



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Crescent Jute Products Limited

Number and date of notice: CSD/ARN/282/2015-2035 dated December 28, 2016
Date of hearing: February 2, 2017
Present: Mr. Saif Ullah
Mr. Tariq Aleem
("authorized representative")

ORDER

UNDER SECTION 196 AND 160 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984

This order shall dispose of the proceeding initiated against directors and chief executive ("respondents") of Crescent Jute Products Limited (the "Company") through show cause notice (the "SCN") dated December 28, 2016 under the provisions of Section 196 & 160 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that, review of annual audited financial statements ("Accounts") for the year ended on June 30, 2015 of the Company filed with the Securities and Exchange Commission of Pakistan (the "Commission") pursuant to the provision of Section 233 of the Ordinance reveals following:

- (i) Disposal of asset has not been made within one year of the passing of the special resolution, contrary to the requirements of SRO1227/2005 read with Section 196(3) of the Ordinance. Year-wise disposal detail is as under:

S. No.	Particulars	Year of Accounts
1	Plant and machinery and other assets including Vehicle and Furniture & Fixtures	June 30, 2014
2	Building and other assets including Vehicle and Furniture & Fixtures – Receipt of advance against sale of land Rs20 million	June 30, 2015

Fresh approval from shareholders has not been obtained for disposal of assets despite lapse of the special resolution passed at the AGM held on October 31, 2011,



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(ii) Review of accounts and correspondences received revealed that some of the proceeds have been utilized for repayment of interest free loans from directors during the years 2014 and 2015 amounting to Rs.51.068 million and Rs.48.432 million respectively. Contrary to the requirements of Section 160(1)(b), the Company has omitted to disclose in the notice of the AGM direct interest of directors with regard to their loans to the Company. Instead the company has misstated that "directors have no direct or indirect interest in the above said special business that would require further disclosure, save their shareholdings in and remuneration by the Company", and

(iii) As per the board of directors meeting held on September 30, 2011, disposal proceeds were to be utilized towards repayment of bank borrowings and surplus amount of Rs.63.6 million would be left before repayment of sponsors' loan. In the section "benefits expected to accrue to the shareholders" of the AGM notice, the Company stated that the proceeds will be utilized towards repayment of borrowings so that finance cost could be minimized. Furthermore, in the section of "Future Business Plan" the Company has clearly stated that Rs60 million will be left over after taking care of all liabilities other than interest free sponsors' loan. However, contrary to the aforesaid, disposal proceeds of approximately Rs.100 million have been utilized towards repayment of *interest free* loans from CEO.

3. Provisions of the Ordinance relevant to the case are stated as under:

Sub-Section (3) of Section 196 of the Ordinance provides that-

"(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely. -

(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and

(b) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 195."

Clause (3) of the SRO1227/2005 dated December 12, 2005 issued in pursuance of section 196 (3) (a) provides that-

In case any decision to sell assets of Company under authority of a special resolution already passed, is not implemented within one year the resolution would stand lapsed.



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Section 160 (1) (b) of the Ordinance provides:

(b) *where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;*

4. The respondents, prima facie, has contravened the afore-referred provision of SRO 1227 of 2005 issued under Section 196(3) (a) and Section 160 (1) (b) of the Ordinance. Therefore, SCN was issued to the respondents under the provisions of Section 196 & 160 of the Ordinance.

5. In response to the SCN, the respondents submitted reply dated January 10, 2017. A brief of the reply relevant to the contents of the SCN is given below:

Disposal of assets within one year.

- At the time of approval from shareholders, we have informed the shareholders that restructuring plan depends on NOC from BOP and it will take around three years. On approval from shareholders, we advertised the tender for sale of assets in newspapers on November 04, 2011 and short listed the buyers.
- The Court issue NOC on October 09, 2013 and we entered into agreement/MOU for sale of Land, Machinery and Building on October 03, 2012, April 03, 2012 and September 11, 2012 respectively. Due to nature and size of transaction the payments received in installments and title and ownership was transferred on final payments. The disposal entries were made in books of accounts on finalization of transaction and amount received shown as advance received against sale of assets.
- As per approval of shareholders, we have sold assets on the following dates but disposal was recorded/will be recorded at the time of final payment.

Description of Asset	Date of advance	Date of entry
Sale of land	September 25, 2012	No disposal entry
Sale of machinery	April 3, 2012	June 2014
Sale of building scrap	July 17, 2014	June 2015

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Repayment of directors' interest free loan.

- At the time of approval, the interest free loan was 101 million (Crescent Jute Mills Limited Rs. 55 million and Directors Rs. 46 million). As committed at the time of approval that the sponsor will keep Rs. 60 million interest free loan, currently the company still has to pay Rs. 59.60 million interest free loan to directors/ sponsors.
- We have kept the shareholders informed through directors report about ongoing restructuring of the company. It is pertinent to mention that the Company took approval of the shareholders for the disposal of all assets at Rs. 345 million but the management has managed to sell these assets at Rs. 495 million.

6. Hearing in the matter was held on February 2, 2017 and the authorized representatives appeared on behalf of respondents and reiterated the earlier submissions made in the written reply and further submitted that loan repaid to directors was provided by them after the approval of sale of assets as a bridge finance to settle bank liabilities till the time proceed from sale of assets were to be realized. The authorized representatives were advised to provide evidence in this regard.

7. The Company vide letter dated February 14, 2017 submitted that the Company received Rs 196 million from director/CE) during year 2012, 2013 and 2014 (copies of cheques enclosed with letter) for security deposit deposited with Deputy Registrar (judicial) of Lahore High Court Lahore regarding issuance of NOC by the bank of Punjab and other Company liabilities. The Company still owes Rs. 59.60 million (interest free) to directors/sponsors as per financial statements for the year ended June 2016. Moreover, the Company also provided first page of agreement dated October 3, 2012 and copy of cheque dated September 25, 2012 received from Al-Rehman Developers of Rs. 20.80 million as advance for sale of land.

8. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 196 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

9. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the respondents in writing and during the hearing and observed the following:

Sale of land



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- As per Company's letter dated January 10, 2017 and February 10, 2017 land vide agreement dated October 3, 2012 was sold to Ms. Saima Yousuf of Al-Rehman Developers for Rs. 190.80 million and as per agreement advance of Rs. 20.8 million was received on September 25, 2012.
- Note 6 to the Accounts for the year ended June 30, 2013 showed advance against sale of land of Rs. 40.8 million, however, it has been observed from note 6 of Accounts for the year ended June 30, 2014 and cash flow statement that advance for sale of land was returned/refunded to the buyer.
- It has been observed from note 18.1 to the Accounts for the year ended June 30, 2015 that the Company through an agreement dated 17 July 2014 again sold same land of the Company against Rupees 220.00 Million to Mrs. Saima Yousaf. The Company has received Rupees 20.00 million as advance in this regard as shown in Note 6.2. Remaining Rupees 200.00 million will be received from the buyer in three equal installments of Rupees 66.667 million each until 24 December 2017. Proportionate freehold land will be transferred to the buyer on the clearance of each installment mentioned above.
- It has been observed that land is sold on both occasions to Ms. Saima Yousuf on softer terms on instalment through negotiation as no tender was invited. It is also noted with concern that the Company in their correspondence dated January 10, 2017 and February 10, 2017 does not indicated the cancellation of agreement dated October 3, 2012.
- Fresh approval from shareholders under Section 196 of the Ordinance has not been obtained for disposal of land in July 17, 2014 despite lapse of the special resolution passed at the AGM held on October 31, 2011.

Sale of Machinery

- The Company in its letter submitted that Machinery was sold on April 3, 2012 whereas, it has been observed from information provided by the Company vide letter February 17, 2016 that quotations from different companies were received in April, 2013 and bank statement of the Company showed first foreign receipt on July 22, 2013. Proceeds for sale of machinery of Rs. 218.764 million received from Aman Jute Fibrous Ltd from July 22, 2013 to January 6, 2014. Moreover, financial statements of the Company for the year ended June 30, 2012 and 2013 does not disclose any advance for sale of machinery.



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- As per detail of sale proceeds provided by the Company vide letter dated February 17, 2016 some machinery and vehicles of Rs. 8.8 million are sold to Mr. Muhammad Amjad and Brothers, Crescent Socks Pvt. Ltd and Crescent Steel and Allied Products Limited after receiving quotation in the financial year 2014 and furniture and fixture and vehicles of Rs. 2.541 million sold in financial year 2015.
- Fresh approval from shareholders under Section 196 of the Ordinance was not obtained for disposal of machinery and vehicles despite lapse of the special resolution passed at the AGM held on October 31, 2011.

Sale of Building Scrap

- As per information provided by the Company vide letter dated February 17, 2016 quotations for building scrap were received from Al-Rehman Developers, Wise Builders, Ali Zaib Builders, Shami Builders, Regent Builders, Adeel Builders and Mughal Builders in June and July 2014 and building scrap sold to Al-Rehman Builders in the financial year 2015 for Rs. 40 million.
- Fresh approval from shareholders under Section 196 of the Ordinance has not been obtained for disposal of building scrap despite lapse of the special resolution passed at the AGM held on October 31, 2011.

Repayment of directors interest free loan

- As per financial statements for the year ended June 30, 2016 Rs. 4.46 million is payable to sponsors and Rs. 55 million is payable to Crescent Jute Mills Limited. However, it has been noticed with concern that the Company disposed of the entire undertaking without a concrete future business plan and no restructuring plan implemented till date as mentioned in the Statement.

10. For the foregoing reasons, I have reasonable grounds to believe that the respondents sold whole undertaking without the consent of the general meeting as previous resolution stand lapsed on October 30, 2012, thereby, contravened the provisions of Section 196 of the Ordinance. I am also concerned on the manner through which these assets were disposed off and accepting the amount in installments against the disposal, spreading over a period of two and a half years. Fresh advertisement for seeking quotations for disposal of assets should have been given to fetch the best price. I am of the view that best interest of shareholders has not been kept in mind while

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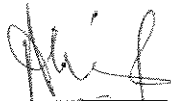
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structuring this transaction. The directors have failed to provide any evidence during the hearing and in subsequent correspondence reflecting their bona fide intent while undertaking the transactions in such an ordinary manner. The director should have been careful while structuring the transaction and should have given special attention giving preference for undertaking the sale of assets in a transparent manner and giving preference to the shareholders interest.

11. In the light of the facts given above, and in exercise of the powers conferred by the aforesaid provision of the Ordinance, I hereby impose a fine of Rs.140,000/- (Rupees one hundred and forty thousand only) in aggregate on respondents in term of Section 196 of the Ordinance. The respondents are directed to deposit the fine in the following manner:

S.#	Names of Respondents	Amounts in Rs.
1	Mr. Humayun Mazhar, Chief Executive	50,000
2	Mr. Ahmed Rashid Muhammad Hanif, Director	10,000
3	Mr. Khurram Mazhar Karim, Director	10,000
4	Mr. Qamar Nawaz Qureshi, Director	10,000
5	Mr. Saif Ullah, Director	10,000
6	Mr. Shafiq Anwar, Director	10,000
7	Mr. Syed Raza Abbas Jaffery, Director	10,000
8	Mrs. Abida Mazhar, Director	10,000
9	Mrs. Ayesha Khurram Mazhar, Director	10,000
10	Mrs. Mehreen Humayun Mazhar, Director	10,000

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.



Abid Hussain
Executive Director

Announced:
March 14, 2017
Islamabad

