



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (Corporate Supervision Department)

In the matter of

Annoor Textile Mills Limited

Number and date of notice: EMD/233/84./ 02 - 5244, dated March 12, 2007
Hearings held on: July 1, 2010
Present: Mr. Farooq Ibrahim, Chief Executive of the Company

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 March 12, 2007 under section 309 read with section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to the **Annoor Textile Mills Limited** (the "respondent"). The Company was incorporated in Pakistan on August 8, 1966. The Company is a public limited company and its shares are quoted on the Pakistan Stock Exchange (*previously on Karachi and Lahore Stock Exchanges*). The principle business of the Company is manufacturing and sale of various kinds of yarn.

2. The brief facts leading to this case are that the Company had suspended its business since 1995. Therefore, proceedings under clause (b) of section 309 read with clause (c) of section 305 of the Ordinance were initiated through the show cause notice dated August 15, 2003. After following due process, an order dated January 12, 2004 was passed whereby additional registrar of companies, Company Registration Office ("CRO") Karachi was authorized to file a petition in the High Court for winding up of the Company. However, the Company in its reply dated April 13, 2004, pleaded to review the aforesaid order and submitted the revival plan. In view of the measures taken by the Company for revival of business, the Commission withheld the aforesaid winding up proceedings and the Company was advised to submit a quarterly update about its revival plan. The Company recommenced its production in October 2004. However, the Company again suspended its business operations with effect from September 2005, as reported in the directors' report annexed to the annual financial statements (the "Accounts") for the year ended June 30, 2006 at note 1.2 to the Accounts. Moreover, the auditor of the Company in his report to members on the Accounts for the year ended June 30, 2006 gave an adverse opinion owing to the



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existence of material uncertainty regarding the Company being a going concern, non-provisioning against 'other receivables' and not following its accounting policy regarding deferred taxation. The audited Accounts for year ended June 30, 2016 showed that accumulated loss increased from Rs.17.632 million to Rs.28.408 million, total assets of the Company declined from Rs.57.9 million to Rs.28.408 million and operating loss increased from Rs1.015 million to Rs.10.692 million as compared to previous year's figures.

3. Consequently, the show cause notice ("SCN") dated March 12, 2007 was issued to the Company under section 309 (b) read with section 305 (c) of the Ordinance whereby it was called upon to show cause as to why a petition for winding up of the Company may not be presented to a competent court on the aforesaid grounds. A hearing in the matter was fixed on April 3, 2007. During the hearing Mr. Jamania Adam and Mr. Muhammad Emad appeared and stated that the management had 87% shareholding. They further stated that the losses were mainly on account of depreciation charge, assets were not sold and the management intended to revive the Company and pay off the bank liabilities. They stated that the revival plan will be submitted and requested for one years' time for taking appropriate revival measures. Moreover, Mr. Farooq Ibrahim, the Chief Executive of the Company through written reply dated April 3, 2007 stated as under:

- Directors of the Company have invested a sum of Rs18.573 million to revive the mill.
- The Company has rescheduled the long term loan with HBL and paid Rs.7.450 million out of total Rs.8.87 million and balance of Rs.1.420 million only is payable. Company has submitted copies of pay orders in this regard.
- Directors of the Company have invested a sum of Rs.24.914 million by submitting personal guarantees to foreign creditors regarding plant and machinery.
- The Company started production from October 2004 which was temporarily stopped in September 2005 due to high prices of cotton and low demand of yarn.

The chief executive of the Company stated that winding up of the Company was not justified in view of the measure taken by the directors of the Company for revival. In consideration of the submissions by the chief executive, winding up proceedings were kept in pendency and through



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letter dated April 13, 2007 the Company was advised to finalize the measures for revival of the Company and submit a quarterly report to the Commission.

4. The Company vide letter dated December 31, 2007 submitted that owing to textile crisis, it was not possible to immediately restart the mill and requested for further time stating that one year time would be needed to recommence production. Later on, a hearing in the matter was fixed on March 3, 2010, which was rescheduled on Company's request and was finally held on July 1, 2010 before the Executive Director. Mr. Farooq Ibrahim, the Chief Executive agreed for winding up of the Company. Subsequently, through letter dated July 5, 2010 it was informed by the chief executive that the board of directors of the Company has decided to buy back all shares instead of winding up of the Company and sought Commission's approval. However, the Commission through letter dated July 8, 2010 informed the Company that the matter for buy back of shares pertained to listing regulation of the stock exchange therefore the Company should take up the matter with exchange. The Company did not provide any update, therefore, the Commission through letter dated December 20, 2010 required the Company to provide an update regarding the proposed buy back of shares in line with the decision of its board of director. However, no update was provided in this regard.

5. In order to provide further opportunity to the Company to clarify the position, a hearing in the matter was fixed on September 2, 2015 and the chief executive through letter dated August 27, 2015 confirmed that he or his representative will appear in the hearing through video conferencing facility available at the Company Registration Office of the Commission in Karachi. He further confirmed that the hearing via video link would constitute a valid opportunity of hearing as recognized by law. However, no one appeared on the appointed date and time. Another hearing was scheduled for September 17, 2015 however, no one appeared on the due date despite written confirmation given by the chief executive through letter dated September 14, 2015. Final opportunity of hearing was provided on February 15, 2016, however, the chief executive through letter dated February 9, 2016 requested for adjournment till February 28, 2016. By way of providing a final opportunity the case was fixed for hearing on February 29, 2016. Again, despite giving a written confirmation to attend the hearing, no one appeared on the due date. Therefore, I



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am constrained to conclude the proceedings based on submissions made by the respondent in writing and during previous hearings and the available record.

6. As per latest available record, the Company has failed to hold its annual general meetings ("AGMs") for the years ended June 30, 2013, 2014 and 2015 and respective annual accounts and quarterly accounts have also not been filed. The Commission has imposed penalties on the directors of the Company after concluding various proceedings for such defaults. As per record available with the Commission, the Company has not even approached the auditor for auditing of its financial statements for the years ended June 30, 2013 and 2014. The Company's mill is non-operational and the auditor of the Company in its report to members on the latest available Accounts for the year ended June 30, 2012 has given an adverse opinion owing to the following matters:

- (a) Going concern used by the Company is not appropriate owing to the financial position and initiation of proceedings under section 305 of the Ordinance (*details given in the auditors report*). The Accounts do not disclose the facts appropriately.
- (b) Unconfirmed balances of creditors.
- (c) Non-compliance with stated policy for impairment of assets as per IAS36.
- (d) Non provisioning of long term overdue receivables.
- (e) Non provisioning against trade debts long overdue.

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

Clause (c) of section 305 of the Ordinance states that *a company may be wound up by the Court 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.*



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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).

8. 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. It temporarily commenced the production for a short period in October 2004 but again suspended it in September 2005 along with all the operating activities. The Company has not presented any viable plan for revival of the business and it has been submitted that due to high prices of cotton and low demand of yarn, the business has not been viable. The Company has also failed to present any alternative business plan for revival. As on June 30, 2012, the Company has accumulated losses of Rs.36.308 million resulting in negative equity of Rs.27.596 million. The Company has no source of income and is only incurring administrative expenses that lead to further deterioration of equity. The Company has also failed to hold its AGMs for the years ended June 30, 2013 through to June 30, 2015 and the latest financial statements available on record are for June 30, 2012. The auditor in his report to members on those Accounts has given an adverse opinion on various counts, as highlighted in preceding paragraphs and has stated that the Accounts do not confirm with approved accounting standards and do not give a true and fair view of the state of affairs of the Company. Therefore, in view of the following there is no credibility of the reported figures of 2012:

- No information is available regarding financial position, performance and existence of any assets of the Company after the year 2012;
- Auditor has given adverse opinion even on the Accounts for the year ended June 30, 2012;
- Negative net equity as at June 30, 2012.

It is also clear that despite being giving ample opportunities and time, the respondent not only failed to submit a viable revival plan but also failed to appear in several hearing opportunities. Keeping in view of the forgoing facts, it is clear that the Company seems unable to carry on as a going concern.

9. 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



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Company is available as directors of the Company have failed to discharge their legal obligation regarding holding of the AGMs, preparation and filing of annual and interim accounts and other statutory obligations. Keeping in view the fact that a long period of time has elapsed since suspension of business and operations of the Company and considering the current condition of its plant and equipment along with market situation, revival of operation is not possible. Moreover, 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 and interim financial statements are very important statutory obligations. It is imperative to understand the importance of AGM for shareholders. AGMs provide opportunity to 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. It is the directors' responsibility to understand and discharge their statutory obligations in this regard. The management of the Company and directors including the chief executive have 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 as it has suspended its business since the year 2005.



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10. 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 Annoor Textile Mills Limited before the competent court.

Abid Hussain
Executive Director (CSD)

Announced:
April 11, 2016
Islamabad