

2013 C L D 220

Securities and Exchange Commission of Pakistan

Before Imtiaz Haider, Commissioner (SMD) and Mohammed Asif Arif Commissioner (Insurance)
RAZA KULI KHAN KHATTAK, CHAIRMAN and 9 others---Appellants

versus

EXECUTIVE DIRECTOR (ENFORCEMENT), SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN---
Respondent

Appeal No.26 of 2008, decided on 5th June, 2012.

Appeal dismissed.

Companies Ordinance (XLVII of 1984)....Sections 208 & 476... Securities and Exchange Commission of Pakistan Act (XLII of 1997), Section 33—Investment in associated companies and undertaking--- Extending abnormal credit period to associated companies for making the outstanding payment....Company extended credit to its associated companies with either no recovery or delayed recovery, which could not be termed as normal trade credit--- Executive Director of Commission took a lenient view, after being assured during the hearing that the company would receive substantial amount against receivables from associated companies was 312 days as opposed to 33 days for other trade debts---Directors of the company has extended abnormal credit period to associated companies for making the outstanding payment—Argument of the Director’s representative that sale to the associated concern was not material in terms of total sale was not acceptable ---Directors of the Company in fact made investment in the associated companies under S. 208 of the Companies Ordinance, 1984 and they ought to have taken approval from the shareholders before making the said investment---impugned order could not be interfered with and same was upheld.

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 04-06-2008 (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 breakup of the trade debts was as under:--

	2006 (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 24-12-2007 ("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 30-06-2008 and through the Impugned Order imposed penalty of Rs,50,000 on each Appellant.

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;
- (c) and 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 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 2½ 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 subsection (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.

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 v. 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.