SEC/Enforcement/2187/2014/658 By Special Messenger

November 05, 2014

Managing Director/CEO

United Power Generation & Distribution Company Limited

House #NW(J)-6,Road#51

Gulshan-2

Dhaka-1212

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

Dear Sir,

Commission's penalty order No. SEC/Enforcement/2187/2014/657 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)

Distribution:

Chief Executive Officer, Dhaka Stock Exchange Limited
Chief Executive Officer, Chittagong Stock Exchange Limited

Copy for information:

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, as per section 2(g) of the Securities and Exchange Ordinance, 1969 (XVII of 1969), United Power Generation & Distribution Company Limited is an "issuer" (here in after referred to as "issuer");

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/2187/2014/622 Dated: October 16, 2014 was issued to United Power Generation & Distribution Company 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 its cash flow statement 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;-

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:

United Power Generation & Distribution Company Limited (issuer) 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 its cash flow statement for the year ended 31 December, 2013.

Unquote

Whereas, Mr.Md.Badrul Ahsan (CEO, United Power Generation & Distribution Company Limited)

Mr.Md.Ebadat Hossain Bhuiyan (CFO, United Power Generation & Distribution Company Limited) and Mr.Md Mojibul Islam Patoary (Manager, United Power Generation & Distribution Company Limited) have attended the hearing. They have submitted an explanation letter no. UPGD/IPO/2014/029 dated October 19, 2014 to the Commission. In the letter they have stated the following among others;

Quote

In response to 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:

1. Although, we have submitted our prospectus after incorporating the financial statements of the year 2013 on 26 May 2014, we have collected subscriptions from the institutional bidders on the basis of the financial statements of the year 2012. The prospectus of both the years have been duly reviewed by your good office and, we have successfully complied with any recommendations or changes as were required by your good self after the review, and additional disclosures were submitted after proper due diligence from the auditors.

2. While reviewing the prospectus along with the financial statements submitted on 26 May 2014 by your good office, an explanation was called vide letter ref: SEC/CI/BB-01/2013/482 dated 8 July 2014 with respect to income tax payment in the cash flows statement pertaining to the 2013 accounts (Annexure-1). We reviewed the statements and found that there was inadvertent misplacement of income tax provisions in the cash flows from operating activities in the statement of cash flows only and it has been explained with correction in the auditors' additional disclosures submitted on 06 August 2014 to BSEC (Annexure-2).

3. After reviewing the auditors' additional disclosures, your good office has issued a letter vide ref: SEC/CI/BB-01/2013/626 dated 04 September 2014(Annexure-3) requesting to submit restated audited accounts and incorporate the same in the prospectus. Accordingly we have revised our financial Statements of the year 2013 (Annexure-4) and submitted the prospectus again after incorporating the changes in the Statement of Cash Flows, as

per your recommendations. For your information, there is no impact in Statement of Financial position, Statement of Comprehensive Income, net cash flows or even notes to the financial statements other than the respective head as aforementioned.

4. We understand that as we have submitted the updated prospectus with revised audited accounts as per your recommendations via the letter dated 4th September 2014 (Annexure-3) as part of the review process of prospectus, and incorporated the outcome of review during the IPO process, it is a resolved issue as per your guidelines. Therefore, there has not been any willful concealment of information warranting a proceeding under section 18 of the Securities and Exchange Ordinance, 1969 and Rule 19 of Securities and Exchange Commission (Public Issue) Rules 2006.

5. UPGDCL is a 15 years tax exempted company. Income tax is levied for other operating income only and no provision is required for income on the company's business profits, as the company received exemption from all such taxes from the Government of Bangladesh under the private sector power generation policy, which starts from its commercial operation, vide SRO ref: 188-Law/income Tax/2009-Income Tax Ordinance 1984 (XXXVI of 1984) dated 01 July 2009 (Annexure-5). Thus, as you would surely agree, there is no benefit on our part to not disclose tax related information in our financial statements, since we are already a tax exempted company Please note that we have already paid tax of taka 1,00,00,000 to the Government out of total tax provision of Taka 1,20,94,683 of the year 2013(Annexure-6), which relates only to our other operational income.

6. It is worthwhile to mention here that both the International Accounting Standards (IAS) 8: Accounting Policies, Changes in Accounting Estimates and Errors, and IAS 10: Events after the Reporting Period allows the correction of errors and reflection of associated changes in the financial statements. The Management has the right to change or revise the financial statements as per the Bangladesh Financial Reporting Standards (BFRS) after discovering any material changes or material errors within three months after the Annual General Meeting (AGM) (Annexure-7). Please note that we did not hold AGM yet as the IPO process is going on.

7. For your kind information, the 2013 financial statements have been provided only to BSEC for their perusal and review, and have not been provided to any other investor. So there is no chance for said prospective investors to be misguided or suffer financially or otherwise as a result of this inadvertent misplacement of income tax provisions. We would like to point out that the EPS, NAV or cash flow per share has not been affected by even a single taka due to this, and thus

there has been no "material effect", which you believed has happened as per Section 18 of Securities and Exchange Ordinance, 1969.

We apologize for any misunderstanding that may have occurred as a result of this oversight. However, we would like to assure you that this was completely unintentional, which is further proven by the fact that even our auditors were not able to trace out this minor inadvertent misplacement of income tax provisions. We assure you that we will be more careful in preparing fair financial statements in the future, as has always been our intention, so that the shareholders as well as the interested parties can get benefit from the transparency with which we coordinate ourselves. Thus we humbly request that you please withdraw any proceedings that you may have undertaken as a result of your belief that Section 18 of Securities and Exchange Ordinance, 1969 and Section 19 of Securities and Exchange Commission (Public Issue) Rules, 2006 have been violated.
Unquote

Where as, IPO of United Power Generation & Distribution Company Limited is under process. They can not submit any misleading or incorrect statement 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 United Power Generation & Distribution Company Limited (the issuer) is **correct.**

Whereas, the issuer'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 United Power Generation & Distribution Company Limited (issuer).

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 Tk2.00. (Tk.Two) Lac upon United Power Generation & Distribution Company Limited (issuer) 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
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