



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/282/2016-2194-95 dated January 9, 2017
Date of hearings: March 9, 2017
Present: Barrister Ummar of M/s Saad Rasool Law Associates
"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 January 9, 2017 under Section 309 read with Section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to Crescent Jute Products Limited ("Company") and directors ("respondents") of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office Lahore, 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 May 2, 2011.

3. Show cause notice dated January 9, 2017 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. In response to the SCN, the authorized representative submitted reply dated January 23, 2017. A brief of the reply relevant to the contents of the SCN is given below;

- Section 305 of the Ordinance provides for a company to be wound up, if the company has not commenced its business, within a year, from the date of incorporation or suspended the operation for a whole year. However, the SCN does not use any words/terms defined in the aforementioned provision, as it, in fact, revolves around the term 'suspend'. In this regard, it is pertinent to mention that the term 'suspend' has not been defined in the entire Ordinance, therefore, following the dicta laid down by the honorable Supreme Court of Pakistan in re: Government of Pakistan v. Hashwani Hotels Limited, cited as PLD 1990 Supreme Court 68, the



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dictionary meaning of the term is to be relied upon.

- To this end, the word/term 'suspend' has been defined in Black law dictionary in the following manner;

"To interrupt; to cause to cease for a time; to postpone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption. As a form of censure or discipline, to forbid a B public officer, attorney, employee, or ecclesiastical perform from performing his duties or exercising his functions for a more or less definite interval of time. To postpone, as a judicial sentence. To cause of temporary cessation, as of work by an employee; to lay off"

According to The Encyclopaedic Law Dictionary, the meaning of 'suspend' is as under:-

"To delay; to debar from any privilege, office or emolument, for some time; to interrupt; to cause to cease for a time; to stay and delay; to hinder the proceeding or a time."

- Furthermore, it is essential to note that the honorable Lahore High Court in the case of Joint Registrar of Companies v. Sh. Fazal Rehman & Sons Ltd, reported as 2008 CLD 465 (Lahore), was faced with an application for winding up under the provisions of Section 305 read with section 309 of the Ordinance, and in its decision the following observations were categorically made:

" ... 8. The scheme and philosophy of section 305(c) of the Companies Ordinance, 1984 is that the company is ordered to be wound up, only when its substratum has gone. It has been observed in various decisions by the superior Courts, within the country and abroad, that substratum is gone, only when there is no hope of business of the company to be run on profits..."

- Moreover, the honorable Lahore High Court in the case of Sh. Fazal Rehman (supra) has also observed that:

"... Business will be deemed to be suspended, when there is no business activity at all or when there is complete cessation of business..."

- Additionally, it is important to point out that the contents of the statement under Section 160 of the Ordinance, which was presented in the Annual General Meeting dated 31st October 2011, the Company sought and obtained approval from its shareholders to, inter alia, "diversify its business activity" ..



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- In view of the foregoing, it is apparent that the business of the Company has not been suspended, as it has in fact made concerted efforts to, inter alia, revive and restructured the business of the Company. As such, SECP's issuance of the SCN has been based on incorrect application and interpretation of the law.

4. In order to provide opportunity of personal hearing; case was fixed on February 2, 2017 but the hearing was adjourned on the request of the authorized representative finally hearing was held on March 9, 2017, Barrister Ummar Ziauddin appeared on behalf of respondents and reiterated the submissions made in the written reply and further submitted that the management intended to revive the Company.

5. 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).

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 19, 1964, as a public limited company under the Companies Act, 1913 [now the Companies Ordinance, 1984]. The shares of the Company are quoted on Pakistan Stock Exchange. Principal business of the Company is manufacturing and sale of jute products including jute bags. As per note 1.1 to the financial statements for the year ended June 30, 2016 shortage of working capital and reduction in demand of finished goods resulted in the closure of Company's operations since May 2, 2011. The



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company in its annual general meeting on October 31, 2011 has decided to dispose of the property, plant and equipment of the Company. Whole of the plant and machinery and building on free hold land has been disposed of up till June 30, 2015. Moreover during the year ended June 30, 2016, the Company reported loss after taxation of Rs. 46.872 million. The Company has suffered accumulated losses of Rs. 593.439 million as on June 30, 2016 which has turned equity into negative balance of Rs. 320.037 million. Hence, the Company is not considered a going concern.

7. The comments of the authorized representative are not cogent as 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 and the Company considered as non-going concern. In the current circumstances the chances of revival of the Company are bleak. This view is further strengthened by the fact that the Company is disposing all the assets of the Company and utilizing the proceeds for repayment of loan of directors and banks.

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 evaluate its income generation capacity and successful business operations. The investment of these shareholders gets stuck in a Company which shuts down its core business and does not have any formal plans to recommence business. 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 2011. 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.



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10. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Registrar, Company Registration Office, Lahore to present a petition for winding up of Crescent Jute Products Limited.

Abid Hussain
Executive Director

Announced:
March 17, 2017
Islamabad

