



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (Corporate Supervision Department)

In the matter of

Pakistan Automobile Corporation Limited

Reference Number of the SCN: CSD/ARN/252/2015-2524 dated January 14, 2016
Hearings held on: March 2, 2016 and February 16, 2016
Present: Ms. Surriya Abid, Company Secretary and Authorized Representative along with Mr. Bahadur Ali and Syed Asif Shirazi

ORDER

UNDER SECTION 237 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against all the directors including the chief executive (the "respondents") of **Pakistan Automobile Corporation Limited** (the "Company"). The proceedings against the respondents were initiated through show cause notice (the "SCN") dated January 14, 2016 under section 237 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that examination of annual audited financial statements (the "Accounts") of the Company for the year ended June 30, 2014 filed with the registrar of companies pursuant to provisions of section 242 of the Ordinance revealed that Pakistan Motor Car Company (Private) Limited ("PMCCCL") and Sind Engineering (Private) Limited ("SEL") are wholly owned subsidiary companies of the Company, as disclosed under note 1.5 to the Accounts. It was observed that the Company, despite being the holding company of the PMCCCL and the SEL, did not attach to its Accounts for the year ended June 30, 2014, the consolidated financial statements of the group presented as those of a single enterprise, as required by section 237 of the Ordinance. In response to the Commission's queries in this regard, the Company through letter dated October 20, 2015 stated that it had not prepared consolidated financial statements due to the following reasons:

- (i) The Company and its subsidiary company PMCCCL are non-operational/dormant companies having no physical assets and employees on their role, and only their boards of directors exist as per law. Their expenses are borne by Pakistan Industrial Development Corporation ("PIDC") since January, 2013 as per decision of the Company & PIDC Board.



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- (ii) SEL is on privatization list of Privatization Commission, Government of Pakistan since 1992. PIDC is also bearing operational/administrative expenses of SEL since 2011.
- (iii) The Company and its subsidiary companies being non-operational have no financial resources to manage expenses of consolidation

3. It appeared that the Company, prima facie, contravened the provisions of section 237 of the Ordinance by not attaching to its Accounts the consolidated financial statements of the group comprising the Company and its subsidiaries PMCCCL and SEL. Therefore, the SCN was issued to the respondents advising them to explain their position as to why penal action may not be taken against them for the alleged contravention of provisions of section 237 of the Ordinance. In response to the SCN the Company submitted reply through letter dated January 29, 2016. With reference to the contents of the SCN, submissions of the respondents are briefly summed up as under:

- Since liquidation / privatization of majority of the Company's units till the year 2000, it is practically a company on papers only which subsequently merged with PIDC and it is only continuing as corporate entity under legal compulsion of the Ordinance.
- Being a subsidiary company of PIDC since 2007, the expenses of company are being born by PIDC since January 2013.
- It is non-operating dormant company having no employee on its roll, since its placement on liquidation.
- The company will be dissolved through High Court of Sindh in accordance with the procedure laid down in the Ordinance. In view of the above submission, the Commission is requested to withdraw the SCN. Going forward, the management has decided to place the matter of consolidated accounts of the Company before its Board.

4. The case was fixed for hearing on February 16, 2016 and Ms. Surriya Abid, Company Secretary and the authorized representative accompanied by Mr. Bahadur Ali and Syed Asif Shirazi, appeared before the undersigned and requested for adjournment. The requested was granted and hearing was adjourned for two weeks and case was fixed for hearing on March 2, 2016. The authorized representative through letter dated February 25, 2016 submitted a detailed reply and also appeared before the undersigned on appointed date and time. She mainly reiterated



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the earlier stance as per written submissions and also made additional statements in respect of background of the Company and respondents' views regarding applicability of section 237 of the Ordinance on the Company and its subsidiaries. A brief on additional submissions with reference to the contents of the SCN are produced below:

- The Company was incorporated to achieve the objects as contained in the Presidential Order No.1 of 1972 (Commonly known as Nationalization of Industries Laws).
- After its incorporation the nationalized companies dealing with automobile sector were entrusted to the Company and shares of all such companies were transferred to it.
- Since then, a number of companies were privatized and some of them are under liquidation through Court of law. There are a few companies left which are on the privatization list of Privatization Commission.
- After change in Federal Government's policy in 2007, all the shares of the Company along with other related company, which is to be privatized, was transferred to PIDC and the Company became a subsidiary of PIDC.
- The Company being a state enterprise has obtained approval of the Commission for relaxation from certain requirements of Public Sector Companies (Corporate Governance) Rules, 2013 through Commission's letter No. CLD/CCD/14/2015/2445 Dated September 7, 2015.
- The Company is a subsidiary of PIDC and its BOD which comprises of the Chairman, who is the CEO of PIDC and directors are the senior Joint Secretaries of ministries and are nominees of the Federal Government.
- Since no business is carried out by the Company and its subsidiaries, therefore, consolidation was not required.
- Without prejudice to the above, as per the definition given in sub section 38 of section 2 read with section 3 of the Ordinance, the Company being subsidiary of PIDC, ceases to be a holding company within the meaning of sub-section 18 of section 2, hence, compliance with the provision of section 237 of the Ordinance are not required.

In view of above submissions, the representative requested to withdraw the SCN. However, during the hearing the authorized representative of the respondents was apprised of the



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applicable provisions of sections 2, 3 and 237 of the Ordinance. It was clarified that in terms of section 3, despite transfer of shares of the Company to PIDC, the Company was still a holding Company of PMCCL and SEL and, therefore, in terms of section 237 of the Ordinance, it was mandatory to prepared consolidated financial statements of the Company along with its subsidiaries. The representative was further apprised that the Company should either prepare the consolidated financial statements of the Company along with its subsidiaries or it may apply to the Commission for seeking exemption from preparation of consolidated financial statements.

5. Before proceeding further, it is necessary to advert to the following provisions of section 237 of the Ordinance:

Sub-section (1) of section 237 of the Ordinance states that there shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirement of the Fourth Schedule and International Accounting Standards notified under sub-section (3) of section 234.

Sub-section (9) of section 237 of the Ordinance states that if a holding company fails to comply with any requirement of this section, every officer of the holding company shall be punishable with fine which may extend to fifty thousand rupees in respect of each offense unless he shows that he took all reasonable steps for securing compliance by the holding company of such requirements and that the non-compliance or default on his part was not willful and intentional.

6. I have analyzed the facts of the case, relevant provisions of the Ordinance and the arguments put forth by the respondents. It is clear that in terms of section 237 of the Ordinance it is mandatory for every holding company having a subsidiary or subsidiaries to prepare and attach to its financial statements, the consolidated financial statements of the group presented as those of a single enterprise. The respondents have contravened the provisions of the law by not filing the group's consolidated financial statements as of June 30, 2014. However, I take cognizance of the fact that the Company has disclosed investments in subsidiaries in the standalone Accounts and has also disclosed the status of PMCCL and SEL. Considering this fact and submissions made by

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the respondents, in exercise of the powers conferred by section 237 of the Ordinance, I hereby conclude the proceedings with a warning to the respondents to be careful in future and ensure meticulous compliance with the provisions of the law.

AMINA AZIZ
Director (CSD)

Announced:
March 16, 2016
Islamabad