



Corporate Supervision Department  
Company Law Division

Before Abid Hussain – Executive Director

*In the matter of*

**Mukhtar Textile Mills Limited**

Number and date of notice: CSD/ARN/138/2015-1098-99 dated October 22, 2015  
Date of hearings: November 2, 2015, December 2, 2015, January 25, 2016, May 23, 2016 and June 2, 2016  
Present: Mr. Mumtaz H. Chaudhry

**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 dated October 22, 2015 under Section 309 read with Section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to Mukhtar Textile Mills Limited ("Company") and directors ("respondents") of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office, has approached this office for grant of sanction in terms of clause (b) of Section 309 read with clause (c) of Section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the ground that the Company had closed its business since 2009.

3. Show cause notice dated October 22, 2015 was served on the Company under Section 309 of the Ordinance indicating the aforesaid ground to present a petition for winding up of the Company. In order to provide opportunity of personal hearing; case was fixed on November 2, 2015, Mr. Mumtaz H. Chaudhry appeared on behalf of respondents and submitted that the operations of the Company are closed and building, plant and machinery are leased out at a rental of only Rs. 100,000 per month. The representative was asked to provide revival plan of the Company. Opportunities of hearings were provided on December 2, 2015, January 25, 2016 and May 23, 2016 which were not attended by the respondents. Another hearing opportunity was provided on June 2, 2016 before me and was attended by Mr. Mumtaz H. Chaudhry on behalf of respondents and submitted that revival of the Company is not possible due to working capital problems as the existing management do not have funds to invest. He failed to submit any revival plan.

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



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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;*

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).

5. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company was incorporated in 1992 as private limited company under the Ordinance and was converted into public limited company in 1994. The objective for which the Company was established *inter alia* is manufacturing and sale of yarn. The shares of the Company were quoted on all stock exchanges in Pakistan, now Pakistan Stock Exchange ("PSX"). The operations of the company were suspended since 2009. The Company has leased out its property, plant and equipment. As per M. Ather & Co. statutory auditor of the Company report dated October 9, 2014 that *the Company has incurred a net loss of Rs. 3,320,966 during the year ended June 30, 2014 and as of that date, accumulated loss comes to Rs. 110,594,152 and company's current liabilities exceeded its current assets by Rs. 19,657,620. The said factors indicate a material uncertainty which may cast significant doubt on the company's ability to continue as a going concern and therefore, it may be unable to realize its assets and discharge its liabilities in the normal course of business.*

6. It is also clear that despite elapse of several years since suspension of business of the Company, the management of the Company has not been able to formulate a viable revival plan. For a going concern the funds are to be generated from the daily operation of its core business rather than leasing or selling of its operating and non-operating assets. Keeping in view of the forgoing facts, it is clear that the Company seems unable to carry on as a going concern.

7. In the current circumstances the chances of revival of the Company are bleak. This view is further strengthened by the respondents reply that the revival is not possible because working



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capital cannot be arranged. 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. In this context the respondents cannot absolve themselves of their statutory duties regarding preparation of financial statements as per the law and managing the affairs in the best interest of the Company and its shareholders. The management of the Company and directors including the chief executive has failed to manage the affairs of the Company prudently and they have not discharged their responsibility to prepare financial statements as per the law and applicable financial reporting framework. 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 2009.

8. A Company incorporated under the Ordinance is a legal judicial person and Board of Directors is vested with the power to make decisions with respect to running of its business operation including purchase of assets and payment of liabilities through funds generated from the operations. Investors/ shareholders in a listed company had invested funds keeping in view of the stated business of the company and accordingly evaluate its income generation capacity and successful business operations. The investment of these shareholders gets stuck in a Company which shuts down its core business and does not have any formal plans to recommence business. In such circumstances the shareholders have the right to get their monies back so that these can be invested in some other fruitful venture. For this very reason the invoked provisions of the Ordinance provide closure of business for more than one year as a basis of going to court to seek winding up of the Company. The Ordinance does not envisage any role of the Board of Directors in the process of winding up, once it is commenced and liquidator is appointed after requisite approval of the shareholders.

9. 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 its business has been suspended since 2009. It is a settled principle of law that a company is liable to be wound up under clause (c) of section 305 of the Ordinance if it has suspended its business for a whole year furthermore there is no reasonable plan or grounds for its revival.



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10. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Registrar, Company Registration Office, Faisalabad to present a petition for winding up of Mukhtar Textile Mills Limited.

**Abid Hussain**  
Executive Director

**Announced:**  
June 13, 2016  
Islamabad