



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Usman Textile Mills Limited

Number and date of SCN: CSD/ARN/158/2015-2579-85, dated January 18, 2016
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 January 18, 2016 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 meeting (“AGM”) for the year ended June 30, 2015 on or before October 31, 2015. However, review of record revealed that the Company failed to convene the aforesaid AGM 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.

3. The case was fixed for hearing 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. Liaquat 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



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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.

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;"



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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 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 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 AGM for the year ended June 30, 2015 and previous AGMs from the year 2009 to 2014 have also not been held till date. The Company 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;



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- 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 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 AGM of the Company for the



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years ended June 30, 2015. 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 respondents, as per following details:

Name of Respondents	Amount (Rs.)
1. Mr. Noor Qadir, Chief Executive	Rs50,000
2. Mr. Jahangeer Akbar	Rs50,000
3. Mr. Mushtaq Ahmed Jatoi	Rs50,000
4. Mr. M. Moosa Phullpoto	Rs50,000
5. Mr. Liaquat Ali Awan	Rs50,000
6. Mr. Jahanzaib	Rs50,000
7. Mr. Nasim Ahmed	Rs50,000
TOTAL	Rs350,000

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