



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Data Textiles Limited

Number and date of notice: EMD/233/106/2002-1-7 dated July 1, 2014
Date of hearings: May 19, 2016 and June 1, 2016
Present: No one appeared

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 1, 2014 under Section 309 read with Section 305 of the Companies Ordinance, 1984 ("Ordinance") issued to Data Textiles Limited ("Company") and directors ("respondents") of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office, 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 had closed its business since 2008 and that the management of the Company has no intention to resume production. The Company has disposed of its entire land and building in the year 2012 and plant and machinery earlier in 2008.

3. Show cause notice dated July 1, 2014 was served on the Company under Section 309 of the Ordinance indicating the aforesaid ground to present a petition for winding up of the Company. The respondents vide letter dated July 16, 2014 requested extension in time for submission of reply till August 15, 2014, which was duly granted by the Commission, however, the respondents failed to submit their response to the SCN. In order to provide opportunity of personal hearing; case was fixed on May 19, 2016 but no one appeared in the hearing. Another hearing opportunity was provided on June 1, 2016. The hearing notice clearly mentioned a final opportunity and failure to appear will result issuance of an ex parte order. However, the respondents once again failed to appear in the hearing.

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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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 was incorporated on March 20, 1988 as a public limited company. The objective for which the Company was established *inter alia* is manufacturing and sale of yarn. The shares of the Company were quoted on Pakistan Stock Exchange ("PSX") but trading of its shares were suspended on August 1, 2012 for non-holding of Annual General Meetings ("AGM") for two or more years as required under clause 5.11.1.(b) of PSX Regulations and failed to fulfill the requirements of clause 5.11.1.(e) of PSX Regulations i.e. payment of outstanding Annual Listing Fee. The Company has disposed of its entire land and building in the year 2012, plant and machinery earlier in 2008, and its operations are suspended since year 2008. The auditor of the Company in their report to the shareholders for the year ended June 30, 2008, 2009, 2010, 2011, 2012 and 2013 respectively have given disclaimer of opinion stating that they do not express an opinion on the financial statements on the grounds of non-production of accounting and statutory records and inappropriateness of going concern assumption for the aforementioned years. The Company failed to hold AGM for the financial year 2014 and 2015.

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, since the management has failed to hold AGMs and publish and circulate audited accounts. Moreover non-response to all sorts of communication from the Commission is indicative of total lack of interest and disregard of the law. 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 performance of a Company but also



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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.

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

8. From the above discussion and after careful consideration of all the facts and circumstances of the case, it is evident that the company is non-operation and in fact it has lost its ability to resume operations due to sale of its assets. The shareholders are being kept in the dark about the current state of affairs of the company since AGMs are not being held and audited accounts are being published and circulated amongst them The provisions invoked in the SCN



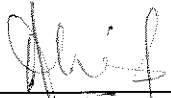
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provide these very basis for initiation of winding up. It is a settled principle of law that a company is liable to be wound up under clause (b) and (c) of section 305 of the Ordinance if default is made in delivering the statutory report to the registrar or any two consecutive annual general meetings and if it has suspended its business for a whole year, furthermore, the substratum of the Company has been lost, as the Company has admittedly disposed of its entire undertaking including land, building, plant and machinery and there is no reasonable plan or grounds for its revival.

9. 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 Data Textiles Limited.



Abid Hussain
Executive Director

Announced:
June 10, 2016
Islamabad