



**Before Mr. Tahir Mehmood, Executive Director (Enforcement)**

**In the matter of**

**M/S Transmission Engineering Industries Limited**

**(Under Section 208 Read With Section 476 Of The Companies Ordinance, 1984)**

|                           |  |
|---------------------------|--|
| Number and date of notice | EMD/233/432/2002/2345-52 dated December 24 , 2007                              |
| Date of hearing           | August 13, 2008  |
| Present                   | Mr. Fasih Hussain Agha, Director<br>Mr. Riaz Ahmed Chughtai, Company Secretary |
| Date of Order             | August 25, 2008  |

**ORDER**

This order will dispose of the proceedings initiated against M/s Transmission Engineering Industries Limited. (the "Company"), its Chief Executive and Directors, for making unauthorized investments in its associated company in violation of the provisions of Section 208 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts leading to this case are that it has been revealed during examination of the annual accounts of M/s Transmission Engineering Industries Limited ("Transmission Industries") that an amount of Rs. 4,731,961 (2006: Rs.504,541) is shown as "other receivable" to M/s Transmission Motor Company (Pvt) Ltd. ("Transmission Motors"), a subsidiary company in note 22 of the financial statements of the Transmission Industries for the year ended on June 30, 2007. The record of the Commission disclosed that the Company has not passed any special resolution in respect of the receivables amounting to Rs. 4,731,961 (2006: Rs.504,541) from the Transmission Motors.

3. In view of the facts and circumstances narrated in the preceding paragraph, the Enforcement Department viewed that the Company is in contravention of the mandatory requirements of Section 208. It was, therefore, considered necessary to ascertain the extent of violations committed by the Company and loss sustained in consequence of violations of Section 208 of the Ordinance. Consequently, a show cause notice dated December 24, 2007 (the "SCN"), under Section 208 read with Section 476 of the Ordinance, was issued to Mr. Ausaf Hussain Agha, Chairman/Chief Executive, Mr. Muhammad Aslam Khan, Deputy Managing Director, Mr. Tausif Hussain Agha, Director, Mr. Asif Hussain Agha, Director, Mr. Fasih Hussain Agha, Director, Mr. Uzair Ashir, Director, Ms. Sabahat Agha, Director and the Company.



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

Continuation Sheet - I -

4. Mr. Ausaf Hussain Agha, Chief Executive of the Company replied to the aforesaid SCN on behalf of the directors of the Company and submitted that:

- a. Rent on Transmission Industry's machinery used by the Transmission Motor is covered through proper rental agreement dated June 30, 2005.
- b. Proportionate rent for the office space occupied by the Transmission Motor which is also covered through proper rent agreement dated June 30, 2005.
- c. Proportionate utilities being consumed by the Transmission Motor is also covered under office rental agreement.
- d. The above amount debited/claimed during the year subsequently received partially.

5. An opportunity of hearing was provided on August 13, 2008, Mr. Fasih Hussain Agha, Director and Mr. Riaz Ahmed Chughtai, Company Secretary appeared before the undersigned and submitted that the Transactions shown under the Head of Account "Other Receivable" from Transmission Motor are normal business transactions as explained below and covered under legal agreements duly signed and attested by notary public.

- a. Rent of Machinery which was partially utilized by Transmission Motor and charged to their account.
- b. The registered office of Transmission Engineering Industries Limited and Transmission Motors are situated at the same premises and 50% rent expense and utilities etc are being claimed and charged to the Transmission Motor which they paid back to the Company.
- c. The latest ledger account is submitted herewith showing credit balance of Rs. 387,295 hence Transmission Motor paid advance money meet and adjust future expenses."

6. It is pertinent here to elucidate 208 of the Ordinance which has been violated that provides that;

*"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 AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

Continuation Sheet - 2 -

7. I have considered the reply of the Company and found it unsatisfactory. An analysis of the clarification given by the company is as under.

- a. Transmission Industries had entered into an agreement to let out certain machinery to Transmission Motors on monthly rent to utilize at its factory. The total monthly rental was fixed at Rs. 226,225 and the rent had to be paid by Transmission Motors on monthly basis in advance as per clause 3 of the agreement. Whereas, factually the entire rent for the year ended June 30,2007 remain unpaid and is included in the amount receivable from Transmission Motors.
- b. Transmission Industries had entered into another agreement with Transmission Motor for jointly using the head office premises situated on plot no. B-14, Block A, Sindhi Muslim Cooperative Housing Society. The parties had agreed that they will share the utility bills equally i.e. electric, telephones, gas and water of the head office premises. Clause 5 of the Agreement specifies that Transmission Motor shall pay fifty percent of each bill to Transmission Industries within the due dates. Whereas, the break up of receivable from transmission Industries, provided by the Company, reflect that the Transmission Motors have not made payments on this account for the whole year, moreover, the bills pertaining to the month of September 2005 and December 2005 remained unpaid. In addition to above, it has also been observed that amount of the rent for utilizing the office premises by Transmission Motors has not been determined in the Agreement.
- c. The ledger account reflects that Transmission Industries have also been making payments to Transmission motors to meet its working capital requirements.

8. I have given due consideration to the submissions of the directors but none of them justified the default. The Company has not been receiving the amount due from subsidiary in accordance with the agreements made between the parties in violation of Section 208 of the Ordinance. The “*Other Receivables*” reflected in the books of accounts of the Company for the year ended June 30, 2007 cannot be termed as normal trade credit. The subsidiary company, has been placed favorably in the transactions, where directors themselves hold 23% shares and could derive benefit from the transactions. The aforesaid facts vividly depict that the receivable from Transmission Motors are not in the nature of normal trade credit. It is explained in Section 208 of the Ordinance that 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 directors have been grossly negligent in preventing the violation of the mandatory provision of the Ordinance.



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

Continuation Sheet - 3 -

9. The directors owe fiduciary duties to the Company they serve and its shareholders. They must discharge their statutory obligations in good faith with fairness and honesty. The directors have failed to exercise reasonable care to see that mandatory provisions of law were being violated and have not respected the mandate of the shareholders. Therefore, the directors have breached their fiduciary duties, which they owed to the Company and its shareholders. The Directors made unauthorized transactions out of the funds of the Company. In fact the Company has been acting as a financier by providing funds to the subsidiary to fulfill their financial requirements at the cost of the Company.

10. For the foregoing reasons, it is established that the Chief Executive and the Directors have violated the provisions of Section 208 of the Ordinance and have not exercised due care while providing advances to the associated concerns. After analyzing the facts of the case and arguments put forward I am of a considered view that these are not rational and are not acceptable. Violation of section 208 of the Companies ordinance is established and all directors are responsible for the said violation. However, I have also noted that the directors have collected the entire outstanding amount from the subsidiary during the subsequent period. I, therefore, instead of imposing maximum penalty of Rs. 10,000,000 on its Chief Executive and each director as prescribed by Sub-section (3) of Section 208 of the Ordinance, impose a fine of Rs.100,000 (one lac only) on Mr. Ausaf Hussain Agha, Chairman/Chief Executive of the Company. The directors of the Company are reprimanded to remain careful in future.

11. The Chief Executive and directors are directed to charge interest from the subsidiary company on the balances outstanding at the end of each month, starting from July 1, 2005 to June 30, 2008, at the rate which should not be less than the borrowing cost of the Company. Furthermore, an auditor's certificate may be produced certifying that all the transactions between the company and subsidiary have been executed at arm's length prices including the transaction related to the rent of the premises being utilized by the subsidiary and the shareholder of the Company were not at loss. The aforesaid certificate may be produced within 60 days of the issuance of this order.

12. The Chairman, Chief Executive is also directed to deposit the aforesaid fine totaling to Rs.100,000 (Rupees One Hundred thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

*Continuation Sheet - 4 -*

Act, 1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive in his personal capacity and is required to pay the said amount from his personal resources.

**Tahir Mehmood**

Executive Director (Enforcement)

*Announced on:*  
*August 25, 2008*