

Chief Executive

Southern Networks Limited

5-Y, Block 6

PECHS, Karachi

..... APPELLANT

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

..... RESPONDENT

**ORDER**

Date of Hearing

24-11-09

**Present:**

For the Appellant:

Mr. Nisar Ahmed

Mr. Abdul Hamad

Departmental representatives:

Mr. Ali Azeem Ikram

Director (Enforcement)

Mr. Haris bin Tipu

Deputy Director (Enforcement)



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1. This order shall dispose of appeal No. 45 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 19-11-2007 (the "Impugned Order") passed by the Respondent.
2. On examination of annual audited accounts for the year ended 30-06-05 of Southern Networks Limited (the "Company") it transpired that the Company has made a total investment of Rs.24.1 million in its associated company i.e. Sun Biz (Pvt.) Limited ("SPL"). The total investment included equity investment of Rs.14.996 million and advance against equity of Rs.9.103 million. The notes to the aforementioned accounts revealed that the shareholders of the Company had approved investment of Rs.20 million in SPL by way of equity in an Extra Ordinary General Meeting (the "EOGM") held on 25-11-03.
3. Show cause notice dated 17.03.06 ("SCN") was issued to the Appellant and the directors of the Company under section 208 and section 492 read with section 476 of the Ordinance. The Appellant filed response to the SCN, however, the Respondent dissatisfied with the response to the SCN, issued the Impugned Order and imposed a penalty of Rs. 75,000 each on the Appellant and the directors of the Company under section 208(3) of the Ordinance.
4. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant's representatives contended that SPL, subsidiary of the Company was incorporated with the object to run satellite TV channel for which the Company holds a valid license in its own name. SPL was wholly owned subsidiary of the Company. Investment amounting to Rs 9.103 million was made in SPL by the Company in the form of equity; however, later the



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shares of SPL were not issued to the Company as the entire share holding of SPL was sold to AKD Securities (Pvt.) Ltd. The Company obtained approval of investment of Rs 20 million in SPL in EOGM held on 25-11-03 and post facto approval of 4.1 million was obtained in its Annual General Meeting (“AGM”) held on 28-10-05. The transfer of shares to AKD Securities (Pvt.) Ltd was also approved in EOGM held on 31-1-06. Moreover, no loss has occurred to shareholders as a result of the investment made in SPL.

5. The departmental representatives argued that the SPL is not wholly owned subsidiary of the Company as the Company is holding 69.75 % shares in SPL. The Company made investment of Rs 14.996 million and Rs 9.103 million in SPL under two heads, “equity investment” and “advance against equity” respectively. No shares were actually issued against Rs 9.103 million as such it can at best be treated as an advance. The approval for investment of Rs 20 million taken from the shareholders of the Company in EOGM held on 25-11-03 was in respect of equity investment and cannot be treated as an approval for advance. The departmental representative also referred to SRO 865(1)/2000 dated 06-12-2000, which requires specific and separate information in case of ‘equity investment’ and ‘loans and advances’ respectively. The Company failed to obtain the approval of shareholders for the advance given to SPL amounting to Rs. 9.103 million. It was further argued that section 208 of the Ordinance does not envisage post facto approval taken by the Appellant in the AGM amounting to Rs 4.1 million as such the penalty was rightly imposed on the Appellant and other directors.

6. We have heard the parties. Section 208 of the Ordinance is reproduced for ease of reference:



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**208. *Investments in Associated companies and undertaking.-***  
*(1) [Subject to sub-section (2A)a] company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto:*

*Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.*

**Explanation:** *The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.*

Emphasis added

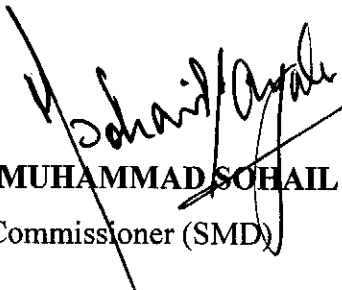
Section 208 requires that a special resolution be passed by the Company before making investment in its associated company. The requirement of law is unequivocal and cannot be avoided. The definition of investment has also been specifically provided and includes loans, advances, equity by what ever name called. In the instant case the investment in associated company has been made in the form of equity and advance for equity; both of which falls within the definition of investment. SRO 865(I)/2000 dated 6-12-00 requires all listed companies to disclose investment in associated companies while issuing notice for the general meeting. The notification also classifies the information to be provided by the companies under two separate heads "equity investment" and "loan and advances". The approval for investment sought by the Appellant




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through EOGM held on 25-11-03 was in respect of the equity investment amounting to Rs 20 million. The investment made in the form of advance for equity amounting to Rs 9.103 was not approved through special resolution as required by section 208 of the Ordinance. The post facto approval of investment in associated company through a special resolution is not envisaged by the Ordinance as such the penalty was rightly imposed.

We therefore do not find any ground to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

  
(MUHAMMAD SOHAIL DAYALA)  
Commissioner (SMD)

  
(S. TARIQ ASAF HUSAIN)  
Commissioner (LD)

Announced on: 14-1-10