



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Salfi Textile Mills Limited

Number and date of notice: CSD/ARN/236/2015-1282 dated January 5, 2016
Date of hearing: February 12, 2016
Present: Barrister Jahanzeb Awan – Authorized Representative

ORDER

**UNDER SECTION 214 AND 216 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated vide show cause notice dated January 5, 2016, issued to Mr. Anwar Ahmed Tata and Mr. Adeel Shahid Anwar (“respondents”) directors of Salfi Textile Mills Limited (“Company”) for default made in complying with the provisions of Section 214 and Section 216 read with Section 476 of the Companies Ordinance, 1984 (“Ordinance”).

2. The brief facts leading to this case are that in the board of directors of Salfi Textile Mills Limited (“Company”) in their meeting held on September 16, 2013, approved increase in unit rate of energy being purchased from associated company, Tata Energy Limited (“TEL”). Mr. Anwar Ahmed Tata and Mr. Adeel Shahid Anwar are directors on the board of both the Company and TEL. By virtue of their directorships respondents are interested directors in term of Section 214 of the Ordinance.

3. In terms of Sub-section (1) of Section 214 of the Ordinance, every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into by the company is required to disclose the nature of his concern or interest at a meeting of the directors in the manner specified in the Sub-section (2). Review of the minutes of the board meeting revealed respondents did not, prima facie, disclosed their interest in terms of the requirements of Section 214 of the Ordinance.



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4. Sub-section (1) of Section 216 of the Ordinance provides that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void. Consequently SCN under Section 214 and Section 216 issued to the respondents for, prima facie, non-disclosure and participation in aforesaid meeting of BOD. In response to SCN the respondents requested opportunity of personal hearing

5. In order to provide opportunity of personal hearing; the case was fixed before the undersigned for February 12, 2016. Barrister Jahanzeb Awan, authorized representative on behalf of respondents appeared and submitted that the Company is managed under the umbrella of Tata group, all the companies under the group have common management and shareholding is in the family. There was no element of surprise and pleaded to decide the case considering group structure and assured that in future all the procedures will be followed. He further submitted that TEL was set up by the directors for the benefit the company and other entities in the group since uninterrupted power supply is essential for the efficient functioning of the company. He also stated that the composition of the BOD is such that in light of the provisions of Sections 214 and 216 the mutual business between group entities cannot be approved due to lack of quorum.

6. In terms of the Commission's notification SRO 1003(I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 214 and section 216 of the Ordinance have been delegated to Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, provisions of Sections 214 and 216 of the Ordinance, arguments put forth by the representative during the hearing. However, due to the following facts, I am of the view that the aforesaid provisions of the Ordinance have been contravened:

- The first underlying question that needs clarity is what constitutes interest or concern of directors. Sections 214 and 216 of the Ordinance both make reference to a director who is in any way, directly or indirectly, concerned or interested in a contract or arrangement entered into or to be entered into by a company. By bare reading of these sections, one can say that it includes both personal as well as professional interests of directors.



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- The common directorship and beneficial ownership of shares of the associated companies by the interested directors made them interested and concerned in the transactions of the Company with the associated companies. It clearly means that the directors, in terms of Section 214 of the Ordinance have to disclose their interest invariably in all cases involving transactions or arrangements in which they are concerned or interested. The interested directors in their capacity as directors of the Company were duty bound to give a disclosure of their interest in the transactions with associated companies, however, they failed to disclose their interest. Since there has been no disclosure of interest by the interested directors, they have not complied with the provisions of Section 214 of the Ordinance.
- Sub-section (1) of Section 216, prohibits voting and participation in meeting of directors by a director who is directly or indirectly concerned or interested in the contract or arrangement to be discussed or approved in such meeting. The interested directors, owing to their common directorship and beneficial ownership of shares of the associated companies, are not allowed to participate and vote in the proceedings of directors of the Company to consider and approve the transactions with the associated companies. In such cases wherein BOD lacks quorum by virtue of its composition the power to approve such transaction devolves to the General Meeting of the Company.

8. For the foregoing it is established that provisions of Section 214 and 216 has been violated by the respondents. However, based on submissions of the authorized representative that in future all procedure will be followed and considering the compliance history of the Company, I hereby conclude the case with a warning to the respondents to ensure future compliance of applicable legal provisions.

Amina Aziz
Director (CSD)

Announced:
February 29, 2016
Islamabad