SEC/Enforcement/2187/2014/ November , 2014

SEC/Enforcement/2187/2014/662 By Special Messenger
November 05 , 2014

Hoda Vasi Chowdhury & Co, Chartered Accountants, Ispahani Building,3rd floor,14-15 Motijheel C/A

Subject: Penalty Order: Non compliance of Securities laws in connection with audited accounts of <u>United Power Generation & Distribution Company Limited</u>

Dear Sir,

Commission's penalty order No. SEC/Enforcement/2187/2014/661 dated November 05, 2014 is enclosed herewith for your kind information and necessary action.

For Bangladesh Securities and Exchange Commission

Mustari Jahan
Deputy Director (Enforcement)

<u>Distribution:</u>
Chief Executive Officer, Dhaka Stock Exchange Limited
Chief Executive Officer, Chittagong Stock Exchange Limited

<u>Copy for information:</u>
P.O to Commissioner (Enforcement), BSEC
P.O to Executive Director (CI), BSEC
P.O to Executive Director (MIS), BSEC
Chairman's office, BSEC

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Order

Whereas, as per section 2 (cc) of the Securities and Exchange Ordinance, 1969 (ORDINANCE No. XVII of 1969) "Commission" means Bangladesh Securities and Exchange Commission constituted under Securities and Exchange Commission Act 1993;

Whereas, Hoda Vasi Chowdhury & Co., Chartered Accountants is the auditor of United Power Generation & Distribution Company Limited;

Whereas, on the basis of the observation report of the Commission regarding the item 'Income tax payment' in the statement of cash flows from operating activities in the audited accounts for the year ended 31 December, 2013 , a show cause-cum-hearing notice No. SEC/Enforcement/2187/2014/623 Dated: October 16, 2014 was issued to Hoda Vasi Chowdhury & Co., Chartered Accountants to appear at the hearing accusing for violating Section 18 of the Securities and Exchange Ordinance, 1969 by showing incorrect figure of income tax payment in the cash flow statement of United Power Generation & Distribution Company Limited for the year ended 31 December, 2013. Hearing has been conducted with the accused. In the show cause-cum-hearing notice following have been mentioned among others;-

Among others the following has been mentioned in the showcause cum hearing notice;

Quote

Whereas, as per Section 18 of the Securities and Exchange Ordinance, 1969;

"**18. Prohibition of false statements, etc**.- No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular.;"

Whereas, Commission has observed from the Auditors' Additional Disclosure that under the cash flows from operating activities 'Income Tax Payment' is Tk. (84,500.00). But in the audited accounts for the year ended 31-12-2013 the same 'Income Tax Payment' was shown as Tk.

1,20,10,183.00 in the cash flow statement. Later on, after getting query from BSEC Cash flow statement has been revised where 'Income Tax Payment' was shown as Tk. (84,500.00).

Whereas, in the auditors' additional disclosure relating to the financial statement of United Power Generation & Distribution Company Limited for the year ended 31 December, 2013 the following is mentioned among others;

"Auditors' Disclosure:

The make up of Taka 1,20,10,183/- is as follows:

	2013
Provision for taxation during the year	1,20,94,683
Less Paid during the year	(84,500)
Changing balance for taxation	1,20,10,183"

Whereas, in the Audited Financial Statements of United Power Generation & Distribution Company Limited for the year ended 31 December, 2013 the cash flows from operating activities are shown as follows;

Cash Flows from operating activities

Particulars	2013 (submitted first time) Figure in Tk.	2013 (submitted later on) Figure in Tk
Cash received from customers	356,63,33,325	356,63,33,325
Cash received from other operating income	3,22,52,489	3,22,52,489
Cash paid to suppliers and contractors	(78,42,02,235	(78,42,02,235
Cash paid for other operating expenses	**(41,88,00,042)**	**(40,67,05,359)**
Payment of financial expenses	(36,06,93,817)	(36,06,93,817)
Income tax payment	**1,20,10,183**	**(84,500)**
Net cash flow from operating activities	204,68,99,903	204,68,99,903

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Contravention:

Hoda Vasi Chowdhury & Co., Chartered Accountants (auditor) has violated Section 18 of the Securities and Exchange Ordinance, 1969 by showing incorrect figure of income tax payment in the cash flow statement of United Power Generation & Distribution Company Limited for the year ended 31 December, 2013.

Whereas, Mr. Kamrul Hassan (Representative, Hoda Vasi Chowdhury & Co, Chartered Accountants) Ms Aisha Siddiqua ACA (Manager, Hoda Vasi Chowdhury & Co, Chartered Accountants) have attended the hearing. have submitted an explanation letter no. 01/L-0814/2014 dated **October 19, 2014** to the Commission. In the letter they have stated the following among others;

Quote

In response of your letter ref: SEC/Enforcement/2187/2014/622 dated 16 October 2014 regarding Show-cause cum hearing notice: Non compliance of Securities laws in connection with audited accounts of United Power Generation & Distribution Company Limited, we would like to draw your kind attention regarding the following issues:

"Whereas, Commission has observed from the auditors' additional disclosure that under the cash flows from operating activities "Income Tax Payment" is Tk.(84,500.00). But in the audited accounts for the year ended 31-12-2013 the same "Income Tax Payment" was shown as Tk. 12,010,183.00 in the cash flows statement. Later on after getting query from BSEC cash flows statement has been revised where "Income Tax Payment" was shown as Tk. (84,500.00)".

Auditors' Response:

The amount of Tk. 12,094,683 is an operating expense item of "Income tax expenses" for financial year 2013 which is included with "Cash paid for operating expenses" butnot yet paid within the financial year 2013,only paid 84,500, excess amount 12,010,183 (=12,094,683-84500) has been presented separately as "cash inflows" for adjustment. For this reason the financial statement is not effected materially innet figure of net cash flows from operating activities, which is the provision of section 18 Securities and exchange Ordinance, 1969, and it was unintentionally presented. When BSEC query to us (vide letter of SEC/CI/BB-01/2013/482 on dated 8th July 2014) above matter then we provided proper disclosure and revised audited financial statement of 2013. However the "cash flows from operating activities" would be presented as follows:

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United Power Generation & Distribution Company Ltd.
Statement of Cash Flows
For the period from 01 January 2013 to 31 December 2013

		Note(s)	2013 Taka Submitted later on	2013 Taka Submitted 1st time
A	**Cash flows from operating activities**			
	Cash received from customers	27	3,566,333,325	3,566,333,325
	Cash received from other operating income	24	32,252,489	32,252,489
	Cash paid to suppliers and contractors	28	(784,202,235)	(784,202,235)
	Cash paid for other operating expenses	29	(406,705,359)	(418,800,042)
	Payment of financial expenses	30	(360,693,817)	(360,693,817)
	Income tax payment		(84,500)	12,010,183
	Net cash flow from operating activities		**2,046,899,903**	**2,046,899,903**

Unquote

Where as, IPO of United Power Generation & Distribution Company Limited is under process. Where as, the auditor can not okayed the issuer's misleading or incorrect financial statement to be submitted to the Commission. Therefore the Commission has not accepted the auditor's explanation regarding the contravention and Commission is of the opinion that the allegation of violating Section 18 of the Securities and Exchange Ordinance, 1969 against Hoda Vasi Chowdhury & Co., Chartered Accountants (auditor) is **correct.**

Whereas, the auditor's aforesaid activities are tantamount to non-compliance of securities law that appears deliberate and clear contravention of Section 18 of the Securities and Exchange Ordinance, 1969 attracting penal provision of section 22 of the Securities and Exchange Ordinance, 1969.

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Whereas, to protect the discipline and transparency of the capital market along with its development the Commission deems it appropriate and necessary to impose penalty upon Hoda Vasi Chowdhury & Co, Chartered Accountants (auditor).

Now, therefore, Bangladesh Securities and Exchange Commission, in exercise of the power conferred by section 22 (amended by the Securities and Exchange (Amendment) Act, 2000) of the Securities and Exchange Ordinance, 1969 (XVII of 1969) hereby imposes penalty for Tk.2 (Tk.Two) Lac upon Hoda Vasi Chowdhury & Co, Chartered Accountants (auditor) which is to be deposited to the Commission in the form of Bank Draft/Payorder favouring 'Bangladesh Securities and Exchange Commission' within 15 days from the date of issuance of this order.

By order of the Bangladesh Securities and Exchange Commission

Professor Dr. M. Khairul Hossain
Chairman

Distribution:

Hoda Vasi Chowdhury & Co, Chartered Accountants, Ispahani Building,3rd floor,14-15 Motijheel C/A