Through Courier
November 18, 2021

No. CSD/ARN/572/2019 – 190

All The Directors
Through Company Secretary
Imperial Sugar Mills limited
Ismail Aiwan e Science Building
205-Ferozpur Road
Lahore

Subject: Order in respect of Show cause notice dated June 19, 2019 No. CSD/ARN/572/2019-4181-4182 under Section section 301 read with section 304 of the Companies Act, 2017.

Dear Sir/Madam,

Please find enclosed herewith copy of the order dated November 18, 2021 in the titled matter for your record and necessary action.

Regards,

Zohra Sarwar Khan
Joint Director

Encl.: Copy of Order dated November 18, 2021

Before

Mr. Amir M. Khan Afridi – Director/ Head of Department

In the matter of

Imperial Sugar Limited

Number & date of Show Cause Notice:	CSD/ARN/572/2019-4181-4182 dated June 19, 2019
Date of hearings:	July 04, 2019, August 21, 2021, February 25, 2021, August 12, 2021, August 31, 2021, September 13, 2021
Present: (Authorized Representatives)	Mr. Mubashar Mehmood, Mr. Javed Panni

ORDER

Under Clause (m) of Section 301 read with Clause (b) of Section 304 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated in the matter of Show Cause Notice dated June 19, 2019 (**SCN**) under clause (m) of Section 301 read with clause (b) of Section 304 of the Companies Act, 2017 (**the Act**) issued to Imperial Sugar Limited (**the Company**) and the board of directors of the Company hereinafter collectively referred to as the **Respondents**.

2. The facts leading to this case, briefly stated, are that the Company Registration Office (CRO) Lahore approached the Securities and Exchange Commission of Pakistan (**the Commission**) for grant of sanction in terms of clause (m) of Section 301 read with clause (b) of Section 304 of the Act to present a petition before the Honorable High Court for winding up of the Company on the grounds that the Company has suspended its operations since September 30, 2016.

3. In this regard, the SCN was served on the Respondents indicating the aforesaid grounds to present a petition for winding up of the Company along with the hearing opportunity

provided for July 04, 2019. The Company vide letter dated August 19, 2019 responded to SCN and stated:

"We briefly explain you the facts of our case. We are confident that after reading these facts you would appreciate that the SCN under reference is not applicable to the Company and the Company is well on its way to roll-out the new business plan approved by its stakeholders. The case of our Company is totally different from other listed companies in Pakistan which have negative equites, huge losses, no surplus cash/assets total liabilities in excess of total assets and hence no chances on revival of business. On a plain reading of balance sheet of our Company, you would appreciate and agree that our Company has an unmatched potential / edge over other companies to undertake business with maximum returns for all stakeholders. The Company under the authority of resolutions of its shareholders duly passed in their Annual .General Meetings is in the process of disposal of its assets and ultimate set up of an Independent Power Producer (IPP) Project of 225 MW, based on Liquefied Natural Gas (LNG) subject to regulatory approvals. Progress to-date is that the Company has disposed of assets of one of its two sugar units i.e. Mian Chanu Unit of the Company during the year ended 30 September 2017 and this asset sale transaction is a landmark in the history of sugar sector of Pakistan in terms of the total value of the transaction.

A significant chunk of sale proceeds (Rupees 3.179 billion) has been invested in high return bank deposits (13.40%) after payment of significant liabilities of the Company pending the disposal of remaining Assets of the Company.

The Company is quite hopeful of striking a good deal for disposal of the remaining Assets of the Company and ultimately raise the required funds for roll-out of the business plan.

You would agree that IPP Project cannot be housed / parked in the existing legal structure of the Company and a special purpose vehicle (wholly owned subsidiary) has to be incorporated for this purpose, as IPPs have specific debt equity ratios, resultant tariffs and regulatory compliances to make.

Hence, the Company i.e. Imperial Sugar Limited shall be a Holding Company as part of its future business plan and shall get only the returns from its wholly owned subsidiary company.

It is quite natural for any person to get confused from the picture being portrayed by the financial statements of the Company and wrongly interpreted as "suspended business for a whole year.".

It is quite important to note here that this picture stands portrayed till disposal of remaining sugar unit of the Company, investment of net sale proceeds of assets of the Company in special purpose vehicle (wholly owned subsidiary company) for IPP Project and ultimate earning of dividends from that wholly owned subsidiary company.

The business plan of the Company sounds a bit long-term but you can well imagine the potential on offer to a listed Company with ultimate hard-cash in excess of Rupees 10 billion (disposal of remaining sugar unit of the Company).

We share below some key statistics pertaining to the Company which clearly demonstrate what is stated above, depict steps taken to maximize shareholders' wealth and reflect potential on offer to the Company:

Available cash and bank balances as on 19 August 2019:

Financial Institution Name	*Amount in Rupees*
Silk Bank Limited	157,386,405
Dubai Islamic Bank Pakistan Limited Soneri Bank Limited	2,047,830,009 974,055,963
Total	3,179,272,377

Mark-up being earned on aforesaid funds is as high as 13.40%.

Gross Markup Income earned till 30 June 2019 on surplus funds is Rupees 405,300,000. Fair value of remaining Asset of the Company located at Phalia - Rupees 8 billion plus.
Remaining liabilities of the Company as at 17 August 2019 - Rupees 907 million.

We agree that the disposal of remaining sugar unit of the Company at Phalia is taking time due to macro-economic conditions, high cost of funds, large size of transaction etc.

However, positive indicators are active market for sugar units in Pakistan (as evident from recent transactions of sale of Gulf Sugar and Baba Farid Sugar) signifying interest of investors in sugar sector. Further, the outlook of sugar sector is also quite good. We are confident that the Company shall be able to strike a good deal, which is in the best interest of all stakeholders, for disposal of Phalia Unit in best possible time.

B) *Jurisdictional Issues*

At the outset, it is pertinent to mention that Section 304 of the Act enumerates the classes of persons competent to petition before the Court to wind up a company, which includes, inter alia, the Registrar (Section 304 (b)). As per Section 304 (b)of Act, the Registrar of Companies is competent to file a petition for winding up to the Court with the previous sanction of the Commission to the presentation of petition. No such sanction, in turn, is to be given by the Commission to the Registrar until the company has been afforded an opportunity of making a representation and of being heard.

The SCN did indicate that the Company Registration Office, Lahore has approached the Commission for grant of sanction to present a petition for the winding up of the Company :before the Honorable High Court in terms of sanction 304 (b) of Act read with Section 301(m) of the Act. However, in the instant case, it is pertinent to mention that the Registrar has not even required any clarification from the Company regarding suspension of its business, which is a necessary requirement before seeking sanction for filing of petition for winding up of a company. It appears that the Registrar has not followed the due process and procedure before approaching the Commission for taking such a drastic step i.e. death of the Company. Moreover, the Company was not provided a copy of application/request of the Registrar, Company Registration Office, Lahore filed with the Commission, which is the only document on which reliance is being placed by the Commission in its SCN.
The Commission is respectfully requested to provide the application/request of the Registrar, Company Registration Office, Lahore made under Section 304 (b) of the Act for examination and response by us in the interests of justice and fairness. Further, the Registrar, Company Registration Office, Lahore is a necessary party for the adjudication of his application and, therefore he may also be issued notice of hearing for the purpose of taking a decision in this matter.

C) Suspension of Operations of the Company

The SCN states that the Company has suspended its operations during the year ended 30 September 2016. The foregoing has been quoted to justify the issuance of the SCN under Section 304(b) of the Act although it is not clear if the Registrar has based his application/request on this point

You would appreciate that the Notices of Annual General Meetings (AGMs) of the Company for last three years along with statement of material facts forming an integral part of notices of AGMs and the Directors Report to the shareholders on annual and interim accounts of the Company and the accounts of the Company are self-explanatory for all stakeholders and are keeping them updated about business plan of the Company, progress made to date, steps being taken to maximize shareholders wealth and potential on offer to the Company. Material / price sensitive information is being duly disseminated to the stock exchange and the Commission at every required point of time. There is no default in repayment to creditors including financial institutions. It is further respectfully submitted that it can be assumed by someone that the Company has suspended its operations but you would agree that the Company has not suspended its business as mandated under its Memorandum of Association of the Company.

You would also note from your records that in years ended 30 September 2016 and before the entire - comparable sugar industry of the country sustained huge losses due to mismatch between selling price of sugar and cost of purchase of sugarcane along with other factors such as scarce capital etc. The closure of operations of mills of the Company paved way for embarking on a highly profitable alternative business plan for the Company.

It is submitted that the Company has closed down the sugar operations of its mills and not suspended its business within the meaning of Section 304(b) of the Act. The Company is also meeting all its statutory obligations which include inter alia, the filing of annual return with the Registrar, holding of annual general meeting, other statutory filing with the Commission and the stock exchange, Further, the Company has kept production assets in good conditions and it has reduced the number of employees to whom the Company is paying salaries besides incurring other operating expenses. The Company is also earning huge income from profit on bank deposits as has been disclosed in the periodic accounts. In the presence of all these activities it cannot be said that the Company has suspended its business. All these acts, directly or indirectly, are related, or incidental to, the business of the Company and which acts are also included in the objects of the Company. The allegation of suspension of business, therefore, has no merits.

D) "Suspension of business" judicial interpretations

The word "suspend" has not been defined in the Companies Act, 2017 and it is, therefore, necessary to make reference to the existing case law under Section 305 and 309 of the repealed Companies Ordinance, 1984 for guidance. It has been judicially interpreted in three main Pakistani cases, namely, Habib Bank Ltd V Golden Plastic Pvt Ltd. 1991 MLD 124, Re: Alliance Motors (Pvt.) Ltd., 1997 MLD 1966 and Joint Registrar of Companies vs Sh. Fazal Rehman and Sons Ltd. 2008 CLD 465.

Joint Registrar of Companies vs. Sh Fazal Rehman and Sons Ltd. 2008 CLD 465 discusses what is meant by the phrase "suspends its business for a whole year" as occurring in Section 305(b) of the Companies Act, 1984:

> *"suspend' within the contemplation of provisions of section 305(C), will mean that the business is completely set at naught for a certain period.... "*
>
> *paying of liabilities. seeking credit lines from banks and raising constructions are acts in furtherance of the business. These activities are business activities and in presence thereof it cannot be said that business is suspended. Business will be deemed to be ended when there is no business activity at all or when there is complete cessation business for a certain period. '.*

Chitty J.'s definition of "suspends its business" in Re: The Tomlin Patent Horse Shoes Company Ltd. (1986) 55 L.T.R. 314) was quoted with approval in both Habib Bank Ltd. V Golden Plastic Pvt. Ltd. 1991 MLD 124 and Re: Alliance Motors (Pvt.) Ltd.. 1997 MLD 1966 and it is also relevant in the present circumstances:

> *"Although there may be a suspension of the business of a company for the space of one year, the Court will not make an order under subsection (2) of section 79 of the Companies Act, 1962, to wind-up the company unless it is satisfied that there has been an intention on the part of the Company to abandon its business or inability to carry it on.»*

The learned judge also said in the Tomlin case quoted above that the phrase "suspends its business" did not mean the same thing as "business has been suspended".

The fact that the Company is actively taking all the steps for rolling-out the duly approved business plan for the benefits of its shareholders amply demonstrates that the business has neither been "completely set at naught", nor has there been a "complete cessation of business" and nor do these activities signify "an intention on the part of the company to abandon its business", so as to render the Company liable for being wound up in terms of Section 304(b) of the Act. It has not suspended its business.

E) *Suspension of business for a whole year by itself does not entitle the petitioner to get the company wound up as a matter of right*

In spite of the business of the Company being "suspended", a Petitioner is not entitled to get the company wound up as a matter of right and the same will be at the discretion of the Court, depending on the peculiar facts and circumstances of the case at hand. Reference may be made to the following passage from Re: Alliance Motors (Pvt) Ltd., 1997 MLD 1966:

> *"Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the company wound up as a matter of right, but the question whether the company would be wound up or not in such circumstance in entirely in the discretion of the Court depending upon the facts and circumstances of each case. '.*

Reliance is also placed on the flowing case law: Murlidhar Roy vs. Bengal Steamship Company, 59 Ind Case 542, Paramjit Lal Badhwar vs Prem Spinning and Weaving Mills, 1986 60 comp Case 420 All.

Hence, it is submitted that the Petitioner is not entitled to get the company wound up as a matter of right and the same will be at the discretion of the Court. Accordingly, there should be an application of mind by the honorable Registrar, and all the relevant facts and circumstances must be taken into consideration, before seeking sanction of the Commission. Therefore, the sanction requested by the Registrar does carry any merits and should be rejected.

F) *No Intension to Suspend Business*

For the avoidance of any doubt, it is categorically stated that the Company has no intention, whatsoever, to suspend its business as mandated under its Memorandum of Association. Therefore, there is no reason for winding up of the Company. Reliance in placed on the following case laws: Habib Bank Ltd. V Golden Plastic Pvt. Ltd., 1991 MLD 124, Malabar Iron and Steel Works vs. the Registrar of Companies, AIR 1965 Ker 35, East India Wires Limited v. Mohan Lal Ghosh, 2004 118 Comp Case 322 Cal.

G) *Revival of companies to be encouraged*

The Commission has justified the issuance of the SCN by referring to the Company having suspended its business for more than a year. Even if for argument's sake it is accepted, although not admitted, that the whole business was suspended for this amount of time, the majority stakeholders of the Company has intention to carry on the Company business as mandated in the Memorandum of Association of the Company. Furthermore, the alleged "suspension" of operation hitherto has been satisfactorily accounted for, which includes factors explained above. The Company can also carry on other business activities as allowed under its Memorandum of Association. All of the aforementioned factors show that the Company still has prospects of coming back to life. In Re: Alliance Motors it was stated that:

"a Court will exercise sound discretion in deciding whether to wind up a company or not and in doing so consider many relevant factors. It may be that despite the inability to pay its debts a company has still prospects of coming back to life and if the Court is told of any specific proposal, inclining to give a chance to resurrect the company. It should be the policy of the Court to attempt to revive though at the moment the company may not be solvent and may not be able to meet its obligations to its investors/creditors.... But it is the duty of the Courts to welcome revival rather than affirm the death of the company and for that purpose the Court is called upon to make a direct exercise'.

It is a well-entrenched view that a winding up is tantamount to a death sentence given to a juristic person being a corporate entity and such death should only be given in the rarest of cases and should be resisted if there is even the slight hope of revival of the said company (East India Wires Limited v. Mohan Lal Ghosh, 2004 118 Comp Case 322 Cal.
In light of preceding discussion, it is clear that the Company is carrying on business activities and it has reasonable prospects of revival of its business operation.

H) *Revival plan of the Company*

Without prejudice of the above submissions, it is respectfully submitted that the Commission is already in possession of the duly approved business plan of the Company which will add value to the shareholders of the Company.
In view of the above submissions, it is respectfully requested that the SCN may please be withdrawn without grant of sanction to the Registrar, Company Registration Office, Lahore."

4. An opportunity of hearing was provided to the respondents on August 21, 2021 wherein Mr. Mubashar Mehmood appeared as authroised representative. He reiterated submissions provided by respondents vide letter dated August 19, 2019. It was also requested that six months' time be provided to the Company in order to make progress on plans on revival of the Company. Further opportunities of hearing in the matter were provided on February 25, 2021, August 12, 2021 and August 31, 2021 which were adjourned on request of the Company. The Respondents vide letter dated September 13, 2021 stated that:

"

(1) *Due to multiple problems faced by the Company, it had suspended its operation of sugar manufacturing as well as ethanol manufacturing, during the year ended 30th September 2016.*

(2) *In the Annual General Meeting held in January 2017, the shareholders had approved management proposal to dispose off land, building and plant and machinery related to sugar, distillery and C02. This decision of the shareholders was implemented and the assets located at Mian Channu were disposed off in August 2017. Assets located at Phalia, District Mandi Bahauddin are still held for sale.*

(3) *The sale of Assets at Phalia is taking time due to macro-economic conditions, high cost of funds, large size of the transaction etc. The management is of the view that there are positive indicators supported by recent transactions of sale of Gulf sugar and Baba Farid Sugar, signifying interest of investors in the sugar industry. The management is confident that the Company shall be able to strike a good deal, which will be in the best interest of all stakeholders.*

(4) *We would like to submit that the word "suspend" has neither been defined nor explained in the Companies Act, 2017. It is appropriate to make reference to the existing case laws under Section 305 and 309 of the repealed Companies Ordinance, 1984. It has been judicially interpreted in three main Pakistani cases, namely Habib Bank Limited Vs Golden Plastic (Pvt.) Ltd., 1991 MLD 124; Alliance Motors (Pvt.) Ltd., 1997 MLD 1966 and Joint Registrar of Companies Vs Sh. Fazal Rehman & Sons Ltd. 2008 CLD 465. In the case of Sh. Fazal Rehman & Sons, it has been discussed what is meant by the phrase "suspends its business for a whole year" as occurring in Section 305(b) of the Companies Ordinance, 1984. It has been held that "suspend within the contemplation of provisions of section 305(c) will mean that the business is completely set at naught for a certain period". Additionally, "paying of liabilities, seeking credit lines from banks and raising construction are acts in furtherance of the business. These activities are business activities and in presence thereof, it cannot be said that business is suspended. Business will be deemed to be suspended, when there is no business activity at all or when there is complete cessation of business for a certain period."*

Chilly J.'s definition of "suspends its business" in "The Tomlin Patent Horse Shoes Company Ltd. (1986) 55 L.T.R 314)" was quoted in both "Habib Bank Ltd. Vs Golden Plastic (Pvt.) Ltd., 1991 MLD 124" and "Alliance Motors (Pvt.) Ltd., 1997 MLD 1966" and it is very much

relevant to the Company's circumstances: The Court had held that "Although there may be a suspension of the business of a company for the space of one year, the Court will not make an order, under subsection (2) of section 79 of the Companies Act, 1962, to wind-up the company unless it is satisfied that there has been an intention on the part of the company to abandon its business or inability to carry it on". The learned Judge had also observed that the phrase "suspends its business" did not mean to same thing as "business has been suspended".

(5) *Inspite of the business of the Company being "suspended", the Commission will not be entitled to get the Company wound up as a matter of right. It will be at the discretion of the Court, depending on the peculiar facts and circumstances of the case at hand. It is important to make reference to the following passage from Re: Alliance Motors (Pvt.) Ltd., 1997 MLD 1966:*

"Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the company wound up as a matter of right, but the question whether the company would be wound up or not in such circumstance in entirely in the discretion of the Court depending upon the facts and circumstances of each case."

(6) *During the year ended 30th September, 2020, in the EOGM held on 20.08.2020, the shareholders took the following decisions:*

(i) *Change the name of the company from "Imperial Sugar Limited" to "Imperial Limited".*

(ii) *Utilization of proceeds from sale of assets to partially repay the liabilities of the Company and to utilize the remaining proceeds to use as per new object clause of the company.*

(7) *The Company has adopted a new principal line of business as buying, selling, holding or otherwise acquiring or investing the capital of the Company in any sort of financial instruments including but not limited to shares, stocks, shares and stocks of unlisted companies, debentures, debenture stocks, bonds, mutual fund certificates, modaraba certificates, musharika certificates, sukuk, participation term certificates (PTCs) and any other shariah complaint security, term finance certificates, unit trust certificates and any other marketable securities and/or certificates of any kind, obligations and securities issued or guaranteed by the Government of Pakistan or by companies incorporated or registered in Pakistan and which are listed or to be listed on the Stock Exchanges of Pakistan or in any foreign country but not to act as an investment/brokerage company subject to necessary permissions/licenses required from concerned authorities and compliance of all applicable laws; The Company Registration Office Lahore approved the principal line of business. A copy of the certified MOA is available in Commission's record.*

(8) *Whereas the purpose of adopting the new object has been not only to invest in various securities but also to undertake new lines of businesses through wholly owned subsidiary companies by investing in the share capital of such companies.*

(9) *The Company is generating income from its new line of business. During the nine (9) months period ended 30.06.2021, the Company's Gross Profit was Rs. 195.642 million, Profit after tax was Rs. 129.489 million and as result earning per share was Rs. 0.94.*

(10) *It may be added that for nine (9) months ended 30.06.2021 the short term investments stood at Rs. 104.527 million has been made in NBP Mutual Fund and short term deposit with*

Microfinance Bank stand at Rs. 201.447 million. Both the investments are expected to generate good revenues.

(11) *It is also worth adding that whereas paid up capital of the Company is Rs. 990.200 million, its accumulated unappropriated profit including the nine (9) months ended 30.06.2021 stand at Rs. 3,569.527 million - giving a break-up value of Rs. 46.00 per share, reflecting a very stable financial position. The company continues to be in profit and will be able to pay a dividend for the year ended 30.09.2021.*

(12) *The above facts and figures speak for themselves and the Company's new business has not remained suspended even for a part of the year.*

In light of above submissions, it is prayed that the notice served under clause (m) of section 301 read with clause (b) of section 304 of the Companies Act, 2017 may kindly be withdrawn."

5. Hearing in the matter was fixed on September 13, 2021 and Mr. Javed Panni appeared as the Authorised Representative and reiterated written submissions provided vide letter dated September 13, 2021 and reinforced the following submissions:

- The assets located at Phalia are still not sold due to unfavorable macroeconomic indicators however there are positive indication in market within the vicinity of the Phalia and the respondents are confident that the aforesaid assets at Phalia shall be sold.
- The shareholders of the Company in its extraordinary general meeting held on August 20, 2020 changed the name of company from Imperial Sugar Limited to Imperial Limited. It was also resolved that the utilization of proceeds from sale of assets was partially to repay liabilities of the Company and to utilize remaining proceeds as per new object clause of the Company.
- The Company has adopted new principal line of business as buying, selling, holding or otherwise acquiring or investing the capital of the Company in any sort of financial instruments. Further, the Company shall also be able to undertake new lines of businesses through wholly owned subsidiary companies. The amended MOA has been provided along with the written submissions.
- The Company is generating incomes from its new line of business. During nine months period ended June 30, 2021, the company reported "Income from investment" of Rs. 195.642 million and profit after tax was Rs. 129.489 million and EPS was Rs. 0.94.
- In view of above, the subject SCN maybe withdrawn.

6. At this juncture, I would like to mention here the relevant provisions of the Act:

Section 301 of Act:

*"**301. Circumstances in which a company may be wound up by Court.**—A company may be wound up by the Court –*

(m) if a listed company suspends its business for a whole year."

Section 304 of the Act:

*"**304. Provisions as to applications for winding up.** – 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:*

Provided that-

(b) the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition: Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;"

7. I have gone through the facts of the case, submission made during hearing proceedings and written responses. I have observed that the operations of the Company were suspended since September 2016; however, the Company in its financial statements for the quarter ended June 30, 2021, submitted to the Commission, has disclosed Income from Investment of Rs. 195.642 million. Further, the Company reported Other Operating Income of Rs 2.586 million. The Company reported profit after tax of Rs. 129.489 million for the aforementioned quarter. The audited financial statements for the year ended September 30, 2020 of the Company reflect income of Rs.367.897 million generated from investment and profit after tax of Rs. 163.775 million. In view of the aforesaid submissions, I have observed that the ground of the SCN i.e. suspension of business of the Company has been addressed. I, therefore, find no reason to continue the winding

up proceedings initiated against the Company through the SCN and hereby drop the same with no adverse action.

(Amir M. Khan Afridi)
HOD - Adj. Department-I

Announced:
Dated: November 18 , 2021
Islamabad