



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 20 of 2006**

1. Raza Abdul Aziz Al-Rae, Chairman/ Chief Executive Officer
2. Aijaz Abdul Aziz Al-Rae, Director
3. Riyadh Abdul Aziz Al-Rae, Director
4. Rabia Barkat Ali, Director
5. Muhammad Kashif, Director
6. Sumiah Saeed-ur-Rehman, Director
7. Asma Hafeez, Director

of Pakistan Telephone Cables Limited .....

Appellants

Versus

Executive Director (CLD)

Securities and Exchange Commission of Pakistan .....

Respondent

Date of hearing

13-10-11

**ORDER**

**Present:**

**For the Appellants:**

M. Farooq Akhtar, Advocate

**Department representatives:**

Mr. Haris Bin Tipu, Deputy Director

Mr. Anwar Hashmi, Deputy Director



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1. This order shall dispose of appeal No. 20 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 23/12/05 (the "Impugned Order") passed by the Respondent.
2. On the examination of annual audited accounts for the year ended 30/06/05 (the "Accounts") of Pakistan Telephone Cables Limited (the "Company"), it was observed that the Company made following unauthorized investment in its associated undertaking:

<i>Particulars</i>	<i>2004</i>	<i>2003</i>
<i>Associates (Note 16)</i>	<i>43,265,449</i>	<i>0</i>
<i>Due from associated undertaking (Note 18)</i>	<i>7,700,989</i>	<i>556,828</i>

The Company, further, explained in note 16.1 of the Accounts that an amount of Rs. 15.771 million is given temporarily at the rate of 8.5 % p.a to M/s Plaza Companies (Pvt.) Limited ("PCL") and the Company shall place the matter for approval of the shareholders at the Annual General Meeting ("AGM"). It was further observed that the Company made investment in PCL without obtaining the requisite approval from the shareholders.

3. Show cause notice dated 07/12/05 ("SCN") was issued to the Company and the Appellants under section 208 read with section 472 of the Companies Ordinance, 1984 (the "Ordinance"). The Appellants submitted reply and hearing in the matter was held where the Appellants' counsel



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admitted default and assured that the default of non-compliance with mandatory provision of section 208 of the Ordinance shall be ratified within 25 days and requested that a lenient view may be taken. The Respondent passed the Impugned Order and imposed a penalty of Rs. 300,000 on each Appellant. In addition the Respondent further directed the Appellants under section 472 of the Ordinance to make good the default and recover the unauthorized investments along with the mark-up from PCL within 30 days of the order and to remove the irregularities made in the investments of Rs. 18.469 million and Rs. 7.70 million in M/s Al-Rae (Pvt.) Limited and M/s Agro Oil Extraction Industries Limited respectively within 90 days of the order.

4. The Appellants preferred to file the instant appeal against the Impugned Order. The Appellants' counsel stated that a family of Saudi origin (Al- Rae Group) came to Pakistan and made investment in the Company. More than 75% of the issued capital of the Company is owned and held by Al-Rae Group. The decision of the management of the Company to make temporary investment of Rs 15.771 million in PCL without passing a special resolution was a technical anomaly since the same directors holding 75% shares could have passed the special resolution in a general meeting. It was argued that the observation in the Impugned Order that the resolution passed on 24/10/02 which authorized the investment was deficient and did not comply with the requirements of SRO No 865(1)/2000 and cannot be made basis for imposition of the harsh penalty imposed on the Appellants. The Impugned Order has gone beyond the ambit of the SCN by directing the Appellants to remove the irregularities made in the investments of Rs. 18.469 million and Rs. 7.70 million in Al-Rae (Pvt.) Limited and Agro Oil Extraction Industries Limited, respectively within 90 days of the order. It was argued that the



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Appellants have track record of regulatory compliance and harsh penalty should not have been imposed for a technical omission.

5. The department representatives stated that non-compliance with the requirement of section 208 of the Ordinance stands established. The Appellants' regulatory compliance has not been exemplary as they did not hold AGM for the last two years within the prescribed time. Moreover, there have been instances of non-compliance of section 160(1) of the Ordinance for which separate order was passed. The Respondent has already taken a lenient view by imposing penalty of Rs. 300,000 each when the maximum penalty on each Appellant could have been Rs. 10,000,000.
6. We have heard the parties and have gone through the record. The Appellants have conceded to have made an investment of Rs. 15.771 million in PCL without passing a special resolution. Section 208(1) and (3) of the Ordinance (as at the time of issuance of SCN) are reproduced for ease of reference:

*208. Investments in Associated companies and undertaking.- (1) 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.*



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(2) .....

*(3) If default is made in complying with the requirements of this section, every director of a company who is knowingly and wilfully in default shall be liable to fine which may extend to one million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section.*

The bare perusal of the above Section leads to the conclusion that the Company was in violation of section 208(1) of the Ordinance for failing to pass special resolution indicating the nature, period and amount of investment and the terms and conditions under which the investment was made. We concur with the view expressed in the Impugned Order that the management provided working capital to its associated concerns at the cost of the Company. The Appellants' counsel has confirmed in writing, vide letter dated 19/10/11, that the directions of the Respondent in the Impugned Order regarding return of investments of Rs. 18.469 million and Rs. 7.70 million in Al-Rae (Pvt.) Limited and Agro Oil Extraction Industries Limited respectively have been complied with, which fact has also been confirmed by the department representatives. As far as the direction to make good the default and recover the unauthorized investment of Rs 15.771 million along with the mark-up from PCL is concerned, the Appellants have attached a certificate from Khalid Majid Rehman Sarfraz Rahim Iqbal Rafiq, Chartered Accountant, which confirms that the Company has received an amount of Rs 16,747,909 on 31/12/05 from PCL towards repayment of outstanding principle amount of advance together with mark-up charged thereon till 31-12-05.



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The Respondent while passing the Impugned Order had gone beyond the ambit of the SCN and the penalty was also imposed for making investments of Rs. 18.469 million and Rs.7.70 million in Al-Rae (Pvt.) Limited and Agro Oil Extraction Industries Limited respectively. In view of the above and the since the Appellants have substantially complied with the direction of the Respondent, we taking a lenient view hereby reduce the penalty to sum of Rs =100,000/- on each Appellant. Accordingly the appeal is disposed of.

(Mohammed Asif Arif)  
Commissioner (Insurance)

(Imtiaz Haider)  
Commissioner (SMD)

Announced on: 12-01-12