



Corporate Supervision Department  
Company Law Division

SECP Before Abid Hussain – Executive Director (Corporate Supervision Department)

*In the matter of*

**Ali Asghar Textile Mills Limited**

Number and date of notice: CSD/ARN/15/2015-3644-45, dated March 15, 2016  
Hearings held on: April 4, 2016  
Present: Mr. Nadeem Elahi, CEO & Mr. Suleman Ali, Company Secretary

**ORDER**

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

This order shall dispose of the proceedings in the matter of show cause notice (the "SCN") dated March 15, 2016 under section 309 read with section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to **Ali Asghar Textile Mills Limited** (the "Company") through its board of director ("BOD") and the chief executive (together referred to as the "respondents"). The Company was incorporated in Pakistan on February 9, 1967, as a public limited company and its shares are quoted on Pakistan Stock Exchange (*previously Karachi Stock Exchange*). The principle business of the Company is manufacturing and sale of yarn.

2. The brief facts of the case are that the Company had closed its operation since September 2011, as reported under note 1.2 to the annual audited financial statements (the "Accounts") of the Company for the year ended June 30, 2015. Moreover, the auditor of the Company in his report to members on the Accounts for the year ended June 30, 2015 gave an adverse opinion on various counts including, inter alia, his disagreement on management's inappropriate use of going concern assumption in preparation of the Accounts. The Joint Registrar of Companies, Company Registration Office, Karachi, on January 28, 2016 approached the Commission 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 grounds that the Company has suspended its business since September 2011.

3. Consequently, the SCN was issued under section 309 (b) read with section 305 (c) of the Ordinance whereby an opportunity was provided to the respondents to appear before the undersigned on April 4, 2016 to show cause as to why a petition for winding up of the Company



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may not be presented by the Registrar of Companies to a competent court. On the date of hearing Mr. Nadeem Elahi, the chief executive and Mr. Suleman Ali, the company secretary, appeared before the undersigned. With reference to the contents of the SCN, they stated as under:

- The present management took over the Company from previous management in the year 1979. The management has been complying with legal requirements including filing of statutory documents and accounts.
- At present the entire spinning industry including the Company has been facing adverse circumstances. However, the management of the Company is in the middle of formulating a business plan to generate funds by disposing of the Company's assets. Shareholders of the Company with a majority of 97% have approved disposal of Company's assets.
- Around 95% of the secured creditors were paid off in the year 2011-2012.

Upon a question by the undersigned regarding buy back of shares from minority shareholders and general public, the respondents stated that the present BOD/management already have majority shareholding of around 95% in the Company. The respondents, however, failed to present any plan for revival of the Company's business. They also could not elaborate upon any other viable alternative business plan proposed by the Company's management for the Company's continuity as a going concern. They also could not come up with any substantiating evidence regarding management's commitment and efforts towards revival of the Company. Subsequently, the company secretary through letter dated April 14, 2016 stated that there was some material information that the respondents would like to share with the Commission and that information will definitely change the outlook of the Company, which is currently just a shell company. He further stated that the details would be shared with the Commission within a week, therefore, the subject proceedings may be put on hold. However, no information was shared by the respondent despite elapse of considerable time after the due date.

4. 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;*



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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).

5. Before proceeding further, it would be necessary to look at certain important facts regarding the Company. The Company has suspended its business since September 2011 and has not prepared or presented any viable plan for revival of its principle business. It has been submitted that the business could not be revived due to overall adverse circumstances surrounding the spinning industry. The Company has also failed to present any alternative business plan for revival. As on June 30, 2015, the Company has accumulated losses of Rs.201.478 million and it has incurred a loss of Rs.23.314 million during the year. The Company's current liabilities exceeded its current assets by Rs.18.223 million, its key financial ratios are adverse and it has not been able to comply with the terms of loan agreements and pay off debts on due dates. As disclosed under note 1.2 to the Accounts the Company has sold a substantial portion of its property plant and equipment. The auditor of the Company in his report has highlighted all these facts and has stated that these circumstances give rise to significant uncertainty as to the ability of the Company to continue operations as going concern in foreseeable future and, therefore, the Company may be unable to realize its assets and discharge its liabilities in the normal course of business. The auditor in his report to members on the Accounts has given an adverse opinion due to inappropriate use of going concern by the management along with the following further qualifications:

- Unconfirmed balances of 'redeemable capital' of Rs.47.6 million and 'loans' of Rs.18.77 million from First Dawood Investment Bank Ltd. and Bank of Punjab Limited, respectively. (note 19.3 & 19.6) despite applying alternate auditing procedures.
- Unconfirmed balance of advance of Rs.4.92 million to Meo Engineering (note 12)



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- Revaluation of property plant and equipment not carried out on June 30, 2015 because of which impairment test was not possible as per IAS 36 and its impact was not determinable
- Non verification of quality claim of Rs7,362,358 booked by the Company (note 14.1).
- Finance cost of Rs.2.058 not accounted for resulting in understatement of loss and accrued mark up.

The auditor while rendering the adverse opinion has stated that the Accounts do not confirm with approved accounting standards and do not give a true and fair view of the state of affairs of the Company. In view of the above, the information available in the financial statements 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. The response given by the directors in their report attached to the Accounts mainly comprises the disagreement expressed by the management with the auditors' qualification and the response does not appear to be cogent.

It is also clear that despite elapse of several years since suspension of business of the Company, the management of the Company has not been able to formulate a viable revival plan. They have rather been exploring the possibilities of disposing of the Company's assets to generate funds. The proposed disposal of assets would further diminish any possibility of revival of the Company's business. Moreover, for a going concern the funds are to be generated from the daily operation of its core business rather than selling of its operating and non-operating assets. Keeping in view of the forgoing facts, it is clear that the Company seems unable to carry on as a going concern.

6. In the current circumstances the chances of revival of the Company are bleak. This view is further strengthened by the fact that credible financial information on state of affairs of the Company is not available, as the auditor has given adverse opinion on the Accounts. Keeping in view the fact that several years have elapsed since suspension of business and operations of the Company, the condition of its plant and machinery must have been significantly deteriorated along with impairment in its value. Moreover, due to total lack of interest on the part of the management to formulate any viable revival plant so far, chances of revival of business seem unrealistic. Financial statements are the most important source of information about affairs of a Company for its shareholders and other users. They not only show the financial position and



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performance of a Company but also reflect the management's stewardship of resource entrusted to it by the shareholders. Preparation of financial statements in accordance with the applicable financial reporting framework is a very important statutory obligation of the directors and management of a company to ensure that these give a true and fair of the state of affairs of the Company. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. In this context the respondents cannot absolve themselves of their statutory duties regarding preparation of financial statements as per the law and managing the affairs in the best interest of the Company and its shareholders. The management of the Company and directors including the chief executive have failed to manage the affairs of the Company prudently and they have not discharged their responsibility to prepare financial statements as per the law and applicable financial reporting framework. 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 it has suspended its business since the year 2011.

7. 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. However, the Ordinance does not allow the Board of Directors to sell substantial assets without permission of the shareholders for any purpose whatsoever. Furthermore, where companies have to resort to sale of assets for settling liabilities, the Ordinance contains detailed provisions and keeping in view the sensitivity of the matter, requires appointment of an independent liquidator. The Ordinance does not envisage any role of the Board of Directors in the process of winding up, once it is commenced and liquidator is appointed after requisite approval of the shareholders. The use of back door channels to accomplish the corporate burial of a legal person results in erosion of investor confidence and is detrimental to the overall investment climate and the capital markets.



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8. 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 Ali Asghar Textile Mills Limited before the competent court.

Before parting with the order, I hereby direct the respondents to refrain from disposing of any assets / undertaking of the Company in view of this order whereby the concerned Registrar has been authorized to file petition for filing winding up petition against the Company before the competent court. It must be ensured by the respondents that all the assets and undertaking of the Company remain intact till the decision of the winding up petition that is to be filed in the court pursuant to this order.

**Abid Hussain**  
Executive Director (CSD)

**Announced:**  
June 6, 2016  
Islamabad