



Corporate Supervision Department
Company Law Division

SECP Before Abid Hussain – Executive Director (Corporate Supervision Department)

In the matter of

Usman Textile Mills Limited

Number and date of notice: CSD/ARN/158/2015-450-51, dated August 26, 2015
Hearings held on: February 2, 2016
Present: Mr. Abdul Sattar, Mr. Zulfiqar Ali, Representatives

ORDER

UNDER SECTION 309 READ WITH SECTION 305 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of proceedings in the matter of show cause notice (the “SCN”) dated August 26, 2015 under section under Section 309 read with Section 305 of the Companies Ordinance, 1984 (“Ordinance”) issued to the **Usman Textile Mills Limited** (the “Company”) and board of directors (“BOD”) of the Company, (together referred to as the “respondents”). The Company is a public limited company and its shares are quoted on the Pakistan Stock Exchange (*previously Karachi Stock Exchange*). The main business of the Company is manufacturing and sale of cotton yarn and cotton fabrics.

2. The brief facts leading to this case, are that the Join Registrar of Companies, Company Registration Office, Karachi, on August 7, 2015 approached this office for grant of sanction in terms of clause (b) of section 309 read with clauses (b) and (c) of section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the grounds that the Company has suspended its business since past many years and has failed to hold its annual general meetings (“AGM”) for the years ended June 30, 2009 to June 30, 2014.

3. Consequently, the SCN was issued to the respondents on August 26, 2015 on the following grounds:

- (i) The business of the Company has been suspended for past many years;
- (ii) It has failed to hold its annual general meetings (“AGMs”) for the years ended on June 30, 2009 through to June 30, 2014; and
- (iii) It has been, inter alia, disclosed in the directors’ report annexed to the latest available annual audited financial statements for the year ended on June 30, 2008 that “... as



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mentioned in the report of 2003, the previous management has sold all the fixed and other assets of the company; there now only remains return from investments as only source of income.....(continued)"

Through the SCN, the respondents were given an opportunity to appear before the competent authority on September 14, 2015 to show cause as to why a petition for winding up of the Company may not be presented by the Registrar of Companies to a competent court.

4. In response to the SCN, the respondents through letter dated September 10, 2015 stated that Mr. Noor Qadir, the Chief Executive of the Company was unable to travel due to terminal ailment of his mother and requested for rescheduling the hearing. Subsequently, another hearing was fixed on December 21, 2015. In response to the hearing notice, the respondents again requested for rescheduling of the hearing stating that their lawyer who was well aware of the facts of the case was to appear before court in another matter. Another opportunity of hearing was provided on January 25, 2016 at 11:00 a.m., however, the respondents again requested for rescheduling the time of hearing. Finally the hearing was held on February 2, 2016 and Mr. Zulfiqar Ali Langah and Mr. Abdul Sattar attended the hearing with power of attorney from three of the respondents namely Mr. Noor Qadir, Chief Executive, Mr. Liaqat Ali Awan and Mr. Jahanzeb. Other members of the BOD remained unrepresented. The representatives submitted that Mr. Noor Qadir, the CEO was arrested in 2009 and was released in the year 2011, therefore, the Company was not able to hold its AGMs since 2009. They further stated that the Company had applied to the Commission for holding the overdue AGMs and once the necessary directions are given, the Company will complete formalities for holding the BOD meetings and AGMs in 120 working days. It was further stated that the management will be able to commence operations after completing these formalities. It was further submitted that the Company had merger plans to with Lilley International Private Limited ("LIPL") for revival of business. They also provided a copy of the order passed in the year 2008 by the honorable Sindh High Court in terms whereof scheme of arrangements for merger of the LLIP with and into the Company was approved. It was submitted that the merger could not be completed till date due to arrest of the CEO of the Company. Based on the above submissions, the respondents pleaded that it was neither in interest of the ordinary shareholders nor the public at large to wind up the Company.



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However, the representative did not produce any business plan or other substantiating evidence regarding management's commitment and efforts towards revival of the Company.

5. It is necessary to advert to the following relevant provisions of the Ordinance:

Clauses (b) and (c) of Section 305 of the Ordinance states that *a company may be wound up by the Court:*

(b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

Clause (b) of Section 309 of the Ordinance states that:

"An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorised by the Commission in that behalf."

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 309 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

6. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company has suspended its business for the past many years and has disposed of all the fixed and other assets of the company in the year 2003, effectively abandoning its main business. The only source of income that has remained is return from investments which is not the principle business of the Company. The Company has also failed to hold its AGMs for the years ended June 30, 2009 through to June 30, 2015 and the latest financial statements available on record are for June 30, 2008. The auditor in his report to members on those Accounts has given an adverse opinion with following qualifications:

- (a) *The Company has advanced a sum of Rs60.060 million (2007:Rs61.784 million) to its associated companies. Interest accrued on these advances is Rs35.752 million (2007: Rs22.800 million). Recovery of the outstanding loan amount and interest thereon is doubtful but no provision has been made in these financial statements, therefore, basis of preparation of these financial statements, as given in note 3.1 to the financial statements are not followed. Had the provisions for these doubtful balances been made, the profit for the current year as well as un-appropriate profit would have been reduced by Rs95.812 million.*



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- (b) Accrued and other liabilities include unclaimed dividend of Rs3.807 million against which Company fail to maintain sufficient reserve in a separate dividend bank account.
- (c) The management of the Company has not filed its income tax return for consecutive four years which may result in penal action under Income Tax Ordinance, 2001 against the Company, impact of which could not be determined yet on financial statements.

Below are the highlights of financial position and performance of the Company as of June 30, 2008:

Description	Rs	Description	Rs
Short Term Loan	603,700	Cash & Bank	32,730
Creditors, Acc. & Other	4,357,905	Short Term Deposits	6,600,000
Provisions (Tax & Duty)	24,210,475	*Due From Associated	89,782,043
Paid up Share Capital	37,262,880	Investment-At FV through P&L	18,004,540
Capital Reserves	12,420,960	Adv., Other Rec. & Dep	8,037,234
Unappropriated Profit	43,600,627	Fixed Assets	NIL
Total	122,456,547	Total Assets	122,456,547

* As per auditor's qualification, recovery of the amount due from receivable is doubtful but the Company has not created provision for this doubtful amount including principle and mark up amounting to Rs95.812 million).

Description	Rs
Revenues	Nil
Other Net Income (Investments & Interest)	16,011,100
Profit after Tax	10,157,136

The Company has no fixed assets and out of total assets of Rs122.456 million, major portion of Rs89.782 million comprising due from associated companies namely Investec Securities Limited and Unity Modaraba Management Limited was doubtful of recovery. Hence, if the amounts were provided for, the equity of the Company had almost been fully eroded. The Company has not held its AGMs and has neither prepared nor filed its audited financial statements after the year 2008. Therefore, in view of the following there is no credibility of the reported figures of 2008 in view of the following facts:

- No information is available regarding financial position, performance and existence of any assets of the Company after the year 2008;
- Adverse opinion of the Auditor even on the Accounts for the year ended June 30, 2008;
- Almost fully eroded net equity as at June 30, 2008 in view of doubtful balances of receivables from associated companies.

7. The respondents have failed to present any revival plan of the Company and there does not appear to be any viable option for revival of the Company. The management including chief



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executive of the Company have not made any serious efforts for Company's revival. The submissions made during the hearing have either been made verbally or on an unsigned plain paper without signatures or authentication, in writing. The copy of order passed by honorable High Court for merger of a private company namely LIPL into the Company for its revival has been provided. It transpires that the order was passed way back in the year 2008 and has lost its relevance given the lapse of considerable time and lack of any efforts made by the respondents to effectuate the merger and revive the Company. The respondents' plea that the management was serious in reviving the Company through merger, which could not be effectuated due to arrest of the chief executive, is also not tenable. A Company is a legal person and any action on behalf of the company is undertaken by the board of directors. Hence, the fate and fortunes cannot and should not solely be dependent upon the availability / non-availability of a single person. The fact that the board of directors did not take the necessary action to implement the merger decision speaks of their lack of interest and efforts for the revival of the company. Moreover, even if the submission regarding the arrest of the chief executive is accepted the authorized representative have been unable to demonstrate/explain the efforts made by him, for the revival of the company and ensuring regulatory compliance, in the four years since his release in the year 2011. It is relevant to mention that any revival plan for the Company should in the first place include the business it intends to undertake along with feasibility and financial projections based on realistic basis. The generalized suggestions by the respondents are unsubstantiated and without authentication, lucid basis, future projections and complete business plan. This shows lack of seriousness on the part of the respondents regarding revival of the Company. Keeping in view the forgoing facts, it is clear that the Company seems unable to carry on as a going concern.

8. In the current circumstances the chances of revival of the Company are bleak. This view is further strengthened by the fact that no authentic financial information on state of affairs of the Company is available as directors of the Company have failed to discharge their legal obligation regarding holding of the AGMs, conducting election of directors, preparation and filing of annual and interim accounts and other statutory obligations. After sale of all the fixed assets including land, building, plant and machinery and due to total lack of interest on the part of the management any realistic chances of revival have totally impaired. Holding of AGMs, preparation and filing of annual interim financial statements are very important statutory obligations. It is imperative to understand the importance of AGM for shareholders. AGMs provide opportunity to



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the shareholders, including those in minority, to participate in discussion and voting on agenda items including consideration and approval of a company's annual financial statements, which not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. The timeline of the provision of financial statements to the shareholders is of utmost importance as any delay in presentation of the said information could lead to either uninformed decision by the users or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding holding of AGMs, preparing and filing of annual and interim accounts and managing the affairs in the best interest of the Company and its shareholders. The respondents' submission that they are awaiting approval from the Commission to hold the overdue AGMs and prepare and file the financial statements is not tenable. In the first place, the Company does not require permission of the Commission to hold the AGMs and to prepare and file the audited financial statements of the Company and they can do it without seeking Commission's approval or directions. Since the directors of the Company can hold overdue AGMs without seeking Commission's approval or direction, therefore, any reference made by the respondents to applications filed with the Commission to seek its permission for holding of AGM, appointment of auditor, holding election of directors etc. to justify inordinate delays in holding AGM, is not tenable. Secondly, the Company's application under section 170 of the Ordinance to seek Commission's directions to hold overdue AGMs from 2009 through to 2012 was not acceded to owing to non-enclosure of application fee, unconvincing justifications, no information on expected dates of AGMs and auditors' certificate with regard to reasons for non-completion of books of account/ non-finalization of audit. The Company also failed to remove deficiencies subsequently. Moreover, it is the directors' responsibility to understand and discharge their statutory obligations in this regard. A company in general and a listed company specifically is not supposed to be a one man show. Therefore, respondents' attempt to justify their inability to revive



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the Company due to the arrest of the CEO is unjustified. The respondents have also failed to manage the affairs of the Company prudently and in a fair and transparent manner. From the above discussion and after careful consideration of all the facts and circumstances of the case, I am of the view that the Company is liable to be wound up.

9. For the forgoing, in exercise of the powers conferred by section 309 of the Ordinance, I hereby authorize the concerned Registrar, Company Registration Office, **Karachi**, to present a petition for winding up of **Usman Textile Mills Limited** before the competent court.

Abid Hussain
Executive Director (CSD)

Announced:
February 26, 2016
Islamabad