



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 74 of 2009

1. Fawad Ahmed Mukhtar, Chairman
2. Fazal Ahmed Sheikh, Chief Executive Officer
3. Faisal Ahmed Mukhtar, Director
4. Ambreen Fawad, Director
5. Fatima Fazal, Director
6. Farah Faisal, Director

of Reliance Weaving Mills Limited Appellants

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan Respondent

Date of hearing 16/07/12

ORDER

Present:

For the Appellant:

Mr. Waheed Ahmed, Chief Financial Officer

Mr. Ali Asim Sayed, Advocate

Mr. Shazil Ibrahim, Advocate

Department representatives:

Mr. Bilal Rasul, Director

Mr. Shahzad Afzal, Joint Director



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1. This order shall dispose of appeal No. 74 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 25/11/09 (the "Impugned Order") passed by the Respondent.
2. Facts leading to the case are:
 - a) Reliance Weaving Mills Limited (the "Company") in pursuance of section 208 of the Companies Ordinance, 1984 (the "Ordinance") passed a special resolution for equity investment of up to Rs. 200 million in its associated undertaking Fatima Fertilizer Company Limited ("FFCL") in the Annual General Meeting ("AGM") held on 31/01/05, which was enhanced to Rs 500 million in the AGM held on 26/10/06. FFCL did not issue shares to the Company in line with the aforementioned special resolution and the payments made by the Company to FFCL was disclosed as '*advance for the issue of shares*' in the annual audited accounts of the Company from year 2005 till 2007. In November 2007, FFCL issued equity shares to the Company amounting to Rs 120,209,580/- which was adjusted against the advance given to FFCL for issue of shares and was disclosed in the accounts as '*Investment in shares of associate*'.
 - b) the Company in the notice of Extraordinary General Meeting ("EOGM") held on 14/12/06 proposed a special resolution seeking shareholders approval for equity investment of Rs. 500 million in Pak Arab Fertilizer (Pvt) Limited ("PAFL"), however, minutes of the aforesaid EOGM available on the record of the Commission revealed that the Company had actually passed resolution for the investment of Rs. 500 million in PAFL by way of loans, advances etc. Further, the



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markup was accrued on the 'short term loan' given to PAFL only up till June 2007 and no markup was charged during the year 2008; and

- c) the accounts of the Company also revealed following amount as '*due from related parties*':

(In Rupees)

Due from related parties	2008	2007	2006
FFCL	3,182,003	243,434	22,832
PAFL	1,218,408	517,325	194,502

3. Show cause notice dated 13/03/09 ("SCN") was issued to the Appellants under section 160 read with 208 of the Ordinance. The Appellants filed reply to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs. 400,000 on each Appellant.
4. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' counsel argued that the Impugned Order may be set aside on the following grounds:
- a) the Company advanced an amount of Rs. 120,209,580/- to FFCL for issuance of FFCL shares. FFCL treated the above amount as share deposit money until November 2007 when shares of FFCL were issued in favour of the Company. Further, the Company received mark-up during the period the funds were placed with FFCL, therefore, there has been no loss to the shareholders. It was argued that the advance by the Company to FFCL was made for the acquisition of shares of FFCL, as authorized under the special resolution, and not for any other purpose. It was, further, argued that during the period of advance of



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money until issuance of shares, no dividend was issued by FFCL as FFCL was in process of completing its fertilizer complex, as such, no loss was incurred to the shareholders of the Company;

- b) in the Statement of Material Facts, made under section 160(1)(b) of the Ordinance and SRO 865(1)/2000 dated 06/12/2000 (attached to the notice of EOGM held on 14/12/06) the Company stated that it intends to invest in the ordinary share capital of PAFL. However, during the EOGM the shareholders decided that the Company should make investment in PAFL in the form of loans, advances etc and it was duly authorized by the shareholders through special resolution at the EOGM. The non-issuance of another notice and/or failure to state the business to be transacted at the EOGM in the notice would not have had any material effect on the resolution that was finally passed by the shareholders with a majority of over 75% of the total issued shares of the Company. It was further argued that the notice itself envisaged the possibility of passing the resolution '*with or without modification*' which was sufficient to inform shareholders that the resolution may be passed with modifications depending on the decision of the shareholders at the meeting; and
- c) the interest free loans and advances were in the nature of normal trade credit and fall outside the scope of section 208 of the Ordinance. It was further argued that these amounts due from time to time, were on account of surplus space (and associated facilities) that the Company offered PAFL to share with the Company in order to reduce the Company's own costs and were treated as current liabilities by PAFL. The advances were not open ended and were made for specific purpose. The Company benefited directly from sharing of the facilities



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and the Company's costs were reduced. This fact has been disclosed in the notes to the audited annual accounts of the Company in the relevant year.

5. The department representatives argued that:

- a) regarding advance made by the Company to FFCL, the Company accrued mark-up was Rs. 18,209,589/- in the year 2007. No mark-up was charged for the subsequent period which was admitted at the time of show cause proceedings by the Company's representatives. The detail of overdue mark-up was also placed on record of the Commission with the submission that the said mark-up has been accrued from FFCL subsequently. This clearly shows that the Company charged mark-up for remaining period *subsequent* to the initiation of the show cause proceedings by the department;
- b) the SRO 865(1)/2000 dated 06/12/2000 requires separate disclosures for investment in form of equity or advance/loan. Further, the term '*with or without modification*' used in the proposed resolution is construed to mean any minor or procedural modification which comes into scope of the notice and does not commit the meeting to anything that is more onerous than the business originally proposed. Regarding the stance of the Appellants' counsel that the resolution was passed by majority of 75% of the shareholders present in the meeting, it was argued that, out of 17 members present in the meeting, 6 members were directors holding 75.22% shares, whereas, the rest of the members were minority shareholders holding only 0.00925% shares. Further, the shareholders who did not attend the meeting knew only



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about the equity investment proposed in the notice, as such, they were not notified in terms of section 160(1)(b) of the Ordinance; and

c) regarding the amounts due to the Company from related parties, the review of the current accounts provided by the Company revealed that the transactions included balances which were 'not in the nature of normal trade credit'. The Company had failed to provide sufficient evidence in support of their contention.

6. We have heard the parties. Our para wise findings on the issues are as under:

a) the shareholders of the Company approved equity investments up to Rs. 200 million in FFCL in AGM held on 31/01/05 which was enhanced to up to Rs. 500 million in AGM held on 26/10/06. The Company advanced an amount of Rs. 120,209,580/- to FFCL for the issuance of shares of FFCL and FFCL treated the above amount as share deposit money until November 2007 when shares of FFCL were issued in favour of the Company. Until November 2007 the Company disclosed this amount as '*Advance for issue of shares*' in its financial statements. The Company had, therefore, obtained the approval of shareholders for equity investment in FFCL which was converted into advances to FFCL without passing a special resolution. The approval of the shareholders was for equity investments and the Company should have paid the amount at the time of issuance of shares by FFCL. The argument of the Appellants' counsel that no dividend was issued by FFCL during the period of advance of money until issuance of shares as FFCL was still in process of completing its fertilizer complex has no nexus with the SCN proceedings as non-payment of



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dividend was not an issue before the Respondent. Further, the Company admitted that it accrued mark-up from April 2005 to January 2006 only. The Company charged mark-up for remaining period *subsequent* to the initiation of the show cause proceedings by the department. The Company had, therefore, tried to provide benefit to FFCL by not charging interest after 25/12/06 and caused loss to the shareholders of the Company;

b) section 160 of the Ordinance is reproduced for ease of reference:

160. Provisions as to meetings and votes. - (1) *The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:-*

(a) notice of the meeting specifying the place and the day and hour of the meeting along with a statement of the business to be transacted at the meeting shall be given -

(i) to every member of the company;

(ii) to any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and

(iii) to the auditor or auditors of the company;

in the manner in which notices are required to be served by section 50, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(b) where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval



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to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;

[Emphasis added]

Para 1 of the notice of EOGM is reproduced for ease of reference:

"To discuss the matter regarding investment of Rs. 500 million in M/s Pakarab Fertilizers (Pvt) Ltd. (PAFL) and if thought fit to pass the following resolution with or without modification."

[Emphasis added]

An extract of resolution passed in said EOGM is reproduced below for ease of reference:

*"Resolved that the Company is hereby authorized to invest Rs. 500 million in its associated undertaking Pak Arab Fertilizer (Pvt) Limited in compliance with Section 208 of the Companies Ordinance, 1984. Also resolved that **this investment can be used in the form of loans, advances, issuance of corporate guarantees, SBLC, and any such instruments being the interest bearing, convertible in ordinary share capital of M/s Pakarab Fertilizers (Pvt) Limited**"*

[Emphasis added]

Sections 160 of the Ordinance and SRO 865(1)/2000 dated 06/12/2000 require that all material information regarding business proposed to be



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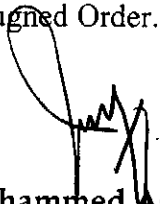
considered in a meeting should be provided to the shareholders well before time. It is obligatory to specify business to be transacted at the meeting and to attach draft resolutions proposed for consideration with the notice of the meeting. In case of special business, a statement of material facts setting out all material facts concerning the special business should be annexed with the notice. In the instant case, the notice of the meeting proposed equity investment in FFCL, whereas, the shareholders changed the nature of investment during the EOGM and instead approved advances to FFCL. The non-issuance of another notice and/or failure to state the business to be transacted at the EOGM in the notice before passing resolution for loans and advances etc. is violative of section 160 of the Ordinance as the Company failed to provide material information to the shareholders required under SRO 865(1)/2000 dated 06/12/2000. Further, we agree with the departments argument that the term '*with or without modification*' used in the proposed resolution is construed to mean minor modifications that do not affect the resolution in substance. Such material changes in the proposed business during the meeting are against the spirit of section 160 of the Ordinance; and

- c) regarding the balance 'due from related parties' appearing in the accounts of the Company, the accounts of FFCL and PAFL reveal that the transactions included balances which were 'not in the nature of normal trade credit'. The Company has failed to provide supporting documentation to substantiate their submissions that they are 'normal trade credit' which fall outside the scope of section 208 of the Ordinance.



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In view of the above, we do not see any reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(Mohammed Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SMD)

Announced on: 16/11/12