



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (CSD)

In the matter of

Saleem Denim Industries Limited

Number and date of notice: EMD/233/229/2003-567-573, dated December 28, 2010
Hearings held on: October 21, 2015, June 6, 2013 & May 5, 2011
Present: Mr. Shahid Saleem, Director

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 December 28, 2010 under section under section 309 read with section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to the **Saleem Denim Industries Limited** (the "Company") through its directors (together referred to as the "respondents"). The Company was incorporated in Pakistan under the Ordinance. It 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 of grey and denim fabrics.

2. The facts leading to this case, briefly stated, are that the Joint Registrar of Companies, Company Registration Office, Faisalabad, 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 suspended its business since the year 2004.

3. Consequently, the SCN was issued to the respondents on December 28, 2010 on the following grounds:

- (i) The Company has suspended its operation since 2004;
- (ii) During the year ended June 30, 2010, the Company incurred a loss of Rs1.165 million and has accumulated loss of Rs86.586 million.
- (iii) The auditor of the Company has expressed adverse opinion in their report to the members on the financial statements (the "Accounts") for the years ended June 30, 2007 through to 2009 owing to non-confirmation of balances of long term bank



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liabilities; trade creditors and non-provision of fixed asset register/record pertaining to physical verification of assets. The auditors, based on its findings, had concluded that financial statements of the Company did not give a true and fair view of the state of affairs of the Company and material uncertainty was prevalent for continuing of the Company as going concern.

(iv) The Company had disposed of its entire plant and machinery during the year 2009.

4. In response to the SCN the respondents through letter dated January 13, 2011 submitted that the Company was considering all the options for benefit of the Company and its shareholders. They sought an extension of 30 days for submission of a detailed reply and further requested to fix a date of hearing in the matter. The requested extension was allowed by the Commission through letter dated January 18, 2011 and the case was fixed for hearing on February 2, 2011. However, through letter dated January 27, 2011, the respondents submitted that being main stakeholders, directors were in consultation with legal and financial consultants. The long term dues of the banks had been paid off by the Company and all the available alternatives were being considered. Based on their submission, they requested for further extension of 30 days. The Commission through letter dated February 1 2011 advised the respondents to submit the response to the SCN in writing latest by February 28, 2011 and to make a request in case opportunity of hearing was desired. In response, the respondents through letter dated February 25, 2011 requested for hearing on March 8, 2011. Another opportunity of hearing was granted on March 14, 2011 through the Commission's letter dated March 2, 2011, which was adjourned and was finally held on May 5, 2011 before the Commissioner (Company Law Division), who had the powers to adjudicate cases under section 309 in terms of delegation of powers at that time.

5. In the hearing, Mr. Shahid Saleem (the "representative") appeared on behalf of the respondents. He gave a commitment to provide financial plan and projections for revival of the Company, which were not provided as per commitment. With reference to the hearing held on May 5, 2011, the Commission through letter dated June 8, 2012 advised the Company to submit written response along with financial plan for revival of operations of the Company. The Company was further advised to submit annual accounts for the years ended June 30, 2011 and 2012 and interim accounts for September 2011, December 2011 and March 2012. The Company



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through letter dated June 14, 2012 submitted that it had cleared all liabilities of financial institutions and was in process of getting clearance from courts for all the settlements. It was further stated that the Company was in process of settling the disputed tax liability with FBR and as soon as there was any advancement on their pursuance with FBR, the Company would present detailed plan to the Commission.

6. Another hearing was fixed on June 6, 2011 before Head of Enforcement Department (*Now Corporate Supervision Department*). The representative again appeared on behalf of respondents and requested for further time while giving commitment to provide financial plans and projections for revival of the Company. The Head of Department acceded to the request and advised to submit the requisite at the earliest. Since no response was submitted by the Company, the Commission vide letter dated June 13, 2014 again advised the respondents to apprise the Commission regarding status and outcome of efforts of Company's management for revival of the operations and its ability to continue as a going concern. The Company through letter dated June 17, 2014 stated that the management had made continuous efforts to make the Company going concern. Due to some legal matters the revival had taken longer than anticipated, but the management would be finalizing the plan by July 2014. The respondents requested for time till September 30, 2014 for submission of a revival plan to the Commission with assurance that they would not like any action to overwrite years of its efforts in this regard. However, despite elapse of considerable time since then, the respondents have not provided any update.

7. In order to provide further opportunity of hearing; the case was again fixed for hearing on October 21, 2015 and Mr. Shahid Saleem, the authorized representative of the respondents, appeared before Mr. Ali Azeem Ikran, Executive Director (CSD) at that time. He mainly reiterated the earlier submissions and also made following submissions in writing through letter dated October 21, 2015:

- The Company is meeting legal requirements including preparing and filing of Accounts and statutory returns.
- Efforts to make the Company a going concern are in progress.



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- Bank liabilities have been paid off and clearance process is in final stages. The two matter close to conclusion include:
 - i. NBP finance limited had been settled and paid via court decision, whereas bank has avoided issuance of NOC to Banker's Equity Limited. Legal action in this regard is in progress and next hearing date in on November 11, 2015.
 - ii. FBR claim of Rs.7.8 million has been pursued and all previous orders are being reviewed by the tax lawyer and FBR to reach final settlement to avoid any future claims against the Company.
- The Company's management has been paying all dues despite no income with intention to clear all essential liabilities which will allow making and presenting a clear road map for shareholders.
- If any liquidation is initiated at this point, clearance from Bankers Equity Limited, which has received NOC from all banks except NBP will be disrupted at the final stage and will cause irreparable loss to shareholders.
- Further time of 3 months is requested to resolve the matter.

However, Mr. Shahid Saleem could not present any substantiating evidence to support the possibility of revival of the Company's business for its continuance as a going concern.

8. Subsequently, due to change in authorized officer a hearing in the matter was fixed before the undersigned on February 8, 2016 through hearing notice dated January 25, 2016, which was adjourned till February 17, 2016, however, Mr. Shahid Saleem through email dated February 16, 2016 requested to reschedule the hearing. The hearing was scheduled on March 1, 2016, however, no one appeared on the due date. The case was again fixed for hearing on March 30, 2016 clearly communicating to the respondents that it was final opportunity. However, again the chief executive through letter dated March 29, 2016 requested to reschedule the hearing. The Commission through letter dated April 1, 2016 fixed the case for a final hearing on April 14, 2016. It was clearly communicated that in case the respondent fail to appear in person or through authorized representative, the Commission will proceed to issue an order on the basis of material available on record. However, no one appeared on the due date of hearing.



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9. 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.*

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).

10. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company has suspended its business since the year 2004 and has disposed of its entire plant and machinery during the year 2009. The Accounts of the Company for the years ended June 30, 2010 through to June 30, 2015 and the directors' reports attached thereto reflect a status quo regarding affairs of the Company and do not include any concrete plan for revival of operations of the Company. The auditors of the Company have been giving adverse opinions in their reports to members on the Accounts for the year ended June 30, 2015 due to persistent issues of non-confirmation of balances of long term bank liabilities, trade creditors and non-maintenance of fixed assets register and record pertaining to physical verification of assets. Keeping in view the forgoing facts, it is clear that the Company does not seem to be able to carry on as a going concern in future. Furthermore, the Company incurred net loss after tax of Rs.955,423/- during the financial year 2015 and as of that date the accumulated loss is Rs.91,900,793/-. Its current liabilities exceed its current assets by Rs70,714,298 and its total liabilities exceed its total assets by Rs52,332,106/-. Moreover, the Company also failed to present a revival plan including the business it intends to undertake along with feasibility and financial projections, despite several opportunities provided during the period spanning over five years. The submission presented before me do not indicate any efforts or deliberations made by the Company for revival of business.

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11. In the current circumstances the chances of revival of the Company are remote. This view is further strengthened by the fact that apart from sale of assets during 2009, there has been no material change in the status of the Company since long. In fact, sale of plant and machinery during 2009 further impaired any realistic chances of revival of the Company. Several opportunities have been provided to the respondents to present a viable plan for revival of the Company, however, there has been continued failure on their part to present any plan despite elapse of more than five years since initiation of the subject proceedings. 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.

12. 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. However, the Ordinance does not allow the Board of Directors to sell substantial assets without permission of the shareholders for any purpose whatsoever. Furthermore, where companies have to resort to sale of assets for settling liabilities, the Ordinance contains detailed provisions and keeping in view the sensitivity of the matter, requires appointment of an independent liquidator. 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.

13. In view the forgoing, in exercise of the powers conferred by section 309 of the Ordinance, I hereby authorize the concerned Registrar, Company Registration Office, Faisalabad, to present a petition for winding up of Saleem Denim Industries Limited.

Abid Hussain
Executive Director (CSD)

Announced:

May 2, 2016

Islamabad