



Corporate Supervision Department  
Company Law Division

Before Amina Aziz – Director (CSD)

*In the matter of*

**Usman Textile Mills Limited**

Number and date of SCN: EMD/233/289/02-1432, dated February 12, 2015  
Hearing held on: February 2, 2016  
Present: Mr. Abdul Sattar and Mr. Zulfiqar Ali

**ORDER**

**UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including chief executive (together referred to as "respondents") of **Usman Textile Mills Limited** (the "Company"):

- |   |                                 |   |                      |
|---|---------------------------------|---|----------------------|
| 1 | Mr. Noor Qadir, Chief Executive | 5 | Mr. Liaquat Ali Awan |
| 2 | Mr. Jahangeer Akbar             | 6 | Mr. Jahanzaib        |
| 3 | Mr. Mushtaq Ahmed Jatoi         | 7 | Mr. Nasim Ahmed      |
| 4 | Mr. M. Moosa Phullpoto          |   |                      |

The proceedings against the respondents were initiated through show cause notice (the "SCN") dated February 12, 2015 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that, in terms of sub-section (1) of section 158 of the Ordinance, the Company was required to hold its annual general meetings ("AGMs") for the years ended June 30, 2009 through to June 30, 2014, as under:

Year ended	Last Date
June 30, 2009	October 31, 2009
June 30, 2010	October 31, 2010
June 30, 2011	October 31, 2011
June 30, 2012	October 31, 2012
June 30, 2013	October 31, 2013
June 30, 2014	October 31, 2014

However, review of record revealed that the Company failed to convene the aforesaid AGMs as per requirements of the law. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM. In response to the SCN, Mr. Noor



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Qadir, the chief executive ("CEO") through letter dated February 17, 2015 requested for fourteen days' time for submission of reply and also requested to fix the hearing in Karachi. Later on through letter dated March 2, 2015, the CEO stated that the Company has applied for seeking Commission's directions under section 170 of the Ordinance to hold the overdue AGMs for the year 2009 to 2012 vide Company's letters of various dates. Copies of the aforesaid letters were also provided along with the reply.

3. The case was fixed for hearing on September 14, 2015 through hearing notice dated August 31, 2015 in response to which the Company through letter dated September 10, 2015 stated that the CEO 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, 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, the CEO, Mr. Liaqat Ali Awan and Mr. Jahanzeb. Other respondents 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 the year 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 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 a lenient view may be taken while deciding the case. It was further stated by them that the Company had already applied for Commission's permission for appointment of auditors and holding the AGMs.





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4. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance:

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

*“Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:*

*Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days.”*

Sub-section (4) of section 158, inter alia, provides as under:

*“If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--*

*(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;”*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four months from the close of its financial year. Holding of the AGM is a very important statutory event and provides an opportunity to the shareholders including those in minority, to participate in discussion and voting on agenda items of the AGM that include consideration and approval of a company's financial statements. The financial statements not only show the financial position and performance of a company but also show the results of management's stewardship of resources entrusted to it. In order to ensure minority participation and transparency, all the companies must meticulously follow the procedure prescribed by the Ordinance for holding an AGM. In addition to their responsibility of



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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. Directors of a listed company while filing their consents to act as directors, inter alia, give an undertaking that they are aware of their duties under the Ordinance and that they have read the relevant provisions contained therein. It is mandatory for the directors of a listed company to have knowledge of provisions of the applicable laws and in terms of the Ordinance the directors are primarily responsible for holding the AGM. In this context the respondents' cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts.

6. The Company has not held its AGMs for the years ended June 30, 2009 through to June 30, 2014 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:

- 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.

The Company is not a going concern and the respondents have failed to present any revival plan of the Company. Consequently, the Commission, through order dated February 26, 2016 under section 309 of the Ordinance, has authorized the concerned registrar to present a petition for winding up of the Company before a competent court. 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. 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





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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 hold the AGMs and file the respective accounts due to the arrest of the CEO is unjustified.

7. In view of the above stated facts, I have concluded that the provisions of the law have been violated by the respondents as they have failed to hold the AGMs of the Company for the years ended June 30, 2009 to June 30, 2014. Therefore, in exercise of powers under sub-section (4) of section 158 of the Ordinance, I hereby impose a fine of Rs350,000/- on the chief executive of the Company i.e. Rs.50,000/- in respect of default in holding each AGM from 2009 to 2014. Moreover, a fine of Rs50,000 on each respondent is imposed for default in holding the AGM for the year ended June 30, 2014. The respondents are directed to deposit the aggregate fine of Rs600,000 (Rupees six hundred thousand only) as per following details:

Name of Respondents	Amount (Rs.)
1. Mr. Noor Qadir, Chief Executive	300,000
2. Mr. Jahangeer Akbar	50,000
3. Mr. Mushtaq Ahmed Jatoi	50,000
4. Mr. M. Moosa Phullpoto	50,000
5. Mr. Liaquat Ali Awan	50,000
6. Mr. Jahanzaib	50,000
7. Mr. Nasim Ahmed	50,000
<b>TOTAL</b>	<b>600,000</b>



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In respect of default in holding the AGM's from the year 2009 through to 2013, the respondents other than the CEO are warned to be careful in future and ensure meticulous compliance with applicable provisions of the Ordinance.

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of failure of the respondents to deposit of the fines, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid fines are imposed on the respondents in their personal capacities; therefore, they are required to pay the said amounts from personal resources.

**Amina Aziz**  
Director (CSD)

**Announced:**  
April 14, 2016  
Islamabad