



Corporate Supervision Department
Company Law Division

Say No To Corruption

Before Mr. Abid Hussain – Executive Director (CSD)

In the matter of

Martin Dow Limited

Number and date of SCN: No. CSD/ARN/290/2016-3736-39, dated March 24, 2016
Date of Hearing: April 14, 2016
Present: Mr. Muqtadir M.A. Jawad, authorized representative on behalf of Mr. M Jawed Akhai, Mr. Rizwan Omar and Mr. Tariq Wajid, Directors.

ORDER

UNDER SECTION 208 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against directors including chief executive (together referred to as "respondents") of **Martin Dow Limited** (the "Company").

Through show cause notice (the "SCN") dated March 24, 2016, issued under the provisions of section 208 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the examination of annual audited accounts of Martin Dow Limited ("Company") for the year ended December 31, 2014 revealed that the company had made equity investment in its subsidiary company Seatle (Pvt.) Limited of Rs. 244.5 million (2013: Rs. 45 million). The shareholding of the Company in its subsidiary had increased from 45% to 97.8% during the period under review. The Company also booked impairment on this investment of Rs. 137.732 million (2013; Rs. 28.647 million).

Further correspondence with the company revealed that an amount of Rs. 154.5 million out of aggregate investment Rs. 244.5 million was invested in associated undertaking without approval from the shareholders in, prima-facie contravention of Section 208(1) of the Ordinance.

3. Consequently, the SCN dated March 24, 2016 was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

under section 208 of the Ordinance. In response to the SCN, directors accepted that the investment of Rs. 154.5 million in associated company is without approval of shareholders. However, it has been contended that members were aware of the investment of Rs. 154.5 million made on January 2014 and it was formally put and approved through special resolution on June 2014. They accept that majority shareholding is common in both companies. They have also attached the relevant Form 26 and 30, showing the approval of the investment through special resolution dated June 6, 2014, signed on April 8, 2016 and filed on April 11, 2016 and also a copy of the extract of the resolution dated June 28, 2014 is attached.

4. A hearing was held on April 14, 2016, wherein Mr. Muqtadir M.A. Jawad, the Company Secretary and Director appeared in person and accepted default in complying with the requirements of section 208 and stated that their office staff was changed, which mistakenly led to non-compliance of section 208 and assured of strict compliance in the future.

5. Before proceeding further, it is necessary to produce the relevant provisions of Sub-section 1 of Section 208 of the Ordinance provides that:

"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. Moreover 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."

6. Before deciding the matter I would like to highlight the importance of the provisions of 208 of the Ordinance and its importance viz-e-viz the protection of the shareholder rights. Transaction with associated undertaking wherein more often directors are common suffer from an inherent limitation of a conflict of interest whereby funds from a public entity can be diverted a private company of the director for purposes other than the business of the Company. The law to mitigate this risk and requires that such transaction should be made after approval from the shareholders in order to protect their interest. The law specifically requires to disclose complete details and the transaction with associated undertaking and terms and conditions attached thereto so that shareholders can make an informed decision.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

7. Reverting back to the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondent. It transpires that provisions of sub-section (1) of section 208 of the Ordinance have been contravened as investment of Rs. 154.5 million in associated company was made without prior approval of shareholders through a special resolution. However, taking into consideration the fact that the Company is a public unlisted company with only four shareholders, instead of imposing a fine under Section 208 of the Ordinance, I hereby conclude the proceedings with a stern warning to the respondents to be careful in future regarding compliance with applicable legal provisions.

Abid Hussain
Executive Director (CSD)

Announced:
May 5, 2016
Islamabad