

**LAHORE HIGH COURT, LAHORE
(COMMERCIAL BRANCH)**

CIVIL ORIGINAL NO. 39619-17

For Parties List
Examined 06-4-18
Copy to Section
Lahore High Court's Office

PRESENT:-

MR. JUSTICE SHAMU KARIM

Parties name & prayer are attached herewith.

Order PTO.

ejw 5.4.18

Examiner Commercial Branch

JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

C.O No.39619 of 2017

Deputy Registrar of Companies

Versus

Mukhtar Textile Mills and 8 others

JUDGMENT

Date of Hearing.	27-02-2018
PETITIONER BY:	M/s Adil Umar Bandial and Asad Hussain, Advocates.
RESPONDENTS BY:	Mr. Ruman Bilal, Advocate for SECP. Kh. Akbar Majal, Advocate for respondents.

Shahid Karim, J:- This is a petition under Section 305 and 309 of the Companies Ordinance, 1984 (the predecessor of the Companies Act, 2017) and seeks the compulsory winding up of the respondent No.1, Mukhtar Textile Mills Limited (Mukhtar Textile). Mukhtar Textile is a public limited company incorporated on 02.05.1992. Its object was to set up and operate a spinning mill for yarn manufacturing. At the time of its incorporation, the authorized share capital was PKR 150,000,000.00 divided into 15,000,000 ordinary shares of Rs.10 each with a paid up share capital PKR 14,500,000.00. Initially the business name of Mukhtar Textile was 'Friends Textile Mills (Pvt) Limited, which was changed to the current name of the respondent No.1.

2. I have heard the learned counsel for the parties.

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CONF. REGISTRAR OF COMPANIES LAHORE

3. Since the year 2006 till date, it is contended by the learned counsel for the petitioner that Mukhtar Textile has been run by the respondents which is in gross violation of the provisions of the Ordinance, 1984 as well as being inconsistent and repugnant to its objective as given in the Memorandum of Association as well as Articles of Association. The facilities of Mukhtar Textile have been leased out since the year 2011 and which arrangement continues till date. Mukhtar Textile has consistently been incurring losses and no revenues are being generated nor have any dividends been declared in favour of its shareholders. So much so that the current liabilities of Mukhtar Textile far exceed the current asset base. This trend has been in place since the year 2008. It is argued by the learned counsel for the petitioner that a decade of grossly poor performance has compelled the Securities and Exchange Commission of Pakistan (SECP) to file the instant petition for the compulsory winding up of Mukhtar Textile.

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Conv. Finance
Mukhtar Textile

4. The primary reliance of the learned counsel for the petitioner is on the Annual Report, 2017 of Mukhtar Textile and some of its salient features which depict a gloomy financial picture of Mukhtar Textile and sufficient reasonable cause for ordering its winding up. The plant of Mukhtar Textile is operating on lease from April 2013, 2011 under a lease agreement with M/s Fazal Awais

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Textile. This has been brought forth in the Directors' report to the shareholders which also mentions that the company had defaulted in repayment to its creditors because of financial constraints. It has further been mentioned that:-

"(d) The position has been explained in the note no. 4 to the financial statements. The management is making all out efforts to bring the project back in self operation as soon as possible, but this depends upon our success in arranging sufficient funds and improvement in market conditions. We disagree with the winding up petition filed by the SECP and actively pursuing it in The Lahore High Court, Lahore."

5. This statement finds mention in the Annual Reports since year 2008 consistently and without any perceptible change. The observation by the Directors that every effort was being made to bring the project back in self operation which was dependent upon the arrangement of sufficient funds and improvement in market conditions is also a common thread running through all the reports since the year 2008. In the Auditor's Report to the Members, the following observations will have an important bearing on the outcome of this petition:-

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- a) *"trade creditors amounting to Rs. 3,052,531/- included in Note 7 to the financial statements remained unconfirmed in the absence of direct balance confirmations;*
- b) *the Company as per its accounting policy has not carried out any review of the carrying amounts of its Tangible Assets, in spite of existence of indications of impairment loss, as of balance sheet date, therefore, the carrying amounts of these assets could not be compared with their recoverable amount to estimate the impairment loss, if any;*
- c) *the Company has defaulted in payment of installments of long term loan of M/S Faizalabad*

Energy Limited towards M/S National Bank of Pakistan against purchase of Land, Building and Plant and Machinery of that company. In view of the same the recovery of the advance amounting to Rs.14,057,448/- has become doubtful. However, no provision has been made in these financial statements (Refer Notes 9 and 10);

- d) *the Company has incurred a net loss of Rs.149,050/- during the year ended June 30, 2017 and as of that date, accumulated loss comes to Rs.116,721,170/- and Company's current liabilities exceeded its current assets by Rs.16,198,715/-. The SECP has filed a winding up petition under Section 309 read with section 305 of the Companies Ordinance, 1984 with the Lahore High Court, Lahore. The said factors indicate a material uncertainty which may cast significant doubt on 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;*
- e) *in our opinion, proper books of account have been kept by the Company as required by the Companies Ordinance, 1984;*
- f) *in our opinion:*
- i. *except as discussed in paragraph (b), (c) and (d) above, the balance sheet and profit and loss account together with the notes thereon have been drawn up in conformity with the Companies Ordinance, 1984, and are in agreement with the books of account and are further in accordance with accounting policies consistently applied."*

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Thus, the auditors have concluded that the Company has not carried out any review of its tangible assets in spite of existing of indications of impairment loss. Also that the company has defaulted in the payment of installments of long term loan towards its creditors and that no provision has been made in these financial statements for the recovery of the advance in this regard. Finally, the company's current liabilities exceed its current assets by Rs.16,198,715/- and that the factors delineated above indicate a material uncertainty which cast significant doubt

on the company's ability to continue as a going concern.

In respect of the going concern issue, the following observations are pertinent and are reproduced as under:-

"4. GOING CONCERN ISSUE

Due to unfavorable conditions the spinning business went into financial crises because of heavy losses. The plant was, therefore, temporarily shut down in May 2008. However, the Company has cleared all the long term liabilities and now there is no financial burden of debt servicing. The market conditions have improved substantially but the Plant and machinery require BMR and the funds are also required to meet the start up cost. We have been, therefore, approaching the Banks and financial institutions for arrangement for working capital finances for which the company now duly qualifies.

Since the Banks and Financial Institutions showed reluctance to provide advance to the textile sector, specially the spinning, we, with the approval of General meeting decided to lease out plant and machinery. Management is of the view that with expected arrangements of funds, the project will become viable in due course of time. The matter has been duly explained in all the previous reports, in spite of that the SECP felt it appropriate to file the winding up petition under Section 309 read with section 305 of the Companies Ordinance, 1984 with the Lahore High Court, Lahore.

However, the management does not agree with it and pursuing the case with the Court."

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7. It can be seen that there are serious doubts regarding the functionality of Mukhtar Textile and it has been made dependent on arrangements of funds from the creditors which is not forthcoming in the foreseeable future.

8. A letter dated 09.11.2015 addressed to the Director Corporate Supervision Department Company Law Division, SECP by Mukhtar Textile, makes an interesting reading and was in response to an order under Section 231 of the Ordinance, 1984. It was said in the letter that:-

"Reference subject Order dated 29th ultimo whereby a team of three officials has been appointed by the Commission for Inspection of Assets and entire record of the company (for the period from 2010 to 2015 i.e. 5 years) on 18th instant.

In this regard it is submitted that the company has suspended its operational activities in 2011 and laid-off entire staff in order to avoid recurring expenses which could not be met in the absence of operational activities. Entire record of the company was packed in gunny bags in haphazard manner and dumped in store and it would not be possible to arrange entire record in such short time for inspection.

Currently, the mill has been leased out to some party to avoid losses to machinery and building and we have no regular employee (except visiting accountant) who may arrange record of the company appropriately and assist the inspection team for the purpose. The notice given by you for inspection is very short. Therefore, you are requested to kindly allow us at least two month's time so that we may call back our ex-employee who is conversant with the record for arranging record in systematic manner for comfortable inspection by the inspection team."

9. The above letter has not been denied by Mukhtar Textile. It is clear from a reading of the letter above that the company has suspended its operation since year 2011 and the entire staff has been laid-off in order to avoid incurring expenditures. Also Mukhtar Textile informed SECP that the entire record of the company is packed in gunny bags in haphazard manner and dumped in a store and thus reluctance was shown by the Chief Executive of Mukhtar Textile to arrange for inspecting the record. It has further been admitted that Mukhtar Textile has no regular employee so as to assist the inspection team for the purpose of inspection.

10. Although in the reply filed on behalf of Mukhtar Textile, the allegations have been denied but no proof has

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Com. Ex-employee
Mukhtar Textile
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been adduced in support of the bald assertions that the company was commercially viable and operational currently. The respondents have not attached any audited accounts which would substantiate the stance taken in the reply as also in order to contradict the contents of the letter reproduced above which too has not been denied. In reply to paragraph 6, it has been stated that:-

"...The leasing out the facility was only to save the assets of company by not abandoning its preservation from crippling losses to keep the company saved from erosion and disintegration which was engulfing the financial disaster in the textile business where no lending agency was prepared for any rescue and the director made the best decision in benefit of the company and as a result, contrary to the assertions, made by the petitioner they are able to preserve the assets which will belie the reasons for which the instant petition is made. The whole para is misleading."

11. Thus, the leasing out of the facility has been admitted and the reason put forth is that this was done to save the assets of the company and to preserve them and in order to save them from erosion and disintegration.

12. From the facts adumbrated and a reference to the various documents produced in support of the petition by SECP, it is clear and plain that Mukhtar Textile has fallen foul of its obligations under the various provisions of the erstwhile Companies Ordinance, 1984. Its current liabilities have exceeded its current assets and this means that the substratum of the company has been lost. Also the company itself is not functional and is not operating the plant and machinery which are the assets of the company

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and which have in fact been leased out to a third party. The auditors report clearly shows that there are no foreseeable chances of the revival of the company and its viability, in turn, depends upon the availability of sufficient funds from the creditors and which too is not a possibility at the moment. Moreover, the respondents have not relied upon any document to rebut the stance taken in the petition and the various documents relied upon for seeking a compulsory winding up of Mukhtar Textile. It seems that it will be just and proper to wind up Mukhtar Textile under the circumstances.

13. In view of the above, this petition is allowed. Consequently, **Mukhtar Textile is ordered to be wound up.**

14. Mr. Haseeb Ahmed Khan, Advocate, Haseeb & Co. 407, 4th Floor, Ashrafi Heights, Main Market, Gulberg II, Lahore (0321-8454422) is appointed as Official Liquidators. The official liquidator shall forthwith start the performance of his duties and functions in relation to the respondent-company and shall continue to perform such duties and functions till the conclusion of the winding up proceedings. The security to be furnished by the official liquidator in terms of section 315(8) of the Companies Act, 2017 is hereby dispensed with. All the consequences enumerated in the Act, 2017 which follow the order of the winding up of a company shall be applicable to the instant case as well. The intimation of the winding up orders shall

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be sent to the Official Liquidator and the Registrar. The remuneration of the Official Liquidator shall be settled on the next date of hearing.

15. In terms of section 320 of the Act, 2017 there shall be made out and submitted to the official liquidator a statement as to the affairs of the company containing the particulars mentioned in the said section. The official liquidator shall, in terms of section 321 of the Act, 2017, submit a preliminary report to the Court with regard to the matters spelt out in section 321 of the Act, 2017.

16. Adjourned to 28.05.2018.


(SHAHID KARIM)
JUDGE

*
Rafiqat Ali

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Lahore High Court, Lahore

86806
Petition No.
Case No.
Date of Presentation of Application 28/5/18
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Urgent Fee 20
Registration and Seal Fee
Court Fee in Application 30
Total
Name of Copiest
Date of Receipt of Fils
Date of Completion of Copy 06-4-18

Number of Copy Supply Section
06-4-18
Article 27
Date of Issuance of Order 28

6/4/18