



Corporate Supervision Department
Company Law Division

Before Abid Hussain –Executive Director

In the matter of

Husein Industries Limited

Number and date of notice: EMD/233/256/2002-584 dated November 18, 2014
Date of hearing: April 4, 2016
Present: Mr. Muhammad Anwar Kaludi – Authorised Representative

ORDER

UNDER SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the Directors including the Chief Executive (the “respondents”) of Husein Industries Limited (the “Company”) through show cause notice (“SCN”) dated November 18, 2014 issued under the provisions of Section 492 read with Section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. Brief facts of the case are that M/s Hyder Bhimji & Co. Chartered Accountants and M/s Haroon Zakaria & Company, Chartered Accountants, both referred to as the “auditors” hereinafter, in their reports to the members on the annual audited financial statements of the Company, for the year ended June 30, 2011 (the “Accounts-2011”) and June 30, 2012 (the “Accounts-2012”) respectively (hereafter both referred to as “the Accounts”), have given adverse opinions on the accounts on following basis:

- a) Inability to substantiate the existence and valuation assertions of inventories of Stock in trade and Stores, spares and loose tools having carrying value of Rs. 476.082 as at June 30, 2012 (2011: Rs. 621.308 million).
- b) Inability to verify trade debtors amounting to Rs. 537.310 million and non-provisioning of overdue export proceeds amounting to Rs. 503.973 million (2011: Rs. 410.294 million).
- c) Non-disclosure of existence of material uncertainty on the Company’s ability to continue as going concern.

3. The directors in their reports to the members annexed with the Accounts-2012 have given following responses on the auditors’ observations:

“Auditors have raised observations in their Auditor’s report to the members in respect of existence and valuation of inventories consisting of non-observance of physical verification at the appropriate time and non-availability of stock records. In this regard it is clarified that company’s



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inventories are valued at lower of average cost and net realizable value/average cost and as such we carried out the evaluation and assessment of stocks and stores and spares and have written down the valuation of the Stocks to Rs. 44 million and Stores and Spares by Rs. 7 million during the year under review.

As regards realization of export proceeds is concerned, we have already stated that due to global recession our export proceeds realization have been considerably delayed but all efforts are being made to realize all such amounts at the earliest. We have received assurances from the customers that the remittances would commence in the near future.

As far as the observation of the Auditors about the material uncertainty as a going concern, your Company has worked out a strategy to improve the situation significantly in the shortest span of time. This includes a plan to bring down the cost of production, cutting down production of the segments which are loss making and increase productivity of the segments which can make profit for the Company.

As regards delay in convening meeting of directors and subsequent corporate actions is concerned, it is stated that the Accounts of the Company year ending 2011 were abnormally delayed by the then Auditors of the company and as such the current Auditors could not be appointed in time resulting in unnecessary delay in the commencement of Audit by the present Auditors. The delay in the auditing of the Accounts for the under review is predominantly the consequence of the delay in the previous year's Audit. These delays and missing of deadlines for the compliance of the rules and regulations as such was beyond our control. However, your Company is working very hard to overcome the situation within a very short span of time to be fully compliant with the requirements of the Regulator."

4. Non-verified insertion in the financial statement with respect to inventories and trade debtors, non-provisioning against overdue export proceeds and inadequate disclosure in respect of material uncertainty on going concern have, prima facie, rendered the financial statements to be materially misstated. Consequently a SCN was served upon the respondents on November 18, 2014 to show cause as to why penalty be not imposed under Section 492 of the Ordinance for presenting misleading, false and incorrect accounts to the Commission.



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5. The respondents replied vide letter dated April 27, 2015, seriatim response is reproduced below.

- a) The present auditor has highlighted that they could not be invited to carry out the physical verification as their appointment date is subsequent to the date of year end.
- b) The Company has made exports in past the receivable whereof have been stuck up on the part of importers abroad and management of the Company is striving hard to recover the same and already stopped exporting goods to them. Despite these the management is continuously pursuing for recovery and expect to realize past due debts soon.
- c) The auditors have reported the matter in the light of their audit as per international accounting Standards in view of a very difficult time where the Company is incurring losses and its equity have been eroded and matter of settlement of bank loan is under negotiation and the sponsors stand committed to pay these loans by arranging finance for the Company once settled. The management is also committed to recover from current turmoil and adverse conditions and once the improvements are observed thereafter future course of actions will be taken up and accordingly management do not see that there are no significant doubts to continue as a going concern.

6. In order to provide opportunity of personal hearing the case was fixed before the undersigned on April 4, 2016. Mr. Muhammad Anwar Kaludi appeared on behalf of respondents and reiterated the submission made in the written reply. He stated that the respondents were making efforts for recovery of the stuck up debt. The authorized representative asked about the occurrence of the trade debt and reason as why exports were not backed by letter of credit to ensure recovery. Furthermore, he was also questioned about the efforts made for their recovery. He stated that the exports were made on the basis of mutual friendship with director of Fateh Textile Mills Limited and that no suit has been filed to ensure recovery of the stuck up debt. The authorized representative could not provide reason disabling the company to facilitate auditors to carry out physical verification of the inventory.

7. Before proceeding further, it is necessary to advert to the following relevant provisions of Section 492 of the Ordinance, which states as under:



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"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 a 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).

8. Before proceeding to analyze the case in hand I deem it necessary to advert to the duties of directors. It is director's duty to keep proper book of accounts with respect to all sum of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the company and all liabilities of the company. Directors have fiduciary duty composed of an overarching duty to the corporation, which contains two component duties, a duty to protect shareholder interests from harm, and a procedural duty of fair treatment for relevant stakeholder interests.

9. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the representative during the hearing and observed the following;

- Financial Statements for the year ended June 30, 2012 and 2011 have failed to give a true and fair view of the state of affairs of the Company, due to non-verification of significant portion of its inventories of stock in trade, store and spares and loose tolls, non-provisioning of overdue exports proceeds and inappropriate use of going concern assumption.
- Furthermore, the trade debts of. Rs. 503,973 million arising from sales to foreign companies related to respondents have been stuck up. The respondents have been unable to provide justification as why these export sales were not backed by any letter of credit guaranteeing the recovery of the sale proceeds. Moreover, the respondent has not provided any evidence regarding the efforts made by them to recover the stuck amount. They have neither provided copies of the correspondence made of the recovery nor have approached any court of law for the same. The aforesaid conduct of the respondents coupled with the fact that thereafter the Company suspended its operations and failed to



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submit its financial statements for the financial year 2014 and 2015 indicates that this is not a case of mere misstatement of accounts. Accurate and reliable financial reporting is the bedrock, upon which our markets are based as false financial information shudders the investor confidence and erodes the integrity of the markets. For our capital markets to thrive, investors must be able to receive an unvarnished assessment of a company's financial condition. Financial statements must provide transparency for investors, and must not obscure the truth, even if that truth is inconvenient.

Keeping in view of the gravity of the issue, I hereby, close the SCN proceedings and direct the department to thoroughly analyze the matter and initiate prosecution of the directors under the provisions of Section 230 and 234 of the Ordinance.

Abid Hussain
Executive Director

Announced:
May 4, 2016
Islamabad