



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Hamid Textile Mills Limited

Number and date of SCN: No. CSD/ARN/255/2020-198 dated March 15, 2021

Dates of hearing: September 01, 2021; November 17, 2021; December 01, 2021

Present: Mr. Muhammad Aslam Awan, FCA (Awan & Co., Chartered Accountants)

ORDER

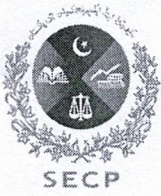
Under Sections 217 of the Companies Act, 2017 read with Sections 219 and 479 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice dated March 15, 2021 (SCN) issued under Section 217 of the Companies Act, 2017 (the Act) read with Section 219 and 479 thereof to Hamid Textile Mills Limited (the Company) and its directors hereinafter collectively referred to as the **Respondents**.

S.No.	Directors
1.	Mrs. Khushbu Ammad, Chairman
2.	Mr. Dilshad Ali, Chief Executive
3.	Mr. Khawar Almas Khawaja, Director
4.	Mrs. Nighat Khawar, Director
5.	Mr. Muhammad Alamgir, Director
6.	Mr. Abid Hussain, Director
7.	Mr. Zeeshan Ali Qamar, Director
8.	Hamid Textile Mills Limited through Chief Executive

2. On examination of the financial statements of the Company for the year ended June 30, 2020 (the 2020 Accounts), it was transpired that security deposits amounting to Rs. 9.50 million was payable to United Textile. The Company under note 16.1 to the 2020 Accounts discloses the following:

"This represents security deposit received from United Textile to secure material, labor and FOH may incur on conversion like cotton to yarn and yarn to fabric. This security deposit is adjustable against overdue invoices. However there are no such adjustments during the year. Company has utilized (as per agreement) this security deposit to pay off its utility bills."



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

3. The Securities and Exchange Commission of Pakistan (the Commission) vide letter dated November 13, 2020 sought agreement executed with the United Textile related to the subject security deposit. The Company vide letter dated November 23, 2020 provided the said agreement. The examination of the agreement transpired that there was no clause authorizing the Company to utilize security deposit to pay off its utility bills or allows utilization in any other way unless in case of termination of the agreement.

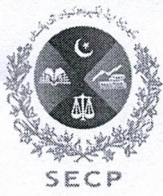
4. In view of the above, SCN was served on the Respondents requiring them to provide justification for utilizing money received as security deposit in contravention of requirements of Section 217 of the Act. In response to the SCN, the Company vide letter dated May 24, 2021 stated as under (relevant extract quoted):

"We take this opportunity to submit that company has entered into an conversion agreement with the "M/S UNITED TEXTILES" which is being the customer of the company who sent its raw material for conversion purposes and the company charge its conversion charges which is recorded as Conversion income of the company.

The Company to ensure the recovery of conversion income has received security from the customer which in case of non-collection of conversion income; is either adjustable against the conversion income invoice charged to the customer or is to be refunded at the time of expiry of agreement with the Customer.

In this respect, your office observation that the securities and deposits shall be kept in special account maintained by a bank is not relevant because the substance and nature of transaction of agreement entered with the M/S UNITED TEXTILE is different which did not comes into the purview of Section 217 of the Companies Act, 2017 due to the following reasons:

- 1. As per the agreement executed with M/S UNITED TEXTILE (here-in-referred as "Customer") and the Customer is giving its own raw material for conversion into finished product i.e. Yarn Produced and the company is incurring the conversion cost i.e. Power, Labor and store and spares etc. to produce the finish product which is to be recovered from the customer by raising invoice for conversion income. The company would be incurring expenses for production for the purpose of the conversion of raw material owned by the Customer, and therefore, the utilization of the security received to incur the expenses for customer purpose is not restricted by the law and therefore, the security deposit received from the customer is only for the purpose to make sure that the customer shall pay the invoice raised on timely manner as the company would have already incurred on the processing charges such as utility bill, labor charges and other directly attributable cost of production being recoverable from the customer. So, the security deposit nature is directly linked with cost of production, the company is going to incur from its own sources for the production purposes and the clause 10 of the said agreement also stipulates that in case of nonpayment against the conversion invoice -by the customer, the security deposit shall be adjusted automatically and only balance is to be refunded (if any).*
- 2. Exclusion given by Section 217 of the Companies Act, 2017*
Further, it is submitted that sub-section (3) of the Section 217 of the Companies Act, 2017 itself has given exclusion that this section not apply where the money received is



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

of an advance for goods to be delivered or sold and in our case, the company has received security from the customer just to secure the expenses incurred on behalf of the customer which are practically incurred for the purpose of economic activity undertaken on behalf of the customer and is evident from the clause 10 of the said agreement which stipulates that in case of nonpayment against the conversion invoice by the customer, the security deposit shall be adjusted automatically and only balance is to be refunded (if any).

In the light of the above, we would like to submit that nature and substance of transaction with the customer as per agreement in particular is different which is covered in the exclusions as the security is either adjustable against receivable from customer or refundable at termination of the agreement subject to adjustment of all the receivable in term of this agreement on account of conversion charges charged to the customer. So the security received from the customer is totally linked with processing expenditures being incurred by the company to produce the finish product of the customer and therefore, the exclusion given by the law is equally applicable."

5. To provide opportunity of personal representation to the Respondents, hearing in the matter was fixed for September 01, 2021 and November 17, 2021 but no one appeared on the date of hearing. Another hearing was fixed for December 01, 2021. On the date of hearing Mr. Muhammad Aslam Awan appeared on the date of hearing as their Authorized Representative **(the Representative)** and submitted the following argument:

- (i) Spinning section of the Company was given to United Textile by entering into agreement where only administrative staff of the Company was being used;
- (ii) The purpose of security deposit was to adjust in case of default by United Textile;
- (iii) Practically the agreement with United Textile will be concluded this month or next month.

6. The Company vide letter dated December 03, 2021 submitted that (relevant extract quoted):

"A-BRIEF FACTS OF THE CASE:

- *It is submitted that present management took over the management in 2008 by executing by tripartite agreement with ex-sponsors/promoters, NBP and present management. After taken over by the present management, they have made best efforts to keep the both units operative despite the overall dismal performance of the textile sector in last decade.*
- *As the company was facing liquidity crunch during the last decade with all the efforts to achieve settlement with the NBP for repayment which could not achieved and due to non-settlement of endless litigation with NBP, the company was not able to resolve the issues with bank and the company sole reliance remains on the directors, sponsors contribution to meet the working capital requirement.*
- *Due to facing liquidity crunch, the company has adopted alternate approach to keep the both units operative despite facing all odds by the textile sector i.e self-operation for weaving unit and operation of spinning section on conversion basis for maximum capacity utilization. In this way, the company able to maintain its sustainable productivity which is evident from the company financial results since 2016 and the company sales growth is witnessed as under:-*

A'



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN


Adjudication Department-I Adjudication Division

Description	2021	2020	2019	2018	2017	2016
Sales	313.98	259.44	218.66	163.850	171.84	90.10

- That management continuously contributed funds in shape of working capital to keep alive the company in the prevailing economic scenario with all odd during the last decades such as law and order situation in Pakistan, Load shedding, economic recession and textile sector dismal performance in last decades.

B- Submission on Issue Confronted:

- The management in August 2019 entered into an agreement with United Textile for allocation of spinning section on conversion basis (Copy has already been provided) and as per terms of this agreement, the United Textile agree to give Rs. 9.5 million as security refundable which is held as security to secure the conversion expenses incurred on behalf of the United Textile just to avoid any default in payment of the conversion bill argued to the customer as per agreement. However, the agreement is silent on use of security deposit but in general terms, the security received is utilized to meet the working capital of the company particularly spinning section.
- As discussed herein above, the facts pertaining to the working model of the company as well as the financial constraint faced by the company, the security refundable received from the United Textile was utilized to maximize the productivity of the company which resulted in growth of revenue from operation i.e Rs. 163.850 million in 2018 to Rs. 313.98 million 2021.
- Although, the company did not place the security received from the United Textile in a separate bank account as prescribed, but the company made its best use the funds received as security to achieve optimum productivity to generate maximum benefit for the company and if these funds would have been placed in the separate bank account, the company's revenue generated may not be achieved as disclosed in the financial results.
- As for as the agreement with United Textile is concern, the term stand expired on 31st July, 2021 and with mutual consent, the spinning section is still continued working in accordance with the terms of this agreement and it is expected that this agreement will be closed within this quarter and the security received will be refunded to the United Textile after settlement of any liability accrued till the performance of this agreement.
- That the management pledge that as and when the security refundable become due payable and in case, company faces problem in repayment of the security, the management will contribute funds to repayment for amicable settlement with the United Textile in accordance to achieve the final settlement with the party.

In the light of the above submission, we hereby request that the company has utilized the funds received as security from the party to generate and maximize productivity of the company which is evident from the revenue growth reported at 91.63% as compared with financial year 2018 i.e. prior to the agreement entered with the United Textile, we hereby request that kindly accept the submission made hereof on behalf of the company and its management and condone the default of the prescribed condition by withdrawing the show cause notice to dispense with the principle of natural justice and oblige." 



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

7. Relevant legal provisions are reproduced as under:

Section 217 of the Act:

“217. Securities and deposits. -

- (1) Save as provided in section 84, no company or any of its officers or agents shall receive or utilize any money received as security or deposit, except in accordance with a contract in writing.*
- (2) The money so received shall be kept in a special account maintained by a company with a scheduled bank.*
- (3) This section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing.”*

Section 219 of the Act:

219. Penalty for contravention of section 217 or 218.—Any contravention or default in complying with requirements of sections 217 or 218 shall be an offence liable to a penalty of level 1 on the standard scale and shall also be liable to pay the loss suffered by the depositor of security or the employee, on account of such contravention.”

8. I have gone through the facts of the case, written submissions and arguments made by the Representative during the hearing proceedings and state that any money received as security or deposit cannot be utilized except in accordance with a contract in writing. The Company has acknowledged that the security deposited by United Textile amounting to Rs. 9.50 million as at June 30, 2020 was utilized by the Company and agreements with United Textile does not explicitly allows utilization unless in case of termination of the said agreement. Taking cognizance of the submissions of the Company and after careful consideration of the facts of the case, I am of the view that the Respondents have contravened requirements of Section 217(1) of the Act and are liable for penalty under Section 219 of the Act. Therefore, I hereby impose penalty of Rs. 25,000 (Rupees Twenty-five thousand only) on the Company. Further, Respondent directors are warned to ensure compliance of law in future.

9. The aforesaid fine 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 of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under law including Section 485 of the Companies Act, 2017 will be initiated for recovery of the same as arrears of land revenue.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

10. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

(Amir M. Khan Afridi)
HOD - Adj. Department-I

Announced:

Dated: January 18, 2022

Islamabad