



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/233/289/02-1433, dated February 12, 2015
Hearing held on: February 2, 2016
Present: Mr. Abdul Sattar and Mr. Zulfiqar Ali

ORDER

UNDER SUB-SECTION (3) OF SECTION 245 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 sub-section (3) of section 245 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that review of record revealed that the Company did not file the interim financial statements (“Quarterly Accounts”) for the following periods with the Commission, as per requirements of section 245 of the Ordinance:

Quarter Ended	Due On	Status
30.Sep.09	31.Oct.09	Not filed
31.Dec.09	28.Feb.10	Not filed
31.Mar.10	30.Apr.10	Not filed
30.Sep.10	31.Oct.10	Not filed
31.Dec.10	28.Feb.11	Not filed
31.Mar.11	30.Apr.11	Not filed
30.Sep.11	31.Oct.11	Not filed
31.Dec.11	28.Feb.12	Not filed
31.Mar.12	30.Apr.12	Not filed
30.Sep.12	31.Oct.12	Not filed
31.Dec.12	28.Feb.13	Not filed
31.Mar.13	30.Apr.13	Not filed
30.Sep.13	31.Oct.13	Not filed
31.Dec.13	28.Feb.14	Not filed
31.Mar.13	30.Apr.13	Not filed
30.Sep.14	31.Oct.14	Not filed



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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 sub-section (3) of section 245 of the Ordinance for not filing the aforesaid Quarterly Accounts. In response to the SCN, Mr. Noor 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. He further stated that the proceedings for non-filing of Quarterly Accounts may be withdrawn and requisite permission be given which were a necessary for preparing and filing of Quarterly Accounts.

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, prepare and file the Quarterly Accounts 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



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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 and Quarterly Accounts could be filed after holding the AGMs and approval of respective annual accounts.

4. Before proceeding further, it is important to mention that in terms of Sub-section (1) of section 245 of the Ordinance all listed companies are, inter alia, required to file their quarterly accounts with the Commission within stipulated time.

Sub-section (3) of section 245 of the Ordinance provides as under:

"If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day 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 245 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 listed company is required to file its quarterly accounts within the stipulated time that is one month from the close of first and third quarters and two months from the close of second quarter. Initially listed companies were only required to circulate annual accounts and the shareholders did not have information about the affairs of companies during the year. The requirement to circulate interim accounts was introduced so that the shareholders could have timely access to information about the affairs of companies. Keeping in view the fact that timing of interim financial statements is of essence the disclosure and audit requirements of these accounts have been kept to a bare minimum. Interim financial statements prepared properly and in a timely manner not only provide to its users a reliable source of information regarding a company's financial position and performance but these also show the results of management's stewardship



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of resources entrusted to it. In order to ensure transparency, all the companies must meticulously follow the legal requirement for preparing and circulation of interim accounts. 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. In terms of the Ordinance the directors are primarily responsible for approval of accounts. In this context the respondents' cannot absolve themselves of their statutory duties regarding 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, 2015 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 Quarterly 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 annual and Quarterly Accounts 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 annual and Quarterly Accounts 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 and prepare



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and file annual and Quarterly Accounts 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 statutory filings, 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 Quarterly 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 and the respondents are liable to fines in terms of section 245 of the Ordinance, as they failed to prepare and file the respective Quarterly Accounts of the Company. Therefore, in exercise of powers under sub-section (3) of section 245 of the Ordinance, I hereby impose an aggregate fine of Rs224,000/- (Rs.2000/- per respondent for each default) on the respondents, as per following details:

Name of Respondents	Amount (Rs.)
1. Mr. Noor Qadir, Chief Executive	32,000
2. Mr. Jahangeer Akbar	32,000
3. Mr. Mushtaq Ahmed Jatoi	32,000
4. Mr. M. Moosa Phullpoto	32,000
5. Mr. Liaquat Ali Awan	32,000
6. Mr. Jahanzaib	32,000
7. Mr. Nasim Ahmed	32,000
TOTAL (Rupees two hundred twenty four thousand only)	224,000

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.



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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