



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Haydari Construction Company Limited

Number and date of notice: CSD/ARN/326/2015-4619-20 dated June 17, 2016
Date of hearing: September 26, 2016.

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 June 17, 2016 (*the "SCN"*) under Section 309 read with Section 305 of the Companies Ordinance, 1984 (*"Ordinance"*) issued to Haydari Construction Company Limited (*"Company"*) and directors of the Company (*the "Respondents"*).

2. The facts leading to this case, briefly stated, are that the Company Registration Office, Karachi (*the "CRO"*) 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 has suspended its business since 1986.

3. SCN dated October 22, 2015 was served on the Company and its directors, under Section 309 of the Ordinance indicating the aforesaid ground to present a petition for winding up of the Company. In order to provide opportunity of personal hearing; case was fixed on June 30, 2016. The respondents sought adjournment of the hearing and were granted further opportunities of hearing on July 20, 2016; August 18, 2016; September 8, 2016, and September 26, 2016. However, no one appeared on behalf of the respondents. Finally, the Chief Executive Officer submitted vide his letter dated September 20, 2016 that;

"We refer to the letter dated September 8, 2016 on the subject of show cause notice and would wish to confirm that we have no objection to the Company being wound up as stated in your subject show cause notice.



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The Company's business of construction has been suspended for lack of suitable opportunities, capital funds required for continuing such business and change of risk profile in the business during the period post-1986 when the business was suspended. Since revival of the business is not feasible or expected, we have no valid basis to object to the SECP's proposal for winding up of the Company and therefore the matter may be decided by SECP in the interest of equity and justice".

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;

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 August 9, 1946 as a public limited company in Bombay, and later on transferred to the province of Sindh and registered itself under the Ordinance. The principle business of the Company is to carry out all types of construction and contracting business. The operations of the company were suspended since 1986.

The statutory auditor of the Company i.e. Tanzeem and Company Chartered Accountants, has given a modified opinion in its audit report to the members on the annual audited financial statements for the year ended on June 30, 2015 (*prepared on realization basis*). The auditor expressed qualifications regarding non-verification of title of 'plant and machinery' and unverified balances of receivables, mobilization advance and unclaimed dividends. Moreover, the auditor has also added following emphasis of matter paragraph in his report:

Without qualifying our opinion, we draw attention to note no 1 to the financial statements.

The financial statements for the year ended June 30, 2015 have been prepared on a realization



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basis as the company has been inoperative since long and has accumulated losses of Rs.41.1 million as at June 30, 2015, eroding its equity by the amount of Rs.30.34 Million.

Further the management of the company has no future plans to revive the operating activities of the company. All these and other factors have rendered the company as no more a going concern and therefore it may be unable to realize its assets and discharge its liabilities in the ordinary course of business.

6. It is also clear that despite lapse of several years since business of the Company is suspended, the management of the Company has not been able to formulate a viable revival plan. For a going concern, funds are to be generated from the daily operations of its core business. In the current circumstances the chances of revival of the Company are bleak. This view is further endorsed by the Chief Executive Officer who stated that revival of the Company is not possible due to lack of suitable opportunities. The Chief Executive Officer further admitted that they have no valid basis to object to the winding up proposal, as revival of the business is not feasible or expected.

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. 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.



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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 1986 and is unable to revive its operations so as to make the company a going concern. 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.

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, Karachi to present a petition for winding up of Haydari Construction Company Limited.

Abid Hussain
Executive Director

Announced:
October 19, 2016
Islamabad