



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (Corporate Supervision Department)

In the matter of

Taha Spinning Mills Limited

Number and date of notice: CSD/ARN/20/2015-3679-80, dated March 16, 2016
Hearings held on: April 20, 2016
Present: Mr. Mushtaq Ahmed Vohra, authorized representative and Mr. Muhammad Safras, the Company Secretary

ORDER

UNDER SECTION 309 READ WITH SECTION 305 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of proceedings in the matter of show cause notice (the "SCN") dated March 16, 2016 under section under section 309 read with section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to the **Taha Spinning Mills Limited** (the "Company") and board of directors ("BOD") of the Company, (together referred to as the "respondents"). The Company was incorporated in Pakistan in 1991, as a private limited company under the Ordinance. It was subsequently converted in to a public limited company on June 16, 1991 and its shares were listed on Karachi Stock Exchange on February 1, 1994. The principle business of the Company is manufacturing and sale of yarn.

2. The brief facts leading to this case are that the Company's business has been suspended since July 2008. The Joint Registrar of Companies, Company Registration Office, Karachi, on February 3, 2016 approached this office for grant of sanction in terms of clause (b) of section 309 read with clause (c) of section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the ground that the Company has suspended its business since 2008.

3. Consequently, the SCN was issued to the respondents on March 16, 2016 on the following grounds:

- (i) The business of the Company has been suspended since the year 2008; and
- (ii) The auditor in his report to members on the annual audited financial statements for the year ended on June 30, 2015 has given adverse opinion based on his disagreement



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with the management's use of going concern assumption and has, inter alia, stated, as under:

"The financial statements of the Company have been prepared on going concern basis, despite the facts that the Company has closed down the factory in July 2008, and production activities remained suspended. The management has disposed of the land and building to pay off its major debts during the year. No further business activities have been carried out by the Company. Furthermore, the Company has not prepared any detailed business plan including profit or cash flow projection for an appropriate period subsequent to the balance sheet date.continued"

Through the SCN, the respondents were given an opportunity to appear before the competent authority on April 4, 2016 to show cause as to why a petition for winding up of the Company may not be presented by the Registrar of Companies to a competent court.

4. In response to the SCN, the respondents through letter dated March 26, 2016 requested for adjournment of hearing stating that the legal consultant of the Company was not available in the country. Another hearing in the matter was fixed on April 20, 2016 and Mr. Mushtaq Ahmed Vohra, the authorized representative along with Mr. Muhammad Sarfraz, the Company Secretary appeared before the undersigned on behalf of the respondents. They made the submissions in writing through letter dated April 20, 2016 during the hearing. A brief of their submissions with reference to the contents of the SCN is given below:

i. Facts

- a. Till March 2014, management was in the process of settlement of its old bank liabilities as its name was in the State Bank's CIB report. *(Copy of last settlement letter of National Bank of Pakistan dated 5th March, 2014 provided)*
- b. The management as part of efforts for revival of company and wrote letters October 7, 2013 to MCB Bank, Askari Bank and Habib Bank. *(Copies attached)*
- c. Management wrote letter to Sui Southern Gas Company Limited for gas connection.
- d. Management is trying its best to arrange funds for new business plan or merge the company with other prosperous company. The majority shareholders are considering changing the BOD and CEO for revival of the company.
- e. Future business plan could not be implemented due to small capital in hand and non-availability of financial assistance by banks.



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f. In case of winding up of company, the receivable amount of Rs.5,007,019 as per accounts for the half year ended 31.12.2015 will be jeopardized. It will cause loss to the company and its shareholders.

ii. Reason for business suspension since July, 2008:

- a. The company has disclosed the difficulties being faced by the company and reason for suspension of business in directors' report attached to the Accounts from 2008 to 2015.
- b. On the day of assassination of Mrs. Benazir Bhutto, mills premises were set on fire at Sheikhpura, Punjab and it suffered huge loss of about Rs.160 million. Since then company is facing liquidity crunch and financial difficulties. Recovery suit was filed by the Banks/ Financial institution against the company. Financial Institution put the name of the company and its directors in State Bank CIB report as defaulter. Financial Institutions were reluctant to renew finance facilities due to non-clearance of CIB report. Financial institution got decree during 2010 from the High Court of Sindh for recovery of their dues.
- c. That consequent to High Court decree, Assets of the company went under the control of Official Assignee, High Court of Sindh vide High Court Order dated 6.10.2010. Management kept defending the cases till 2013. Copy of High Court order attached.
- d. The management disclosed in its financial statements for the years 2011 to 2013 to Commission and its shareholders that company is facing liquidity problem and facing court cases and is in the process of selling of its fixed assets to pay off its liabilities in an orderly manners.
- e. The management had no option but to sell the fixed assets of the company and pay off its liabilities. Company got the approval of shareholders on 20-02-2013 for disposal of fixed assets in an orderly manner. Company disclosed all the facts in statement of material facts.

iii. Auditors Adverse Opinion

The management has replied to the auditor's adverse opinion in the directors' report and in note No.1.2 to the Accounts. Despite adverse opinion, the auditors have certified that the accounts for the year ended June 30, 2015 stating that proper books of accounts have been kept by the company as required by the Ordinance and the balance sheet and profit and loss



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account together with the notes thereon have been drawn up in conformity with the Ordinance and are in agreement with the books of account and are further in accordance with accounting policies consistently applied.

iv. Application of provisions of clause (c) of Section 305 of the Ordinance.

The provisions of section 305 (c) of the Ordinance are not applicable. The company was incorporated in 1991 and commenced its business within one year of its incorporation. Suspension of business was due to unexpected circumstances which the company faced as stated above. None of the provision of section 305 is applicable due to the following reasons. Reliance is also made on 1991 MLD 124. Copy attached herewith.

- a. There is no resolution for winding up of company by the shareholders.
- b. There is no default in delivering statutory report/returns to Registrar or shareholders.
- c. The company is holding its statutory meetings within time regularly.
- d. The company has its seven elected directors.
- e. The company has paid its entire debts.
- f. The company is not involved in any unlawful activity.
- g. The Company is public listed company.
- h. The shares of company are being traded at Pakistan Stock Exchange.
- i. The company have about 323 members as at 31.3.2016
- j. The company is maintaining proper books of accounts as required by the Companies Ordinance, 1984.
- k. The majority shareholders are not interested for winding of the company. They are insisting for revival of the company.
- l. The company is active and ready for business if the funds are available.
- m. None of the majority or minority shareholders has requested for winding up of company.

In view of above submission the representative requested to withdraw the SCN. Subsequently, through letter dated April 22, 2016, they sated that the matter was discussed in the board meeting in detail and it was resolved that the Commission may be given the following information:

- i. Textile industry is passing through crises. Various advertisements of All Pakistan Textile Mills Association (APTMA) in the newspaper are attached.



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- ii. Since the revival of existing textile business is very difficult, it was proposed to change the business to manufacturing of fast moving goods according to market trends. It was agreed that feasibility report for new business plan be prepared on urgent basis. It was agreed to change the object clauses of memorandum of association of the company accordingly.
 - iii. The management has also approached different investors to gauge the interest for investment in new business plan. The investors demand detailed bankable feasibility before considering the investment request.
 - iv. You will appreciate that preparation of bankable feasibility report for new business plan and change of object clauses will take at least 8 to 10 weeks which may be granted.
5. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance:

Clause (c) of section 305 of the Ordinance states that *a company may be wound up by the Court if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;*

Clause (b) of section 309 of the Ordinance states that *an application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorised by the Commission in that behalf.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 309 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

6. In order to decide the matter, it would be necessary to look at certain important facts regarding the Company. The Company has suspended its business for the past eight years and has disposed of its remaining fixed assets comprising land and building in the year 2014. Plant and machinery had already been disposed of by the Company. It clearly reflects that the Company has effectively abandoned its business. The Company has no sources of income and has only earned a nominal other income of Rs.37,665/- on small deposits with banks. The auditor in his report to members on those Accounts has given an adverse opinion with following qualification:



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"The financial statements of the Company have been prepared on going concern basis, despite the facts that the Company has closed down the factory in July 2008, and production activities remained suspended. The management has disposed of the land and building to pay off its major debts during the year. No further business activities have been carried out by the Company. Furthermore, the Company has not prepared any detailed business plan including profit or cash flow projection for an appropriate period subsequent to the balance sheet date. The foregoing conditions indicate material uncertainty which cast a significant doubt on the Company's ability to continue as a going concern.

The significance of matters discussed in the preceding paragraph, lead us to believe that the going concern assumption used in preparation of the financial statements of the Company is inappropriate: consequently, the assets and liabilities should have been stated at their net realizable and settlement amount respectively."

The Auditor has further opined that " due to the significance of the matter referred to in above paragraph, in our opinion and to the best of our information and according to the explanations given to us, the financial statements together with the notes have not been prepared in all material respect as at June 30, 2015 and of its profit, comprehensive income, its cash flows and changes in equity for the year then ended in accordance with approved accounting standards as applicable in Pakistan, and do not give the information required by the Companies Ordinance, 1984."

Below are the highlights of financial position and performance of the Company as of June 30, 2015:

Description	Rs	Description	Rs
Trade and Other Payable	78,000	Cash & Bank	4,100,202
Paid up Share Capital	40,500,000	Other Receivables	*5,481,716
Accumulated Loss	(30,754,013)	Advance Tax	217,069
		Long Term Deposits	25,000
Total	9,823,987	Total Assets	9,823,987

*Including Rs.4,000,000 due from related party.

Description	Rs
Revenues	Nil
Other Net Income	37,665
(Loss) after Tax	(3,241,359)

The Company has a meagre balance sheet footing of Rs9,823,987 and there are no fixed assets other than nominal amount of long term deposit of Rs25,000/-. Out of total other receivables of Rs.5.482 million, an amount of Rs.4.00 million is due from a related party outstanding for past many years. This in itself is a question mark as to how the Company has not been able to recover



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the aforesaid amount despite being in financial and liquidity crunch. The equity of the Company has been eroded over the years and with the current situation continuing it will turn negative in couple of years. In view of adverse opinion of the auditor on the Accounts, the information available therein cannot be considered credible. The Company has no source of income and is only incurring administrative expenses that lead to further deterioration of equity and worsening of financial position. It is also clear that despite elapse of several years since suspension of business of the Company in the year 2008, the management of the Company has not been able to formulate a viable revival plan. They have rather disposed of the Company's remaining assets comprising of land and building during the year 2014, which has diminished any possibility of revival of the Company's business. Keeping in view of the forgoing facts, it is clear that the Company seems unable to carry on as a going concern.

7. The respondents have failed to present any revival plan of the Company and there does not appear to be any viable option for revival of the Company. The management including chief executive of the Company has not made any serious efforts for Company's revival since the year 2008. In response to the subject proceeding they have just made submission regarding management's plan to change line of business to manufacturing fast moving goods. Based on their unsubstantiated submission they have requested for a further time of two months for submission of feasibility. This appears to be the effort to appease the regulatory to buy time instead of any serious intentions to revive the Company's business. If the management has been serious in the Company's revival they must have done some ground work in the past eight years when the business remained suspended. However, they have sold out all the assets of the Company, which now only remains as a shell company without any assets base and infrastructure to commence any business.

8. A Company incorporated under the Ordinance is a legal judicial person and Board of Directors is vested with the power to make decisions with respect to running of its business operations including purchase of assets and payment of liabilities through funds generated from the operations. The Ordinance does allow the Board of Directors to sell substantial assets with permission of the shareholders for any purpose whatsoever. What it does not allow however, is the de-facto winding up of a company by the directors without following the procedures laid in the ordinance. Where companies have to resort to sell the assets for settling liabilities, the



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Ordinance contains detailed provisions and keeping in view the sensitivity of the matter, requires appointment of an independent liquidator. However, the BOD of the Company, in disregard to the scheme of the Ordinance, has sold out the entire assets of the Company over the years leaving it to be a shell company.

9. The respondent have stated relied upon the case law 1991 MLD 124. It may be noted that the case law pertains to winding up filed by the creditors (bank) of the Company and is not relevant in the instant case. The respondents have given a list of reasons stating those to be the pre requisites for winding up under section 305. They have further stated that since none of those pre requisites are met, therefore, provisions of section 305 are not applicable. This plea is untenable being misconceived. The provisions of section 305 (c) and 309 (b) are clear and explicit. In case the business of a company is suspended for more than a year, it is liable to be wound up under these provisions. The law does not impose any additional pre-requisite in this regard.

10. In the current circumstances surrounding the Company, the chances of its revival are bleak. Lack of interest of the management in revival of the Company is apparent from the fact that it has failed to come up with a plan for revival despite suspension of the business for the last eight years. All the assets of the Company including land, building, plant and machinery have been sold out. Therefore, any realistic chances of revival of the Company have totally impaired.

11. For the forgoing, in exercise of the powers conferred by section 309 of the Ordinance, I hereby authorize the concerned Registrar, Company Registration Office, Karachi, to present a petition for winding up of Taha Spinning Mills Limited before the competent court.

Abid Hussain
Executive Director (CSD)

Announced:
May 11, 2016
Islamabad