



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Shaffi Chemical Industries Limited

Number and date of notice: CSD/ARN/330/2016-20-21 dated July 11, 2016
Date of hearings: August 1, 2016, August 18, 2016, September 7, 2016, December 28, 2016, January 19, 2017, February 2, 2017 and March 20, 2017
Present: Mr. Zahoor Ahmed
"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 July 11, 2016 under Section 309 read with Section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to Shaffi Chemical Industries Limited ("Company") and directors ("respondents") of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office Peshawar, has 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 business has been suspended since 2014.

3. Show cause notice dated July 11, 2016 was served on the Company under Section 309 read with Section 305 of the Ordinance indicating the aforesaid ground to present a petition for winding up of the Company. The respondents were provided opportunities of personal hearings on August 1, 2016 and August 18, 2016 but hearings were adjourned on request of respondents. Mr. Zahoor Ahmed ("authorized representative") appeared in hearing dated September 7, 2016 and provided written submissions. A brief of the reply relevant to the contents of the SCN is given below:

- It is admitted that the Company for the time being and since quite some time is not in the position to conduct its manufacturing activities due to pending litigation with Allied Bank Limited since the year 2005 which forced the Company to become non-operational.

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
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absolutely not at any fault for the inability, for the time being, of the Company to operate as a going concern. The sponsors and directors of the Company do not wish their innocent shareholders to suffer any further and for this reason, the management of the company is seriously thinking for de-listing of the company from Pakistan Stock Exchange.

- The directors and sponsors are willing, able and have undertaken to bear all reasonable costs incurred for the de-listing of the company and payments to the shareholders. Alternatively winding up of the company will cause undue financial harm to the minority shareholders and not in the best of their interests.
- In this connection paper work / remedy for delisting of company are under process by M/s Saleem Ahsan and Company Chartered Accountants with the co-operation of auditors of the company which will be presented, discussed and its approval will be sorted by its directors and shareholders in forthcoming meeting.

4. Keeping in view of the submission of the company, it was decided to give 60 days' time for completing the process of buy back from minority shareholders. Hearings in the matter were again fixed on December 28, 2016, January 19, 2017 and February 2, 2017 but no one appeared on the dates of hearings. Finally authorized representative appeared on hearing dated March 20, 2017 on behalf of respondents and reiterated the earlier submissions made in the written reply.

5. Before discussing the facts of the case 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



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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. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company was incorporated in Pakistan on September 27, 1994, as a public limited company under the Ordinance. The shares of the Company are quoted on Pakistan Stock Exchange. Principal business of the Company is to manufacture and process of Di-Octyle-Ortho Phthalates Chemicals. As per note 1.2 to the financial statements for the year ended June 30, 2015 and 2016, the Company remained closed for the period. Management of the company has decided to go for delisting therefore all the employees are being laid off. These factors have raised uncertainties that the company may not be able to continue as a going concern. Therefore these financial statements have been prepared on the basis of estimated realisable/ settlement values of assets and liabilities respectively in addition to historical cost convention. All assets and liabilities in these financial statements have been presented in the order of liquidity

7. The comments of the authorized representative are not cogent as despite elapse of approximately three years since suspension of business of the Company, the management of the Company has not been able to buy back shares from minority shareholders through delisting of the Company from the stock exchange and further failed to formulate any viable revival plan. It is observed that the Company is considered as a non-going concern in financial years 2015 and 2016. In the current circumstances the chances of revival of the Company are bleak.

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 operation including purchase of assets and payment of liabilities through funds generated from the operations. Investors/ shareholders in a listed company had invested funds keeping in view of the stated business of the company and accordingly to evaluate its income generation capacity and successful business operations. The investment of these shareholders get stuck in a Company which closes down its core business and does not have any formal plan to recommence business.



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In such circumstances the shareholders have the right to get their monies back so that these can be invested in some other fruitful venture. For this very reason the invoked provisions of the Ordinance provide closure of business for more than one year as a basis of going to court to seek winding up of the Company.

9. From the above discussion and after careful consideration of all the facts and circumstances of the case, I am of the view that the Company is liable to be wound up as its business has been suspended since 2014. It is a settled principle of law that a company is liable to be wound up under clause (c) of section 305 of the Ordinance if it has suspended its business for a whole year furthermore there is no reasonable plan or grounds for its revival.

10. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Deputy Registrar, Company Registration Office, Peshawar to present a petition for winding up of Shaffi Chemical Industries Limited.

Abid Hussain
Executive Director

Announced:
April 4, 2017
Islamabad