



Corporate Supervision Department  
Company Law Division

Before Abid Hussain – Executive Director (Corporate Supervision Department)

*In the matter of*

**Landmark Spinning Industries Limited**

Number and date of notice: No. CSD/ARN/223/2015-2477-2483, dated January 14, 2016  
Date of hearing: March 7, 2016  
Present: Mr. Amin A. Hashwani and Syed Muhammad Yousuf,

**ORDER**

**UNDER SECTION 492 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 (the “respondents”) of **Landmark Spinning Industries Limited** (the “Company”):

1. Mr. Nizam A. Hashwani, Chairman
2. Mr. Amin A. Hashwani, Chief Executive
3. Mr. Abdullah A. Hashwani
4. Mr. Syed Raza Abbas Jafferri
5. Mrs. Sultana A. Hashwani
6. Mrs. Farieha A. Hashwani
7. Mrs. Shahrina Hashwani

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated January 14, 2016 issued under section 492 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that examination of the annual audited financial statements of the Company for the year ended June 30, 2015 (“the Accounts”) revealed that the Auditor in its report to the members gave qualified opinion, on the following basis:

- i) For not charging depreciation of fixed assets except on Vehicle and Hut at Sandpit since the date of suspension of commercial operations by the company in the year 2002-2003.
- ii) Indication of existence of a material uncertainty which may cast significant doubt about the Company’s ability to continue as a going concern and, therefore, it may be unable to realize its assets and discharge its liabilities in the normal course of business.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 1 -

iii) For not accounting for loans received from associated concerns and directors at amortized cost as required by International Accounting Standard ("IAS") 39.

3. The aforementioned contraventions with IAS 16, which form part of the International Financial Reporting Standards ("IFRS"), in preparation of its Accounts by the Company due to not charging the depreciation on fixed assets, prima facie, caused material misstatements as substantiated below:

(Amounts in Rs.)

Head of Account	Understated / Overstated	Figure Reported in Accounts	Amount of Misstatement due to incorrect treatment	Actual Accumulated Loss if correct treatment was applied	Misstatement as % of Actual Figures if correct treatment was applied
Accumulated Losses (without revaluation)	understated	(191,914,658)	(94,979,417)	(286,894,075)	33%
Accumulated Losses (With revaluation)	understated	(191,914,658)	(153,223,690)	(345,138,348)	44%
Loss for the year (without revaluation)	understated	(1,139,741)	(4,873,590)	(6,013,331)	81%
Loss for the year (with revaluation)	understated	(1,139,741)	(8,879,730)	(10,019,471)	89%
Equity (Without revaluation)	Overstated	(70,677,658)	(94,979,417)	(165,657,075)	57%
Equity (With revaluation)	Overstated	(70,677,658)	(153,223,690)	(223,901,348)	68%
Fixed Assets (With Revaluations)	Overstated	241,793,508	153,223,690	88,569,818	173%

The impact of not accounting for loan from directors and associated was not quantified. The Company was incorporated in the year 1991 but it did not commence its commercial operation until year 2001 when the production was temporarily started but again suspended since November 29, 2002. Despite elapse of considerable time and commitments given by the management to the stakeholders, including the Commission, the Company continuously failed to commence its production. The Commission has also passed an order authorizing the Registrar of Companies to file a petition for winding up of the Company in a competent court in terms of the provisions of section 305 and 309 of the Ordinance against which the Company has filed an application with the Commission for review of the aforesaid order. In view of the facts highlighted above, the Company was, prima facie, not a going concern, and management's use of going concern assumption in preparation of the Accounts did not appear to be appropriate.

The Company under note 3 to the Accounts described that the Accounts are prepared in compliance with IFRS despite the contraventions with IFRS in preparation of Accounts, as



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 2 -

highlighted in preceding paragraphs. The Company also did not give adequate disclosures as required by IAS-1 in relation to departure from the requirements of the IFRS.

4. In view of the aforementioned facts and contraventions of requirements of the IFRS in preparation of the Account, the Company's Accounts were, prima facie, misstated due to:

- (i) not charging depreciation on fixed assets in contravention of the IFRS;
- (ii) use of going concern assumption in preparation of the Accounts despite the facts highlighted above, which, prima facie, indicate that management's use of going concern assumption is inappropriate; and
- (iii) describing the Accounts as compliant with IFRS despite the aforesaid contraventions and departures from requirements of IFRS and omission of disclosures required by IAS-1 in relation to departure from the requirements of the IFRS.

Consequently, the SCN was issued to the respondents requiring them to show cause as to why penal action may not be taken against them for the alleged misstatements in the Accounts.

5. In response to the SCN, the respondents through letter dated January 30, 2016 requested for extension in time for submission of reply which was later on submitted through letter dated February 13, 2016. A brief of the reply given by the respondents with reference to the contents of the SCN is given below:

### (i) Depreciation of fixed assets:

The auditor has qualified the report on Accounts of the company for the year ended June 30, 2015. Company's management is of the view that charging of depreciation on regular basis will understate the book value of the unutilized assets of the company. Further, the company got its assets revalued at regular intervals as per IAS 16 and this serves as mitigating factor. The impairment of the assets adjusted the accumulated losses and the overvalued amounts after revaluation, which enhanced the surplus on revaluation in the accounts. Therefore, there is no undervaluation and misstatements in the Accounts.

Relevant disclosure have been for the users under note 7.2 to the Accounts and the Auditor's report who has qualified and disclosed the non-charging of depreciation. Reliance is made on the ICAP's circular No. 10/2002 dated November 11, 2002, wherein it is advised to apply depreciation on number of days utilized and the Para 55 of the IAS 16, which, inter alia, states that "However, under usage methods of depreciation the depreciation charge can be zero while there is no production."



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 3 -

In the matter of not charging depreciation of plant and machinery consideration has been given to practicality, past and prevailing condition of plant and machinery, its actual operations and maintenance, related wear and tear and its manufacturers' suggested/guaranteed working life time/hours as per manuals. The depreciation and revaluation of plant and machinery are being charged and considered on regular intervals to meet requirements of IFRS and the Ordinance. This being the exceptional case, all these factors should be considered rather than only considering the accounting impact of increase or decrease in annual expenditures. This will allow presentation of facts and figures in a better way for all stakeholders and shareholder.

## **(ii) Loans Amortization:**

The conditions for discounting are not met due to following reasons:

- The loan is not for a definite period.
- Due to Company being non-operational, future cash flow from operating activities cannot be ascertained. The facts regarding Company's operations being suspended and present situation have been disclosed in note 2 read with note 1, 12.2 and 23 to the Accounts. The Company's commencement of production depends upon supply of gas by the government that has plans to provide gas connection to the mills in Winder, Baluchistan and the company also is actively persuading the government in this regard. The government's agreement with Iran for supply of gas will enable it to supply gas to Winder.
- Note 15.3 to the financial statements states that the loans are payable on demand/ will be paid as and when convenient to the company. There is no fixed schedule and tenure for repayment of these loans. Owing to the uncertainties regarding remaining tenure of these loans, and future cash flows the amortized cost cannot be ascertained and accordingly these loans have been carried at historical cost". Therefore a definite time for repayment cannot be ascertained.

However, the auditors of the company did not accept the above stance of the management and qualified their opinion in this regard.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 4 -

## (iii) Going Concern

- The Company was set up with a concrete plan for manufacturing exportable yarn/ textile products but it could not start its full operation as government did not fulfill its commitment for supply of gas, electricity, water and basic infrastructural facilities. The federal government has given commitment to facilitate the Winder Industrial Zone, where the Company is situated, by providing the basic energy, utilities, gas, electricity, water and all necessary infrastructural facilities. Despite strenuous efforts by the Company's management and its worth ex-Chairman Mr. Akbar Ali Hashwani with representatives of industrial estate and government authorities there has been no positive outcome and resultantly huge investments are melting down.
- Since setting up of plant and machinery in March 1993, the factory commenced commercial production in 2000, but due to frequent electricity break downs and unreliable working of diesel generators, the Company was experiencing financial losses and operations were suspended. Despite the aforementioned facts the Company's management is still optimistic and ready to start the operation if all utilities and infrastructural facilities are provided by the government. The management is still considering the company as a going concern and all related disclosures have been given in the Accounts to comply with requirements of IFRS and the Ordinance in preparation of Accounts.
- The management is confident that considering practical aspect, management's experience and strength, capacity and reputation of our Group, the Company is capable of reviving the operations for producing and delivering the quality goods for exports and generating foreign exchange. It is also capable of meeting its official and legal requirements and financial and administrative obligations.
- Despite the aforementioned facts, the company has made full disclosure in the Accounts regarding the financial position, losses, erosion of capital, excess of liabilities over assets, suspension of operations along with reasons thereof. Moreover, the Company has also disclosed the status of proceedings against the Company under section 305 and 309 of the Ordinance, which are at review stage with the Commission. (Reference notes 1, 2, 12.1 12.2 and 23 to the Accounts)



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 5 -

- The disclosure give an indication that the company is not in operation since long time and does not plan to start its production till the gas or uninterrupted supply of electricity is available to Winder Industrial Estate, Baluchistan.

The required disclosures regarding departures/contraventions of requirements of IFRS regarding non-charging of depreciation and not accounting for directors'/associates' loans at amortized cost have not been made for which we will be careful in future. However, there are disclosures given in the relevant note to the accounts, auditor's report and directors' report enclosed with the full set of Accounts and there was no intention to hide the information. Therefore, it does not fall within the ambit of false statement. From above, it is clear that all the disclosure requirements under IFRS and the Ordinance were placed in the Accounts and the respondents have not made any misstatement in the Accounts under section 492 of the Ordinance. Hence the proceedings are liable to be vacated and re-called in the best interest of the justice.

6. The case was fixed for hearing on March 7, 2016, and Mr. Amin A. Hashwani and Syed Muhammad Yousuf appeared before the undersigned on behalf of the respondents. They mainly reiterated the earlier written submissions and requested for a lenient view in the matter stating that there was no ill intention to hide any information for the users of the Accounts. They were apprised of the fact that the Company was not a going concern and as per requirements of the IFRS, the management was required to prepare the Accounts on net realizable value. Moreover, requirements of IFRS regarding charging of depreciation on the assets and accounting for the loans at amortized cost were also elaborated. In response, Mr. Hashwani, the chief executive, stated that he will consult he experts in the matter and would be ready to comply with the requirements of the IFRS and the Ordinance in this regard.

7. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance, IASs and IFRS:

## IAS 16-Property Plant and Equipment

*30. After recognition as an asset, an item of property, plant and equipment shall be carried at its cost less any accumulated depreciation and any accumulated impairment losses.*

*31. After recognition as an asset, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 6 -

less any subsequent accumulated depreciation and subsequent accumulated impairment losses. Revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period.

55. Depreciation of an asset begins when it is available for use, i.e. when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. Depreciation of an asset ceases at the earlier of the date that the asset is classified as held for sale (or included in a disposal group that is classified as held for sale) in accordance with IFRS 5 and the date that the asset is derecognised. Therefore, depreciation does not cease when the asset becomes idle or is retired from active use unless the asset is fully depreciated. However, under usage methods of depreciation the depreciation charge can be zero while there is no production. (Emphasis added)

## IAS 1- Presentation of Financial Statements

16. An entity whose financial statements comply with IFRSs shall make an explicit and unreserved statement of such compliance in the notes. An entity shall not describe financial statements as complying with IFRSs unless they comply with all the requirements of IFRSs.

18. An entity cannot rectify inappropriate accounting policies either by disclosure of the accounting policies used or by notes or explanatory material.

19. In the extremely rare circumstances in which management concludes that compliance with a requirement in an IFRS would be so misleading that it would conflict with the objective of financial statements set out in the Framework, the entity shall depart from that requirement in the manner set out in **paragraph 20** if the relevant regulatory framework requires, or otherwise does not prohibit, such a departure.

**Section 492 of the Ordinance**, which states as under:

*“Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.”*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 492 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

*Continuation Sheet - 7 -*

8. I have analyzed the facts of the case, relevant provisions of the Ordinance, IAS and IFRS and the arguments put forth by the respondents and my observations are as under:

- a) Preparation of financial statements in line with applicable provisions of the IFRS, IAS and the Ordinance is responsibility of the management while auditor is responsible to express an independent opinion on the financial statements. Management is responsible for assessment of the entity's ability to continue as a going concern to make sure that the use of going concern assumption in preparation of Accounts is appropriate under the circumstances. It is a matter of fact that the Company has not been in operations since the year 2002 and the management of the Company has no alternative plan for revival of the Company. Management's use of going concern assumption is solely reliant on availability of gas and electricity in the vicinity where the Company is situated without any definite timeline, concrete revival plan along with substantiating evidence and basis. The management has relied upon the completion of the Iran Pakistan gas pipeline which is a project without any definite timeline and is dependent on the factors, which are beyond the control of the management. Despite elapse of several years, the management of the Company has not been able to come up with any alternative plan for commencing the suspended operations of the Company. Therefore, under the circumstances, the use of going concern assumption is clearly inappropriate. The presence of mitigating factors cited by the management as a justification to continue using going concern assumption in preparation of Accounts is untenable in the circumstances. Moreover, the auditor in his subsequent review report on the Company's half yearly accounts for the period ended December 31, 2015 has given adverse opinion, without there being any material changes in the circumstances of the cases which again leads to the same conclusion i.e. inappropriateness of going concern assumption. The Company was not a going concern and as per requirements of the IFRS, the management was required to prepare the Accounts on realizable value.
- b) The Company has not been charging any depreciation on fixed assets except on Vehicle and Hut at Sandpit since the date of commercial operations has been suspended by the company in the year 2002-2003. This is against the requirements of Framework for the Preparation and Presentation of Financial Statements (the "Framework") and IAS 16. In

*Handwritten signature*



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 8 -

terms of the requirement of the Framework and IAS 16, once an asset constituting property plant and equipment is recognized, it has to be depreciated over its useful life unless it is the land owned by the entity. Therefore, it was mandatory to charge depreciation on fixed assets. As disclosed under note 6.5 to the Accounts, the Company's policy regarding depreciation is as under:

*"Depreciation is charged to income using reducing balance method, at the rates specified in the annexed schedule, whereby the cost/revalued amounts of assets is written off over its estimated useful life..... (Continued)".* In view of the Company's stated policy of charging depreciation on reducing balance method, the plea that as per IAS 16 allows charging zero depreciation under usage methods of depreciation while there is no production, is untenable. It has further been disclosed that except a hut at Sandpit, and Vehicles no depreciation has been charged on the assets of the Company since 2002-2003 in violation of requirements of IAS 16 and its own accounting policy and has resorted to giving disclosure regarding non-charging of depreciation. In terms of para 18 of IAS 1, an entity cannot rectify inappropriate accounting policies either by disclosure of the accounting policies used or by notes or explanatory material. Since the Company has not complied with the requirements of IAS 16, the Accounts were not in conformity with the requirements of the Framework and IFRS. The impact of the misstatement due to the non-compliance with IAS 16 was in itself material on standalone basis, as has been highlighted at para 2 above, as the balances of loss for the year, accumulated loss, equity and fixed assets were materially misstated.

- c) The respondents have referred to the ICAP's circular No10/2002 as a justification for not charging the depreciation on fixed assets. It is clear that the aforesaid circular addresses the questions regarding following accounting policy for fixed assets whereby depreciation for the full year is charged on additions while no depreciation is charged on assets disposed of during the year. In terms of the circular the auditors were advised to encourage adoption of an appropriate depreciation policy for additions and deletions in line with the financial reporting requirements pertinent to the concerned entity. However, in the instant case, the aforesaid circular is of no relevance at all.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

Continuation Sheet - 9 -

- d) With regard to not accounting for the loans from directors and associated concerns at amortized cost, it has been stated that the impact could not be quantified as the conditions for discounting were not met due to following reasons:
- The loan is not for a definite period.
  - Uncertain cash flow as the Company was not operational and its revival was dependent on factor beyond the control of the management.
  - There is no fixed schedule and tenure for repayment of these loans.

It is the responsibility of the management of the Company to ensure that loans obtained from associates are based on agreements in writing that include the terms and condition of such loans so that the liabilities of the Company could be appropriately determined and compliance with applicable financial reporting framework can be made.

- e) The overall impact of non-compliances of IAS 16 taken together with the inappropriate use of going concern assumption and non-amortization of loans from associates was clearly material as well as pervasive. Under the circumstances, the statement of compliance (note 3 to the Accounts) wherein the Company has stated that the Accounts have been prepared in accordance with approved accounting standards, is also incorrect and is a misstatement. This is in contravention with para 16 of IAS 1 which states that *an entity shall not describe financial statements as complying with IFRSs unless they comply with all the requirements of IFRSs.*
- f) The aforementioned non-compliances with the requirement of the IFRS including the IAS 16, IAS 39 coupled with inappropriate use of going concern assumption in preparation of Accounts of the Company by the management caused misstatements in the Accounts which were both material as well as pervasive in aggregate. It has been stated by the respondents that all the disclosures were made in the Accounts, directors' report attached thereto and in the Auditor's report and nothing was hidden from the users of the Accounts. However, it is clear that the Accounts were materially misstated as the basis used in preparation was incorrect and requirements of IFRS were not complied with. Moreover, contravention of requirements of IFRS in preparation of Accounts cannot be rectified by giving disclosure in this regard. In the instant case, the

dr: P



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

*Continuation Sheet - 10 -*

respondents in their capacity as directors of the Company have failed to discharge his duties to follow requirements of the Ordinance and the notified IFRS, as explained above.

9. I deem it necessary to make some observations on the importance of compliance with requirements of the IFRS and the Ordinance in preparation of financial statements, adequacy and accuracy of disclosures made therein and directors' duties and responsibilities in this regard. The financial statements are the most important source of reliable information for the shareholders who make their investment decision based on such information. The 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. Therefore, adequate and correct disclosures in the financial statements in line with applicable financial reporting framework are of utmost importance. The IFRS provide basis for preparation and presentation of financial statements to ensure understandability, reliability, relevance and comparability both with the entity's financial statements of previous periods and with the financial statements of other entities. The IFRS also set out overall requirements for the presentation of financial statements, guidelines for their structure and minimum requirements for their content. Therefore, it is of utmost importance that all the applicable requirements of IFRS are complied with in letter and spirit. It is the duty of the company and its directors to see that the disclosures made in the financial statements are adequate and correct and there is no misstatement or omission of material facts. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company. 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 misstatements in the financial statements. They also cannot avoid their responsibility of exercising due care and prudence while making investment decisions in line with the best practices, company's policy and market norms.

10. For the foregoing reasons, I am of the view that the Respondents are liable to be penalized under the provisions of section 492 of the Ordinance. However, I also take into account the



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department  
Company Law Division

*Continuation Sheet - 11 -*

willingness shown by the respondents to rectify the situation by complying with requirements of the IFRS in future. Therefore, in exercise of the powers conferred by section 492 of the Ordinance, instead of imposing maximum fines, I hereby impose an aggregate fine of Rs70,000/- (Rupees seventy thousand only) on the respondents. The respondents are directed to deposit the fines in the following manner:

Name of Respondents	Amounts in Rs.
Mr. Nizam A. Hashwani	10,000
Mr. Amin A. Hashwani	10,000
Mr. Abdullah A. Hashwani	10,000
Mr. Syed Raza Abbas Jafferri	10,000
Mrs. Sultana A. Hashwani	10,000
Mrs. Fariha A. Hashwani	10,000
Mrs. Shahrina Hashwani	10,000
<b>Total</b>	<b>70,000</b>

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalties are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

ABID HUSSAIN  
Executive Director

**Announced:**  
March 25, 2016  
Islamabad