



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Citi Pharma Limited

Show Cause Notice No. & Date Adj.I/ARN/20/2022-211
dated April 17, 2024

Date(s) of Hearing(s): June 06, 2024; and August 28, 2024

Hearing Attended by: Mr. Ghulam Dastgeer, Director Finance; and
Mian Irfan Aziz, Director Operation; as the Authorized
Representative.

ORDER

Under Regulation 5(3) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 read with Regulation 8 thereof and Section 199 of the Companies Act, 2017

This Order shall dispose of proceedings initiated through the Show Cause Notice No. Adj.I/ARN/20/2022-211 dated April 17, 2024 (the SCN) issued under regulation 5(3) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (the Regulations) read with regulation 8 thereof and section 199 of the Companies Act, 2017 (the Act) to Citi Pharma Limited (the Company) and its board of directors, hereinafter collectively referred to as the Respondents.

2. Review of financial statements for the year ended June 30, 2022 (Accounts) of the Company revealed that:

- (i) The Company in Accounts disclosed Rs.254.54 million as 'Long Term Deposits' and at its corresponding Note-18 to the Accounts, the same has been disclosed as 'Investment in Associated Company' by stating that "This represents investment in an associated company M/s. Yaqeen Developers Limited (the "YDL.");



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(ii) Information provided by the Company and its Auditors revealed that during FY 2017 - 2021 funds of Rs. 254.54 million were advanced by the Company to YDL (Incorporated on December 09, 2016) in pursuance of its agreement dated January 27, 2016 with YDL, for purchase of Land/godown at district Attock. The said amount was advanced as per detail tabulated below:

Fin. Year	2017	2018	2019	2020	2021	2022
	Rupees in million					
Opening		97.70	112.68	171.83	254.54	254.54
For the Year	97.7	14.98	59.14	82.71	-	-
Closing	97.7	112.68	171.83	254.54	254.54	254.54
Treated as Advance (Under agreement to acquire land at District Attock)					Treated as Investment (Advance for issuance of shares)	

(iii) It was observed from analysis of the aforesaid transaction that:

- The land/godown for which the amount was given in advance, were never transferred in the name of the Company;
- The agreement provided by the Company dated January 27, 2016 for purchase of godown found even before incorporation of YDL;
- The Company, till 2020, recorded the transaction as advance (free of cost) against purchase of godown in its accounts and changed the disclosure/ classification to investment against purchase of shares in YDL in the year 2021;
- The amount of Rs.254.54 million, is lying with YDL as an advance for issuance of shares as per financial statements of the period ended June 30, 2023.

3. Review of financial statements for the year ended June 30, 2023 (Accounts 2023) transpired that as per note 20 to the Account 2023, the Company has booked a receivable of Rs. 96.294 million from YDL being markup on advance for issuance of shares for the financial years 2021, 2022 and 2023. It is noted that though the Company has charged markup but is not recovering the same on regular basis in accordance with proviso to section 199(2) of the Act.

4. The Company has reclassified/ treated the amount advanced to YDL as advance for purchase of shares without there being any formal announcement of issuance of shares of YDL, contrary to the provisions of regulation 5(3) of the Regulations.

5. The Company in response to aforesaid observations by the Commission, vide letters dated January 24, 2023 and March 11, 2023 submitted that these funds transferred during 2017-2020, is an advance for equity investment, however, the Company failed to present any contract, announcement of the offer for issue of shares by YDL and requisite approval of its shareholders in this respect.



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6. In view of above, the Company has, *prima facie*, contravened the following(s):
- Advanced amounting to Rs. 254.54 million for subscription against the shares without any announcement of issuance of shares by YDL in contravention of the requirements of regulation 5(3) of the Regulations;
 - Non- recovery of mark-up on share deposit money, being treated as loan due to non-issuance of shares within ninety days, in contravention of regulation 5(3) the Regulations.
7. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents for the aforesaid contraventions of the law. In response to the SCN, Director Finance of the Company, vide letter dated July 06, 2024 submitted written response and relevant extracts thereof are provided hereunder:

"Citi Pharma Limited (Formerly named as Citi Pharma Private Limited) entered into an agreement with M/S Yaqeen Developers Limited in financial year 2017, amounting to PKR 254.54 million (paid in three years). Following is the breakup of the payments being made by the company in previous years for your ready reference.

Fin. Year	2017	2018	2019	2020	2021	2022	2023
Opening		PKR 97.70	PKR 112.68	PKR 171.83	PKR 254.54	PKR 254.54	PKR 254.54
For the Year	PKR 97.7	PKR 14.98	PKR 59.14	PKR 82.71	-	-	-
Closing	PKR 97.7	PKR 112.68	PKR 171.83	PKR 254.54	PKR 254.54	PKR 254.54	PKR 254.54

With reference to your observation regarding the date of agreement it is explained that advance against purchase of godown was executed on January 27, 2017, it is pertinent to mention that the first transaction on behalf of this agreement was conducted on Feb 2, 2017 and the same could be endorsed from our ledger that has already been provided in response to your letter with reference number AMC/AD/CP/2302/01.

Recovery of Markup

During the audit of our financial statements for the year ended June 30, 2023, our auditors identified that the shares for the investment made in YDL were not issued within the stipulated time period of 90 days as per, clause 5(3) of the relevant regulations. Consequently, they recommended that markup should be charged on this investment. In compliance with this recommendation and in adherence to IAS 8 of the International Financial Reporting Standards, we have restated our financial statements accordingly.



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In accordance with section 199 of the Companies Act, we are accruing markup on the principle and the interest thereon and the delay in recovering the markup is due to YDL being in its development stage, which has resulted in weaker cash flows. However, we anticipate an improvement in YDL's cash flow situation and we have formulated a recovery plan to recoup the majority of this markup in the financial year 2024-2025.

Announcement Rules for Public Unlisted Companies

YDL is a public unlisted company, and our understanding is that the specific announcement rules stipulated under Regulation 5(3) do not apply to YDL. It is our understanding that the issuance of shares by a public unlisted company like YDL is conducted based on mutual agreement and understanding among its members, rather than through public announcements.

Further, at this point, YDL has not issued any shares. The assertion that shares have been purchased without an announcement of issuance is imprecise."

8. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 06, 2024 which was adjourned on the request of Chief Executive Officer (CEO) vide letter dated June 06, 2024. Another hearing in the matter was fixed for August 28, 2024 wherein Mr. Ghulam Dastgeer, Director Finance and Mian Irfan Aziz, Director Operation, appeared on behalf of the Respondents as their Authorized Representatives (**the Representatives**) and, *inter alia*, submitted that:

- Written response dated July 06, 2024 is reiterated;
- At the time of loan, both companies were private companies and loan given to YDL to build godown;
- Later in 2021, the Company decided to convert this loan into advance for issuance of shares;
- YDL is associate company by way of common directorship and there is no investment of the Company in YDL;
- Accrued mark-up on the loan in 2023 on the identification of Auditor; and
- Mark-up rate is expected to decrease to 15%, which will improve cashflow portion of both companies and investment in property is expected to increase.

9. The Representatives subsequent to the hearing, vide letter dated September 04, 2024, submitted extract of resolution passed by the Board of Directors (BoDs) ensuring adherence to the payment timelines due from YDL, also approved in the resolution by YDL, amounting to Rs. 96.294 million for the year ended June 30, 2024, as per the schedule below:



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1. December 30, 2024	Rs. 30,000,000
2. March 30, 2025	Rs. 30,000,000
3. June 30, 2025	Rs. 36,294,000

10. Relevant legal provisions of the Regulations provide that:

"5. Restrictions and conditions applicable to a company making investment.- (3) Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by the associated company or associated undertaking and if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark up or return from the date of transfer of funds in accordance with the provisions of section 199 of the Act.

8. Penalty.- Any contravention of the regulations shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."

11. I have gone through the facts of the case, considered the written submissions made by the Representatives and the arguments extended during the hearing, the aforesaid legal provisions and the record placed before me. At this juncture, it is imperative to address the following:

(i) **Whether the Company contravened regulation 5(3) of the Regulations by failing to make a formal announcement of the offer for issuance of shares by YDL before reclassifying the advance as an equity investment?**

Yes, the Company contravened regulation 5(3) of the Regulations. This regulation explicitly requires a formal announcement for the issuance of shares before any reclassification of funds as an equity investment. The absence of such an announcement, as evidenced by the financial statements and responses, indicates non-compliance with the regulation 5(3) of the Regulations.

(ii) **Whether the non-recovery of markup on the share deposit money within the stipulated time period, as required under section 199(2) of the Act, constitutes a violation of the Act and relevant regulations?**

Yes, the non-recovery of markup on the share deposit money constitutes a violation of section 199(2) of the Act. This section mandates that share deposit money, if not converted into shares within the prescribed period, must be treated as a loan, and interest or markup is to be charged accordingly.



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Furthermore, the law requires that the return on such investment should not be less than the borrowing cost of the investing company, and the markup must be recovered on a regular basis in accordance with the terms of the agreement. The Company's failure to recover this markup within the specified time, and more importantly, on a regular basis, violates the requirements as prescribed under the provisions of the law. By failing to ensure consistent recovery, the Respondents have breached the legal requirement as mandated under section 199(2) of the Act.

(iii) Whether the lack of timely issuance of shares by YDL within the 90-day period converts the share deposit money into a loan, thereby subjecting it to markup under the Act and the Regulations?

Yes, the lack of timely issuance of shares by YDL within the 90-day period automatically converts the share deposit money into a loan under regulation 5(3) of the Regulations. This means the funds become subject to the legal framework for loans, including the accrual of interest or markup from the date of the transfer of funds, as per section 199 of the Act.

Furthermore, the law mandates that shareholder approval in a general meeting is a prerequisite for such investments. This means that any investment in an associated company, through loans or advances, requires prior approval from the shareholders. This approval must be obtained in a formal general meeting. The purpose of this requirement is to ensure transparency and allow shareholders to have a say in major financial decisions that could impact the company's financial health.

In the instant case, the Respondents did not obtain the necessary approval from its shareholders before proceeding with the investment. Additionally, they also failed to present any formal contract outlining the terms of the investment or any public announcement of an offer for the issuance of shares by YDL, contravene the statutory requirements set forth in section 199(2) of the Act.

(iv) Whether the Company's assertion, stating that YDL is exempted from the announcement rules under regulation 5(3) of the Regulation, holds legal merit?

No, the assertion does not hold legal merit. Regulation 5(3) of the Regulations does not provide an exemption for public unlisted companies from the requirement to announce the issuance of shares. The argument that mutual agreement among members is sufficient is not correct, as the law applies to all associated companies, including public unlisted companies, requiring a formal public announcement.



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(v) **Whether the Board of Directors' subsequent resolution regarding the recovery plan for markup absolves the Company from the past non-compliance?**

The Board of Directors' subsequent resolution is a future measure and does not absolve prior violations. The violation occurred when the markup was not recovered within the prescribed period, and the resolution only serves as a commitment for the subsequent compliance moving forward. It does not negate the Company's past non-compliance with regulation 5(3) of the Regulations and section 199(2) of the Act.

(vi) **Whether the Company's failure to make a formal announcement of the issuance of shares by YDL constitutes a violation of regulation 5(3) of the Regulations?**

Yes, the Company's failure to announce the issuance of shares by YDL as required under regulation 5(3) of the Regulations constitutes a violation. The regulation mandates that share deposit money can only be transferred after an official announcement, and failure to issue shares within ninety days necessitates treating the amount as a loan, which the Company failed to do.

(vii) **Whether the Company's claim that markup recovery was delayed due to YDL's cash flow issues is a valid legal defense for non-compliance with the recovery requirements?**

No, YDL's cash flow issues do not provide a valid legal defense for non-compliance. Section 199(2) of the Act requires the recovery of markup within the stipulated period, and on recurring basis, regardless of the financial condition of the associated company. The law does not allow for exceptions based on cash flow difficulties, and the Company remains liable for non-recovery.

12. In view of the aforesaid, it is established that the Respondents advanced an amount of Rs. 254.54 million to YDL in the form of share deposit money and subsequently failed to recover the markup of Rs. 96.294 million thereon within the stipulated period and on regular basis, in contravention of regulation 5(3) of the Regulations and section 199(2) of the Act. Therefore, I, in exercise of powers conferred under regulation 8 of the Regulations, hereby conclude the proceedings initiated against the Respondents through the SCN by imposing an aggregate penalty of **Rs.1,600,000 (Pak Rupees One Million and Six Hundred Thousand Only)** on the Respondents in the following manner and advised to ensure compliance of applicable legal and regulatory framework in future in letter and spirit:

Sr. #	Names of the Respondents	Amount
1	Mr. Rizwan Ahmad	200,000
2	Mr. Nadeem Amjad	200,000
3	Mr. Zamir Ul Hassan Shah	200,000
4	Ms. Saira Aslam	200,000



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5	Mr. Mohammed Naeem	200,000
6	Mr. Abdul Jaleel Shaikh	200,000
7	Ms. Farzin Khan	200,000
8	Citi Pharma Limited	200,000
	Total	1,600,000

13. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

14. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.

(Shahzad Afzal Khan)

Director/ HOD

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Announced:

Dated: September 27, 2024

Islamabad