



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Premier Formica Industries Limited

Number and date of notice: EMD/242/P/46/2011-500-506 dated November 21, 2014
Hearing Held on: February 18, 2016
Present: Syed Haider and Mr. Iftikhar Ahmed, Representatives

ORDER

**UNDER SUB-SECTION (1) OF SECTION 495 READ WITH SECTION 476 OF THE
COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors (the “respondents”) including chief executive of **Premier Formica Industries Limited** (the “Company”):

- | | | | |
|---|------------------------|---|-------------------|
| 1 | Mr. Jamshed Saval, CEO | 5 | Mrs. Kausar Aziz |
| 2 | Mr. Mohsin Aziz | 6 | Mrs. Farhat Saval |
| 3 | Mr. Affan Saval, | 7 | Mrs. Huma Mohsin |
| 4 | Mr. Imran Saval | | |

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated November 21, 2014 under sub-section (1) of section 495 read with section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that the Securities & Exchange Commission of Pakistan (“the Commission”) after following due process of law concluded the proceedings against the Company with regards to non-compliance of the provisions of section 235 of the Ordinance in the annual audited financial statement (the “Accounts”) of the Company for the year ended June 30, 2011 and through Order dated October 11, 2013, directed the respondents, as under:

“The chief executive and directors of the Company are directed to follow the provisions of section 235 of the Ordinance in true letter and spirit. They are further directed to prepare the financial statements for the year ended June 30, 2013 in accordance with the provisions of section 235 of the Ordinance reflecting retrospective impact on the opening balances failing which the Commission will be compelled to initiate proceedings against the Company under section 495 of the Ordinance.”



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Review of Account for the year ended June 30, 2012 and June 30, 2013 of the Company revealed that the auditor of the Company namely Baker Tilly Mehmood Idrees Qamar, Chartered Accountants, (the "Auditor") had given similar qualification in the audit report ("the "Report") on the Accounts 2012 and Accounts 2013 of the Company, as under:

"The Company revalued its non-current assets on 27 February, 2013 (Report 2012: 25 June, 2010) and the same are being shown in statement of financial position at revalued amounts as allowed by International Financial Reporting Standard 16 'PROPOERTY, PLANT AND EQUIPMENT'. However, the effect of incremental depreciation has not been incorporated in these accounts. Had the company accounted for these adjustments the profit for the year would have decreased by Rs.17,772,682/- (Report 2012:Rs. 18,026,765/-)."

3. In the light of directions of the Commission, the respondents were required to prepare the Accounts 2013 of the Company in accordance with the provisions of section 235 of the Ordinance reflecting retrospective impact on the opening balances. However, it appeared that the Accounts 2013 were not prepared in accordance with the directions of the Commission. Instead, the Company again contravened the provisions of section 235 of the Ordinance in the Accounts 2013 as the non-current assets were again revalued in 2013; however, the effect of incremental depreciation was not incorporated. It appeared from the above stated facts that, the Company, *prima facie*, failed to comply with the directions of the Commission. Consequently, the SCN was issued to the respondents.

4. In response to the SCN, the respondents through letter dated November 28, 2014 submitted that the requirements of section 235 have already been followed by the Company and incremental depreciation has been charged the to the 'Surplus on Revaluation of Fixed Assets' Account and it is also reflected in the Balance Sheet (Note 4.3). However, the response did not appear to be justified because the Company had not followed the requirements of section 235 of the Ordinance and did not charged the depreciation based on revalued amount to profit and loss, as highlighted by the Auditor in its report to members on the Accounts 2013. Based on their submissions, they requested for withdraw the proceedings. Hearings in the matter were fixed on April 9, 2015 and February 9, 2016, however, the respondents requested for adjournment each



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time. The hearing was finally fixed and held on February 18, 2016 before the undersigned. The respondents were represented by Syed Haider and Mr. Iftikhar Ahmed. With reference to the content of the SCN, it was stated that the Company did not incorporate the effect of incremental depreciation in the Accounts because it was in process of negotiating with the banks for finance and if the effect was incorporated it would have made it difficult for the Company to negotiate successfully. The representatives further assured that the Company would comply with the requirements of section 235 of the Ordinance in the Accounts 2016 to the satisfaction of the auditors.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

In terms of the Commission's notification S.R.O. 45(I)/2003 read with section 235 of the Ordinance the Companies are, inter alia, required to adopt the following accounting treatment in respect of revaluation of fixed assets and the 'Surplus on Revaluation of Fixed Assets':

"Depreciation on assets which are revalued shall be determined with reference to the value assigned to such assets on revaluation and depreciation charge for the period shall be taken to profit and loss account."

Sub-section (1) of section 495 of the Ordinance states that *where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under SRO 634(I)/2014 dated July 10, 2014 read with section 495 of the Ordinance have been delegated to the Director (Corporate Supervision Department).



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6. Review of Accounts 2013 of the Company reveals that it has failed to adopt the correct accounting treatment and has not charged the incremental depreciation on revaluation of fixed assets to the profit and loss accounts, in line with the directions of the Commission given through order dated October 11, 2013. The Auditor has also qualified his report to members on the Accounts 2013 in this regard. As a result of the contravention of the Commission's directions and by not adopting the correct accounting treatment, the profit of the Company has been materially overstated. The respondents' plea that they did not incorporate the effect of incremental depreciation in the Account to avoid difficulties in obtaining finance from banks is not tenable. Banks and financiers are amongst the users of financial statements and it would be unfair if financial statements containing correct accounting treatment and financial information are not made available to them. Annual audited financial statements not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. Preparation of the Accounts based on correct accounting treatment with adequate and accurate disclosures is of utmost importance for the users including banks and financial institutions who make their decision based on those. In order to ensure transparency, the companies must meticulously follow the procedure prescribed by the Ordinance. 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. 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 this context the respondents cannot absolve themselves of their statutory duties regarding incorrect accounting treatment in violation of requirements of the law and directions of the Commission. It is the directors' responsibility to understand and discharge their statutory obligations under the law.

7. I have gone through the facts of the case, provisions of the Ordinance, the Commission's notification and arguments put forth by the respondents. I am of the view that the respondents have failed to comply with the directions of the Commission given under section 473 of the Ordinance and are, therefore, liable to fines. However, I take into account the fact that the Company is a closely held public unlisted company with only seven shareholders who are also directors of the Company. Keeping in view these facts and assurance by the respondents to adopt



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correct accounting treatment regarding depreciation on revalued fixed assets, instead of imposing maximum fines, I hereby conclude the proceedings with aggregate fine of Rs35,000 (rupees thirty five thousand only) on the respondents, as per following details:

(Amounts in Rs)

Name of Respondents	Total
1. Mr. Jamshed Saval, CEO	5,000
2. Mr. Mohsin Aziz	5,000
3. Mr. Affan Saval,	5,000
4. Mr. Imran Saval	5,000
5. Mrs. Kausar Aziz	5,000
6. Mrs. Farhat Saval	5,000
7. Mrs. Huma Mohsin	5,000
TOTAL	35,000

The respondents are directed to deposit the aforesaid fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of movable and immovable property.

The respondents are further directed to adopt the correct accounting treatment in the Accounts 2016 and all the subsequent Accounts to the satisfaction of the statutory auditor.

I may be noted that continued non-compliance with the Commission's direction may render the respondent liable for action under sub-section (2) of section 495 of the Ordinance.

Amina Aziz
Director (CSD)

Announced:
March 3, 2016
Islamabad