



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Yousaf Weaving Mills Limited

Number and date of SCN: CSD/ARN/156/2015-2903-10, dated January 27, 2016
Hearing held on: March 9, 2016
Present: Mr. Nadeem Anwar, CFO and Company Secretary

ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors including the chief executive officer (together referred to as “respondents”) of **Yousaf Weaving Mills Limited** (the “Company”):

1	Mr. Khawaja Mohammad Nadeem, CEO	5	Mr. Khawaja Mohammad Kaleem
2	Mr. Khawaja Mohammad Jawed	6	Mr. Mohammad Naveed
3	Mr. Khawaja Mohammad Jahangir	7	Mr. Danish Tanveer
4	Mr. Khawaja Mohammad Tanveer	8	Mr. Mohammad Tariq Sufi

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated January 27, 2016 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company was required to hold its annual general meeting (“AGM”) for the year ended June 30, 2015 on or before October 31, 2015, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the Company failed to convene its AGM as per requirements of the law. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time.

3. In response to the SCN, the chief executive submitted reply vide letter dated February 5, 2016 and stated as under:

- Audit of Accounts for the year ended June 30, 2015 is in process and will be completed during the current month.



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- The Company is taking up the issue with the Commission for obtaining directions under section 170 of the Ordinance to hold the AGM for 2015.
- In view of the above, the proceedings may be withheld.

4. The case was fixed for hearing on March 9, 2016 and Mr. Nadeem Anwar, the company secretary appeared on behalf of the respondents before the undersigned at the appointed date. He made the following submissions in writing through letter dated March 9, 2016:

- AGM was delayed as the external auditor Aslam Malik & Co., Chartered Accountants, who was appointed in the AGM held on October 31, 2014, was QCR rated at the time of appointment but was later removed from the list of QCR rated auditors issued by Institute of Chartered Accountants of Pakistan, as on June 30, 2015. The above situation created ambiguity regarding qualification of the aforesaid auditor to audit the Company which is a listed company. Therefore, extension of thirty days was obtained from the Commission for holding the AGM by November 30, 2015. Relaxation from requirement of the Code of Corporate Governance regarding QCR rating of statutory auditor was also obtained vide Commission's letter dated September 22, 2015.
- Another reason for delay in holding the AGM was shifting of the entire office premises from previous location in Gulberg, Lahore to Bhai Pheru on Multan Road. Due to shifting, the problems with the data server also contributed to the delay in holding the AGM.
- The delay was neither willful nor intentional and was due to unavoidable circumstances beyond the management's control. The Company is applying for seeking the Commission's direction under section 170 of the Ordinance for holding the AGM on April 13, 2016. Furthermore the Company also has plans to approve the Quarterly and Half Yearly Accounts as per following schedule:
 - a) Quarterly Accounts for period ended 30-Sep-15 on 21-Apr-16
 - b) Half Yearly Accounts for period ended 31-Dec-15 on 28-Apr-16

The respondents also provided a copy of letter dated March 4, 2016 from the statutory auditor wherein it was stated that the audit of Accounts 2015 of the Company would be completed by



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March 22, 2016. Based on the above submissions, the respondents requested to withdraw the proceedings.

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

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

"Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:"

Sub-section (4) of section 158, inter alia, provides as under:

"If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--

(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;"

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and facts available on record. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four month from the close of its financial year provided that the Commission may extend the time for thirty days based on application by the company. Holding of AGM is a very important statutory event and provides an opportunity to the shareholders, including those in minority, to participate in discussion and voting on agenda items of the AGM. This includes consideration and approval of a company's financial statements, which 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. The timeline of the provision of financial



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statements to the shareholders is of utmost importance. The investment decisions of the shareholders are based on the information presented to them in financial statements. Delay in presentation of the said information could lead to either uninformed decision or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance for holding the AGMs. 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 holding of AGMs and preparing and filing of annual and quarterly accounts in a timely manner as required by the law.

6. The Company has not held its AGM for the year ended June 30, 2015 within the stipulated time and has also not been able to hold the AGM by the extended date of November 30, 2015. QCR rating of the statutory auditor has been cited as one of the reason for delay in holding the AGM. As stated by the respondents, the Commission through letter dated September 22, 2015 accorded approval for relaxation from requirements of the Code of Corporate Governance regarding appointment of QCR rated auditor for the year ended June 30, 2015. The Company has not been able to get its Accounts audited and hold the AGM even after elapse of almost six months after that approval. Another reason for delay has been stated to be shifting of Company's office and consequent problems with the data server. It is worth mentioning that it is entirely the responsibility of the management of the Company to keep its data and record safe with appropriate back up. However, I also take into account the previous track record of the Company with regard to holding of the AGMs which appears to be satisfactory. Moreover, the respondents have also submitted an application for seeking direction of the Commission under section 170 of the Ordinance to hold the overdue AGM of the Company.

7. In view of the foregoing, it is clear that the provisions of section 158 of the Ordinance have been violated by the respondents as they have failed to hold the AGM within the extended period. However, taking cognizance of satisfactory track record of the Company regarding holding of



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AGMs and submissions made by the respondents, instead of imposing fines, I hereby concluded the proceedings with a warning to the respondents to be careful in future and ensure meticulous compliance with applicable provisions of the law.

Amina Aziz
Director (CSD)

Announced:
March 15, 2016
Islamabad