SEC/Enforcement/2187/2014/660 By Special Messenger
November 05, 2014

Managing Director/CEO
Lanka Bangla Investments Limited
Eunoos Trade Centre, Level # 21,
52-53, Dilkusha C/A, Dhaka-1000

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/2187/2014/659 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

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, Bangladesh Securities and Exchange Commission issued Merchant Banker Registration Certificates to Lanka Bangla Finance under wmwKDwiwUR I G·‡PÄ Kwgkb AvBb, 1993 (1993 m‡bi 15 bs AvBb), read with wewa 7 of wmwKDwiwUR I G·‡PÄ Kwgkb (gv‡P©U e¨vsKvi I †cvU©‡dvwjI g¨v‡bRvi) wewagvjv, 1996 to conduct functions of issue manager/underwriter/portfolio manager under certain terms & conditions stipulated in the said certificates;

Whereas, Lanka Bangla Investments Limited is the issue manager 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/2187/2014/624 Dated: October 16, 2014 was issued to Lanka Bangla Investments Limited to appear at the hearing accusing for violating Section 18 of the Securities and Exchange Ordinance, 1969 and Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 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, as per Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006,

" **19. Contravention.**– If any issuer or its representative violates any of the provisions of these Rules or furnishes false, incorrect, misleading information or suppresses any information, the Securities and Exchange Commission may take appropriate action under the Securities and Exchange Ordinance, 1969."

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

Whereas, the audited accounts was incorporated in the prospectus signed by the Issuer and Issue Manager.

Contravention:

Lanka Bangla Investments Limited (issue manager) has violated Section 18 of the Securities and Exchange Ordinance, 1969 and Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 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.

Unquote

Whereas, Mr.Hassan Zabed Chowdhury (CEO-cc, Lanka Bangla Investments Limited) and Mr.Iftekhar Alam (Senior Analyst, Lanka Bangla Investments Limited) have attended the hearing. They 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

A very warm Greeting from Lanka Bangla Investments Limited, kindly find below our explanation regarding the above subject matter:

In the above backdrop, we want to confirm that there has been no intention for misrepresentation, false or overstated information in this regard.

- On May 26, 2014, Lanka Bangla Investments Limited (Issue Manager) and United Power Generation & Distribution Company (UPGDCL) (Issuer) submitted the draft Prospectus for final approval to the Commission after bidding. After review, BSEC issued letter no. SEC/CI/BB-01/2013/482 dated July 08, 2014 requiring explanation regarding the Income Tax Payment in the Statement of Cash Flows. In reply, LankaBangla Investments Limited (Issue Manager) and United Power Generation & Distribution Company (UPGDCL) (Issuer) submitted the revised draft Prospectus along with Auditors' Additional Disclosures on August 06, 2014. In the Auditors' Additional Disclosure, Auditors rearranged the amount of "Cash paid for other operating expenses" and "Income tax payment" under head of Cash Flow from Operating Activities along with revised note 29 to the Financial Statements of December 31, 2013 ***(Annexure-1)***.

- Subsequently, Commission issued a letter no. SEC/CI/BB-01/2013/626 dated September 04, 2014 to submit the restated audited accounts along with the Prospectus. In reply, UPGDCL (Issuer) submitted the revised audited financial statements of December 31, 2013 along with revised draft Prospectus prepared by Lanka Bangla Investments Limited incorporating the said Financial Statements, where Auditors stated that "Cash paid for other operating expenses has been rearranged due to Income Tax Provision which was previously adjusted with Income Tax Payment under Cash flows from operating activities in Statement of Cash Flows" of Financial Statements of December 31, 2013 ***(Annexure-2)***.

As a Manager to the Issue, LankaBangla Investments Limited incorporated the financial statements in the Prospectus based on the audited financial statements provided by the Auditors. However, in the subject matter of Audited Financial Statements, we have to trust the Auditors in Good Faith as the Financial Statements have been signed by the Auditors. In revised financial statements of year ended on December 31, 2013, the Auditors clearly stated in Note 29 that "Cash paid for other operating expenses has been rearranged due to income tax provision which was previously adjusted with Income tax payment under Cash flows from operating activities in Statement of Cash Flows". Moreover, this rearrangement of 'Cash paid for other operating expenses' and 'Income Tax Payment' do not change 'Net Cash Flow from Operating Activities' in the Statement of Cash Flows. As a result, there has no implication in Statement of Financial position, Statement of Comprehensive Income or even notes to the financial statements other than the respective head. Thus, there is no impact in the financial performance of the Company.

We would like to assure you that Lanka Bangla Investments Limited does not have any intention to materialize any misrepresentation that does not comply with the rules of the Securities and Exchange Ordinance, 1969, Securities and Exchange Commission (Public Issue) Rules, 2006 and regulations of Bangladesh Securities and Exchange Commission.

Under these circumstances, we cordially seek apology to the Commission for the above mentioned inconvenient situation and kindly request to consider the fact in a sympathetic manner and we assure you that we will be more careful in future as this has been a lesson for us.

Unquote

Where as, IPO of United Power Generation & Distribution Company Limited is under process. The issue manager can not submit any misleading or incorrect statement of the issuer to the Commission. Therefore the Commission has not accepted their explanation regarding the contravention and Commission is of the opinion that the allegation of violating Section 18 of the Securities and Exchange Ordinance, 1969 and Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 against Lanka Bangla Investments Limited is **correct.**

Whereas, the issue manager'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 and Rule-19 of Securities and Exchange Commission (Public Issue) Rules, 2006 attracting penal provision of section 22 of the Securities and Exchange Ordinance, 1969.

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 Lanka Bangla Investments Limited (issue manager).

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.1.00 (Tk.One) Lac upon Lanka Bangla Investments Limited (issue manager) 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

Managing Director/CEO
Lanka Bangla Investments Limited
Eunoos Trade Centre, Level # 21,
52-53, Dilkusha C/A, Dhaka-1000