



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director / Head of Department

In the matter of

Dar es Salaam Textile Mills Limited

Show Cause Notice No. & Date CSD/ARN/234/2015-205 dated July 12, 2023

Date of Hearing: September 04, 2023

Hearing Attended By: Ms. Abida Mukhtar, Chief Executive Officer

ORDER

Under Section 183 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated against Dar es Salaam Textile Mills Limited (the "Company") and its board of directors (collectively referred to as the "Respondents") through Show Cause Notice (the "SCN") dated July 12, 2023 issued under Section 183 of the Companies Act, 2017 (the "Act").

2. Facts of the case are that review of the audited accounts for the year ended June 30, 2022 (the "Accounts") revealed that the Company has sold all of its non-current assets i.e. land and buildings, having book value of Rs 341.89 million during the year without there being a viable alternate business plan duly authenticated by the board as required under the provisions of Section 183 (4) of the Act. The Securities and Exchange Commission of Pakistan (the Commission) vide letter dated March 03, 2023 sought comments from the Company.

3. The Company vide its letter dated April 08, 2023 *inter alia* stated that:

- *The company's board and management were and are actively seeking ways to revive the company. The Company was highly distressed and leveraged and the management worked tirelessly to the resolve the situation. The efforts of the management can be substantiated from EOGM held in April 2021, the management decided to change its main line of business to real estate. However, the plan was put on hold as the Company did not get approval on change of name and in November 2021, received an offer to buy the assets of Company.*
- *The offer was beneficial for all shareholders as it allowed the management to pay all debts of company with sufficient funds left to start real estate business. The deal was signed on 30th November 2021 – It took management 10 months to recover the amount and settle all of its*

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liabilities. The time taken was due to the complication of GIDC payment, it took management over 6 months to resolve the issue.

- In November 2022, the management realized that the economic environment and political uncertainty being faced in Pakistan, real estate was no longer a viable option. Therefore, the management is now evaluating various other options including but not limited to restructuring of Company, arrangement with potential investor/buyer, engage in trading business of indigenous items. Currently, we are of the view that option of trading is a viable one and the management is working on business plan/feasibility study to present to board/shareholders before the close of financial year.

4. Examination of the Company's response vide letter dated April 08, 2023 revealed that *prima facie* the Company has disposed-off all of its land and building in the absence of a viable alternate plan which is contrary to the requirements of Section 183 (4) of the Act, read with Section 183 (6) thereof.

5. In order to take cognizance of the aforesaid non-compliance, SCN dated July 12, 2023 was served on the Respondents for the contravention of Section 183 of the Act, requiring them to explain the reasons as to why action may not be taken against them for the aforesaid contravention.

6. In response to the aforementioned SCN the Company vide letter dated August 8, 2023 *inter alia* submitted the following:

- Allegation of selling assets of the company without having a viable business plan is against the facts. The Company and the Board have fully complied with the provisions of Sub-section (4) of Section 183 of the Companies Act, 2017 in its true letter and spirit.
- As reiterated via letter dated 8th April 2023; the management presented an alternate business plan before the shareholders in their meeting on 20th November 2021 which was already approved by the shareholders in Extra Ordinary General Meeting held on 15th April 2021. Your attention is invited to statement of material facts to notice of Annual General Meeting held on 20th November 2021.
- Assets were sold with the approval of the shareholders and alternate business plan was duly presented and approved by the shareholders.
- The Company and its management had witnessed positive returns from operating lease or rental activity. The management had believed that with the funds generated from sale of assets, as per plan, it would comfortably settle its obligations towards financial institutions, government debt, and creditors.



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- *With the remaining funds, it planned to reinvest them in investment properties and to earn rental income that would allow it to generate substantial income and profitability for itself and its shareholders. Therefore, the management decided to enter into real estate business and to deal in sale / lease of all kinds of immovable property, including land and building, commercial / industrial units, and to rename itself "DTM Real Estate Limited."*
- *As per the plan, the management had aimed to clear within the first two quarters all dues that included financial institutions, government debt, and market creditors. Although the management was able to clear the majority of its debt by March 2022, there was a contingent liability remaining that took time to close. The issue was settled in September 2022, and the transaction was closed.*
- *During the period from April 2021 to September 2022; economic and political uncertainties drastically changed the business environment and subsequently jeopardised the real estate plan. All of these negatively impacted the viability of the plan, as not only did the prices of properties increase sharply, but the economic halt also depressed demand for rentals. Therefore, the directors, despite their best efforts, could not implement the plan as all of these elements were absolutely out of their control.*
- *Nonetheless, the management and directors started to look at other viable business options and soon presented a business plan for starting a trading business for which approval of the shareholders was obtained in the EOGM held on June 27, 2023. It is pertinent to mention that the management has successfully completed two trading transactions of Rs.1.772 million subsequent to June 30, 2023 and is hoping to convert the Company to a profitable entity in a short span of time as a number of orders are in pipeline as envisaged in the business plan approved by the shareholders on June 26, 2023.*
- *Similarly, the first alternate business plan could not be materialized but the management successfully implemented its second business plan. Keeping in view of the above, it is humbly requested to close the proceedings without adverse order as the management has presented and implemented a viable alternate business plan to the shareholders.*
- *The Company has been put on the right track after years of efforts by the board. Not only has the Company started earning revenues, but all of its liabilities have been settled.*

7. To provide opportunity of personal representation, hearing in the matter was fixed for September 04, 2023, wherein Ms. Abida Mukhtar, Chief Executive Officer, appeared before the undersigned on behalf of the Respondents as their Authorized Representative ("Representative") and submitted that:

- *There was a delay in execution of the plan;*
- *Sale was executed however market dynamics changed;*
- *The economic activity degraded considerably thereby resulting in a halt in executing the plan;*
and
- *The option initially explored for real estate business declined resulting in ill returns.*



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8. Subsequently, the Company vide letter dated September 05, 2023 *inter alia* submitted that:
- *The management and the board, in April 2021, sought approval from its shareholders to change its main line of business to leasing / warehousing property. The logic was that the company had seen beneficial returns in rental and leasing and the management felt that it would be a good decision to convert its main business.*
 - *The Company was a highly leveraged entity – approx. 570 million in debt and there was immense pressure from the creditors to settle the debt. Therefore, as part of the business plan, the management sought approval to dispose off its freehold land and building and to reinvest the money in different investments that yield a higher return for the Company.*
 - *The management had estimated being able to invest around 110 million in two different properties - the Sheikhupura / Muridke properties were cheaper and would provide ample space to rent out and earn money, while Multan Road properties would be purchased for the purpose of increase in value rather than rental. In addition to this, the management would keep approx. 40 million in in short term investments.*
 - *As explained that the transaction took place on November 30th 2021 but the company received total receipts by 30th September 2022. In the period of over 10 months, the economic and political scenarios had changed drastically in the country as well as globally.*
 - *Please note, the main cause of the delay in closing the transaction was primarily due to the contingent liability. Although the buyer had initially agreed to keep the funds in escrow account, we were told post transaction – approx. May / June 2022, that their management was not comfortable to release remaining funds without payment of the contingent liabilities. The management of DSML tried its best to comfort the buyer, but the buyer did not change its stance. Therefore, to avoid further delay and to close a stalemate, the management decided to pay the contingent liability approx. amount of PKR 32 million to close the transaction.*
 - *Both the options in Muridke and Sheikhupura no longer seemed viable as the property prices had substantially increased. When the management included the cost of purchasing, cost of installing electricity and construction costs, the numbers didn't make sense. The prices of property on Multan Road had also increased but the rate per square foot remained really low – approx. PKR 20.*
 - *Moreover, the potential customers, the management had shortlisted to provide warehousing service, informed them that due to the economic and political uncertainty in the country, they were not looking to expand their set ups.*
 - *The management felt that it was no longer viable to invest in such a turbulent economic and political environment. Please note that the management was also looking at the increasing KIBOR rate and by September 2022, KIBOR was at 15.5 percent. The company was earning more money by simply keeping the funds in the bank account. Therefore, it did not make any sense to go ahead*



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with the prior business plan and the management decided to look into other feasible business options.

- It is a normal course of business where the success of every project, initiated by the entrepreneur, cannot be guaranteed. This does not mean that the management sold all the assets of the company and now would lead towards the closure of the business and /or the winding up of the company. Rather, the management would like the apex regulator to observe that the management has worked diligently to ensure that the company's revival and profitability. Not only did we clear debt of approx. 570 million rupees, the management saved money by negotiating with all creditors so it could ensure the continuity of the company and preserve the rights of shareholders, especially minority shareholders.*
- Lastly, on 27th June 2023, the management, via an EOGM, sought approval to change its main business to trading business. The management had observed substantial gains in trading business and was exploring options to trade in food and other items. From July 2023, the management completed three transactions and is building orders for its pipeline. In addition to that, the management recently entered into an agreement with TPL life, exploring the possibility of a potential merger.*
- Therefore, as clearly illustrated that, the original plan could not be implemented due to unexpected economic and political uncertainty, however, the management sought approval and implemented a fresh business plan of trading business and is also pursuing a potential merger opportunity. Therefore, it has ensured a clear and positive path forward and there is no chance that the company will go towards a closure or winding up.*
- Please note that the Company is now on the right track after years of efforts by the board. Not only has the Company started earning revenues, but all of its liabilities have been settled. Very few companies can make that claim, and the board is very proud of its team and thankful to all its partners, i.e., from advisors to regulators. Any adverse order at this stage may hamper the reputation of the board, and the new business may suffer losses at the take-off stage.*

9. Furthermore, the Company vide its letter dated September 15, 2023 also shared the notice dated March 17, 2021 regarding the board of directors' meeting, attendance sheet and minutes of the aforementioned meeting held on March 24, 2021, considering the approval of the alternate business plan. The same was then presented before the EOGM held on April 15, 2021 followed by its representation in the statement of material facts to the notice of annual general meeting held on November 20, 2021 for getting shareholders' approval as well.

10. Relevant legal provisions are reproduced as under:

183. Powers of board. – (1) “ ...

(3) *The board of a company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely. –*



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(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

Explanation. – For the purposes of this clause-

(i) —undertaking shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited financial statements of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year;

(ii) the expression —sizeable part in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year;”

(4) Nothing contained in sub-section (3) shall entitle a listed company to sell or otherwise dispose of the undertaking, which results in or may lead to closure of business operation or winding up of the company, without there being a viable alternate business plan duly authenticated by the board.

(6) Any contravention or default n complying with requirement of this section shall be an offence liable to a penalty of level 2 of the standard scale and shall individually and severally liable for losses of damages arising out of such action.”

11. I have gone through the facts of the case, and considered the written submissions made through various letters by the Respondents/Representative and the arguments made during the hearing, in light of the aforesaid legal provisions and the record placed before me and state that:

i. Board of Directors Meeting – March 24, 2021

Prior to the disposal of the assets, the Board of Directors, in their meeting held on March 24, 2021 had approved a new business plan of leasing/renting. The management and the CEO considered selling the land and building to pay off its debts and to allow the Company to earn rental income coupled with appreciation in its asset’s value. The CEO presented the new business plan with financial projections for board’s approval.

ii. Extraordinary General Meeting – April 15, 2021

The management then sought approval from its shareholders to change its main line of business to leasing/warehousing in order to reap beneficial returns in rental and leasing business.

iii. Annual General Meeting – November 20, 2021

Subsequently in the AGM held on November 20, 2021, the management presented an alternate business plan before the shareholders. Accordingly, the assets were sold with



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the approval of the shareholders primarily aimed to initially pay-off its debts giving way for the company to implement its alternate business plan of investing in leasing and rental activity.

iv. Due Diligence and Feasibility

The statement of material facts related to the special business to be transacted at the AGM held on November 20, 2021 mentions that the directors of the company had carried out necessary due diligence prior to making the decision regarding disposal of land and building and to implement the alternate business plan.

v. Viability of the Alternate Business Plan

The documents and information shared by the Respondents/Representative reflects that as per the initial plan, numerous investment options were explored, however, there were initially inordinate delays followed by a failure in the implementation thereof. The Company's ill-financial health as also corroborated from the auditor's adverse opinion on the financial statements for the year ended June 30, 2022, emphasizing on the "Going Concern" status of the Company. Although, the Company managed to lower down its gearing ratio primarily due to the substantial decline in its borrowings, both in long term and short term through generation of funds from the sale of its assets, however, despite all the efforts, the board had failed to implement the said plan, questioning its viability, which is in essence to the provisions of Section 183 (4) of the Act.

vi. Implementation of alternate business plan

Moving on, the board then decided to consider another line of business of "trading" and accordingly obtained the approval from the shareholders in the EOGM held on June 27, 2023, thereby, implementing the alternate business plan as approved subsequent to the issuance of the SCN. Based on the aforementioned, the board's initial plan did not materialize as initially devised thereby causing delays in the implementation which was imperative in reviving the Company. The success of the initial alternate business plan would have asserted its viability, being imperative to compliance of Section 183 (4) of the Act.

12. Finally, to sum it up, the failure in implementing the initial alternate business plan indicates that the plan was not viable which was of essence in terms of the provisions of Section 183 (4) of the Act. The same has been substantiated by the auditor's adverse opinion on the financial statements for the year ended June 30, 2022, questioning management's ability in implementing the business plan which resulted in a significant doubt on Company's going concern status.



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13. Keeping in view the above, it is stated that the contravention of the provisions of Section 183 (4) of the Act, at the relevant point of time, has been established. The Respondents are, therefore, liable for penalty under Section 183 (6) of the Act. In view of foregoing, I hereby impose penalty of Rs. 100,000/- (Rupees Hundred Thousand only) on the Company and Warn the remaining Respondents.

14. The Company is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

15. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondents in respect of any default, omission or violation thereof.

(Shahzad Afzal Khan)

Director/ HOD

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Announced:

Dated: October 16, 2023

Islamabad