



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Regal Ceramics Limited

Number and date of notice:	EMD/233/589/2002/I-443-453 dated April 5, 2007
Date of hearing:	April 23, 2007, February 22, 2011, April 22, 2011, March 9, 2016, March 14, 2016, April 14, 2016, May 2, 2016 & January 25, 2016
Present:	Mr. Muhammad Asif, Director Mr. Malik Nadeem, Authorized Representative

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 dated April 5, 2007 (*the "SCN"*) under Section 309 read with Section 305 of the Companies Ordinance, 1984 (*"Ordinance"*) issued to Regal Ceramics Limited (*"Company"*) and directors of the Company (*the "Respondents"*).

2. The facts leading to this case, briefly stated, are that previously Show Cause Notice under sub-section (b) of section 309 read with section 305 of the Companies Ordinance, 1984 (*"Ordinance"*) dated July 24, 2003 (*the "SCN-I"*) was served on Company on the following grounds:

- Company has suspended its business since the year 2000 and has not been able to restart its operations. Its accumulated losses stood at Rs. 83.965 million which were increasing with each passing day;
- Company had failed to file its statutory returns beside it had failed to comply with the various mandatory requirements of the Ordinance:
 - It did not hold two consecutive annual general meetings for the year 2001 onwards;
 - Notices issued by the Commission were not replied;
 - There was no responsible management to look after the interest of the Company its shareholders, creditors and there seemed to be no hope for its revival.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

3. The directors of the Company were given several opportunities of hearing however they failed to appear before the Commission. Therefore, the Commissioner CLD authorized the Additional Registrar, CRO Lahore to file a winding-up petition in the Lahore High Court for winding up of the Company. The winding-up petition was filed and honorable Lahore High Court passed an ex-parte winding-up order by appointing Mr. Yawar Ali as the official liquidator on June 18, 2004.

The Company was aggrieved with the decision and wanted to become the party to the case. The Court reversed its earlier order dated June 18, 2004 and allowed the Company to become party to the case. Another petition was filed by the PICIC Commercial Bank for winding up of the Company due to non-payments of debts. The honorable Lahore High Court clubbed both the cases in the court of Mr. Ali Nawaz Chohan, judge of Lahore High Court. The honorable Lahore High Court decided the matter and passed a winding up order of the Company on March 28, 2005. The Order of the learned company judge was challenged before the Supreme Court of Pakistan, which was set aside and the case was remanded to the Company Judge to decide the matter keeping in view the law on the subject. The company judge of Lahore High Court in his order dated March 12, 2007 made the following highlights and directions:

"Perusal of the sanctioned letter dated October 8, 2003 clearly find mentioned that a show cause notice dated 24-07-2003 was alleged to have been issued in the name of respondent company, which was received back undelivered meaning thereby the respondent company was not in the knowledge of any proceeding before the authority. No services, as required by rule 76 of the Company Rules were effected. The show cause notice alleged to have been received back un-served has not been annexed with this petition. In view of the admission on the part of the authority that show cause notice was received back un-served. It was mandatory to get the services effected by other mode of services i.e. by publication in the newspaper. In the view of the matter, it could not be presumed that the respondent company was afforded a lawful opportunity of being heard was provided as written as the sanction letter dated October 8, 2003. Service of the show cause notice could not be ignored in the circumstances, where it attracts penal consequences. Reliance in this respect is placed on Additional Registrar of Companies SECP vs. Norrie Textile Mills Limited (2004 CLD 1109 Karachi).

The authority vested quasi-judicial authority connected with adjudication or determination of entitlements of rights of the citizen must be vigilant and conscious while exercising their power;

7th Floor, NIC Building, 63-Jinnah Avenue
Islamabad, Pakistan

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

In view of the above facts, order dated October 8, 2003 passed by the authority, whereby sanction was granted to the Registrar for filing the petition, was rendered void, ab-initio and nullity. Thus, petition for winding-up as prayed, could not be granted in view of the inherent indication herein above;

The purpose of the service of show cause notice is to bring into the notice of the respondent company, the violations of act of omission and commission, alleged to have been committed by the Company. By presenting the instant petition and by participating in the proceeding the acts and omission and commission and violation of law allegedly committed by the respondent have been communicated to, show cause notice, thus shall be deemed to have been served upon them;

The petitioner shall accordingly be required to submit and make representation to the authority Securities and Exchange Commission of Pakistan within four weeks of the announcement of this order. The respondent company shall be provided an opportunity of hearing by the authority and after considering all aspects of the case, it shall pass an appropriate order and if after considering the facts was satisfied that the circumstances warranted for filing a petition for winding-up, it shall pass necessary sanction order within six weeks after receipt of reply of show cause notice, if any, furnished by the respondent after providing full opportunity of hearing to the respondent company..."

4. Pursuant to the above said order, a Show Cause Notice dated April 5, 2007 under section 309(b) read with section 305 of the Ordinance (the "SCN-II") was issued to all directors of the Company and the Company, as the Company :

- a) Failed to hold AGMs since 2001; and
- b) Operations are suspended since 2000

5. While issuing SCN-II in terms of the directions given by the honorable Lahore High Court, the respondents were given an opportunity to appear on April 23, 2007 at SECP. Next hearing in the matter had been fixed for February 22, 2011 which was adjourned on the request of the Counsel. In the hearing scheduled for April 22, 2011, Mr. Malik Saleem, Chief Executive appeared and requested in his response that the principal assets of the Company were auctioned in June 7, 2003 through a manipulated auction and respondents had challenged the same before the honorable Lahore High Court. Mr. Justice Shaikh Azmat Saeed had reserved the judgment in the case. He requested that it would be proper in the circumstances to await the decision of the honorable Court on the same as it was likely to have significant bearing on the instant proceedings. Therefore, as advised by the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

competent authority, proceedings were adjourned till judgment be announced in the matter. The matter was taken up again by the Commission vide letter dated November 29, 2012 for furnishing the copy of the final order passed by the Honorable Lahore High Court to enable the Commission to proceed in the matter. A hearing was fixed for February 10, 2016 however the letter was returned undelivered. Hearing was again fixed for March 9, 2016 vide letter dated February 22, 2016 which also was returned undelivered from the registered office of the Company. Hearing was re-fixed for March 14, 2016 in which Mr. Muhammad Asif was represented by Mr. Shahid Aziz and other five of the respondents namely (i) Mr. Ahmed M. Hussain, (ii) Mrs. S. Ali Noor Jehan, (iii) Mr. Azizuddin Hassanali, (iv) Mr. Jahangir Ali Shamsi, and (v) Mr. M. Amin Hassanali were represented by Mr. Muhammad Nadeem and Mr. Muhammad Akram. Mr. Abdul Qayum Bhutta and Mr. Mushtaq ul Hasan Gillani advocates also appeared in the hearing separately with no power of attorney from any of the respondents. During the hearing the respondents were allowed one month time and were advised that the case be re-fixed for hearing after expiry of one month. Accordingly, the hearing was held on April 14, 2016 in which Mr. Shahid Aziz, Mr. Muhammad Nadeem and Mr. Muhammad Akram appeared and requested for adjournment. Hearing was rescheduled for May 2, 2016.

6. In the hearing held on May 2, 2016, Mr. Muhammad Asif, the NIT's nominee and Mr. Malik Saleem Ismail, Chief Executive of the Company appeared before the Executive Director (CSD). It was submitted by the Mr. Malik Saleem Ismail that the proceedings of the liquidation of the Company's assets has been challenged in the court and have been pending with the same status since the year 2011 and therefore, the matter may be held in abeyance till the court's decision. Mr. Muhammad Asif, the NIT's nominee stated that auction of the Company's assets was completed through liquidator appointed by the High Court and payment was made to the PICIC, but it was challenged by Mr. Malik Saleem Ismail. He also stated that the matter may be held in abeyance till final decision of the court. Moreover, in a previous hearing, the representatives of other directors had also submitted that since the matter was pending in the court for final decision, therefore, the instant proceedings should be held in pendency. Mr. Malik Saleem Ismail also made written submission and he stated as follows:

"... the matter of the principal assets of the Company which were fraudulently sold through a manipulated action dated 7-6-2003 by PICIC bank and an ex-director of the Company, Mr. Sikander Ali, something also referred to in the

7th Floor, NIC Building, 63-Jinnah Avenue
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SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

Show Cause Notice, is subjudice before the Lahore High Court as EFA No.1670/2014 titled "Regal Ceramics Vs PICIC etc" is pending before the Learned Lahore High Court. This appeal was filed by us praying therein, the auction of the company's assets be declared collusive as the same was conducted in a fraudulent manner with the connivance of the bank and aforesaid Sikander Ali, husband of one of the sitting directors and others. The same is pending before the Hon'able Division Bench of Lahore High Court, Lahore comprising of Mr. Justice Abid Aziz Sheikh and Mr. Justice Shahid Kareem. We therefore call upon you that the proceeding before the Executive Director (CSD), Securities and Exchange Commission of Pakistan, Islamabad may be suspended till the final order being passed by the Lahore High Court, Lahore in the instant matter. For SECP to take any action at this juncture would prejudice the interest of the Company and pending proceedings. I would also like to point out that in the present matter significant prejudice was caused to the Company precisely because SECP got the company wound up, which winding up was subsequently set aside but by then omissions on part of the Liquidator had allowed the illegal and baseless decree obtained by the PICIC bank, to attain finality and fraudulent auction to prevail. In view of the above, I thus suggest that the subjected proceedings be suspended, pending the decision of the aforementioned EFA".

7. In view of the submissions made in the hearing above held on May 2, 2016, the proceedings were pended for a period of six months and the respondents were directed to submit a fortnightly report to the Commission containing update on the proceedings of the Court and follow up made by him in this regard.

8. The respondents did not submit the fortnightly report as directed in the hearing. A letter was sent to the respondents dated May 30, 2016 to submit the required report failing which the Commission may proceed to take a decision earlier than six month period based on the available record. The letter was returned undelivered. A final hearing opportunity was fixed for January 25, 2017 vide letter dated January 12, 2017. It was duly informed therein that respondents may make arrangements to attend the hearing in person or through a representative. A video link facility was also offered to the respondents for attending the hearing.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 5 -

9. The hearing held on January 25, 2016 before the undersigned was attended on video link by Mr. Malik Naeem on behalf of (i) Mr. Ahmed M. Hussain, (ii) Mrs. S. Ali Noor Jehan, (iii) Mr. Azizuddin Hassanali, (iv) Mr. Jahangir Ali Shamsi, and (v) Mr. M. Amin Hassanali and (iv) Mr. Mehmood M. Hussain. Further, Mr. Muhammad Asif personally attended the hearing. Mr. Muhammad Asif informed that assets of the Company have been sold and possession has been handed over to the purchaser. A question was asked why not the Company be wound up. Both Mr. Malik Nadeem and Mr. Muhammad Asif endorsed the point of view that the Company should be wound up.

10. 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;

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).

11. Before proceeding further, I would like to highlight that the issue that the some of the respondents have filed a petition against the sale of assets in the Court and the case is pending for decision. In my view, it is not a tenable option to hold the winding up of the Company as said case will be decided by the Court on merit whereas the winding up of the Company rests apart from the issue put up before the Honourable Court. Further, Mr. Malik Saleem Ismail in the hearing held on May 2, 2016, while also representing the respondents namely Mr. Rahim Pervaiz Ismail and Mr. M. Amin Ismail was directed to file a fortnightly report to the Commission, which was not filed even after reminding the same. The final hearing opportunity was duly given to the respondents on January 25, 2017 which was attended by representatives of seven respondents who categorically

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SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 6 -

agreed in the hearing that the Company be wound up. Now therefore, In view of the foregoing and keeping the fact in mind that the Company has failed to hold AGMs since 2001 and that the operations of the company are also suspended since the year 2000, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Registrar, Company Registration Office, Karachi to present a petition for winding up of Regal Ceramics Limited.

Abid Hussain
Executive Director

Announced:
January 27, 2017
Islamabad