



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 26 of 2008

1. Raza Kuli Khan Khattak, Chairman
2. Lt. Gen. (R) Ali Kuli Khan Khattak, President
3. Ahmed Kuli Khan Khattak, Chief Executive Officer
4. Mushtaq Ahmed Khan, Director
5. Ch. Sher Muhammad, Director
6. Jamil A. Shah, Director
7. Muhammad Zia, Director
8. Zahid Hussain, Director
9. Ikramul Majeed Sehgal, Director
10. Koichi Sekine, Director

of Ghandhara Nissan Limited

.....

Appellants

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

Respondent

Date of hearing

20/04/12

ORDER

Present:

Appellant:

Mr. Afzal Munif, FCA
M Moin Khan, FCA
Mr. Saleem Baig, CFO

Department representative:

Shahzad Afzal, Joint Director (Enforcement)
Haris bin Tipppo, Deputy Director (Enforcement)



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 26 of 2008 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 04/06/08 (the "Impugned Order") passed by the Respondent.
2. On examination of the accounts of Ghandhara Nissan Limited (the "Company"), it was revealed that trade debts of an amount of Rs. 62.527 million (2006: Rs. 52.699 million) were due from its associated companies. The break up of the trade debts was as under:

	<u>2006</u> (Rs. in million)
Ghandhara Industries Limited (GIL)	57.583
Rahman Cotton Mills Limited (RCM)	3.929
Janana De Malucho Textile Mills Limited (JDMT)	1.015
Total	62.527

The ledger accounts of the above mentioned associated companies were reviewed and it transpired that the Company extended credit to its associate companies with either no recovery or delayed recovery, which could not be termed as normal trade credit.

3. Show cause notice dated 24/12/07 ("SCN") under section 208(3) read with 476 of the Companies Ordinance, 1984 (the "Ordinance") was issued to the Appellants and hearing in the matter was held. The Respondent, took a lenient view, after being assured during the hearing that the Company will receive substantial amount against receivables from associated companies by 30/06/08 and through the Impugned Order imposed penalty of Rs. 50,000 on each Appellant



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

4. The Appellants preferred the instant appeal against the Impugned Order. The Appellants' representative argued in respect of each of the associated companies as under :

- a) that the amount of Rs 57.583 million were due from GIL on account of assembly charges for the Isuzu Vehicles and an amount of Rs 53 million has already been recovered from GIL. Ledger was submitted in support of the contention;
- b) that the amount of Rs 3.929 million outstanding against RCM was against the sale of vehicle and the entire amount was recovered in the year 2007/2008. The amount was 0.13% of the sales and was not substantial, as such, it should not have been termed as an investment in associated concern. Ledger was submitted in support of the contention; and
- c) that the amount of Rs 1.105 million was receivable against the sale of vehicle to JDMT as normal trade transaction. The amount was fully recovered at the end of the year 2007. The amount was 0.03% of the total sales. The amount was not material and should not have been classified as investment. Ledger was submitted in support of the contention.

5. The department representatives argued that:

- a) GIL was given long credit time period and the recovery from the GIL was made by the Company based on the availability of funds with GIL, as such, the credit cannot be termed as 'normal trade credit'. Reference was made to para 8 of the Impugned Order and it was



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

contended that the list clearly shows the extended credit period of more than 1 years allowed to GIL;

- b) the credit period allowed to RCM was for period of more than 2 ½ years which cannot be termed as normal trade credit. RCM was getting a privileged treatment as the trade credit was abnormal and was given to facilitate the associated concern; and
- c) the credit period allowed to JDMT was substantially higher and was for a period of upto 2 years. The Company should have recovered the outstanding amount within a reasonable time.

It was further contended that the abnormal credit extended to the associated concerns was in violation of the requirement of section 208 of the Ordinance, as such, the Respondent rightly imposed the penalties on the Appellants.

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

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.*




SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

The Impugned Order held that debt collection period from the associated companies was 312 days as opposed to 33 days for other trade debtors, which has not been rebutted by the Appellants' representative. The Appellants extended abnormal credit period to GIL, RCM and JDMT for making the outstanding payment. The argument of the Appellants' representative that sale to the associated concern was not material in terms of total sale is not acceptable. The question before us is that whether the abnormal trade credit allowed was an 'investment' in terms of section 208 of the Ordinance. We place our reliance on *Gharibwal Cement vs. Executive Director* cited at 2003 CLD 131, wherein it was held that open ended trade credit without any specific purpose cannot be termed as a 'normal trade credit'. The Appellants in fact made investment in the associated companies under section 208 of the Ordinance and ought to have taken approval from the shareholders before making the said investment.

On the basis of above findings, we do not see any reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to cost.


(Mohammed Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SMD)

Announced on: 5th June 2012