



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Husein Industries Limited

Number and date of notice: CSD/ARN/87/2015-1792-1798 dated December 9, 2016
Date of hearing: February 22, 2017
Present: Mr. Khurram Jah
Mr Aziz Jamal
("authorized representative")

ORDER

UNDER SECTION 196 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceeding initiated against directors and chief executive ("respondents") of Husein Industries Limited (the "Company") through show cause notice (the "SCN") dated December 9, 2016 under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that, review of annual audited financial statements ("Accounts") for the year ended on June 30, 2014 of the Company revealed that Company has disposed of a total of 7 of spinning units of the Company consisting of 28,512 spindles during the year. Disposal of these assets is considered as sizeable portion of assets during the year due to following reason;

(i)

	Cost of asset disposed	Cost of total plant and machinery	Percentage
Cost	207 million	747 million	27.7%

(ii) Number of spindles of the Company reduced from 50,808 to 22,296.

3. Sub-Section (3) of Section 196 of the Ordinance provides that-

"(3) The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, do any of the following things, namely. -

(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

(b) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 195."



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4. The respondents, prima facie, has contravened the afore-referred provision of the Ordinance by disposing sizeable part of assets without the consent of the general meeting. Therefore, SCN was issued to the respondents under the provisions of Section 196 of the Ordinance. The respondents failed to reply the SCN.

5. Hearing in the matter was held on February 22, 2017 and the authorized representatives Mr. Khurram Jah and Mr. Aziz Jamal appeared on behalf of respondents and submitted that assets were sold due to restructuring agreement with the bank, authorized representatives were advised to provide evidence in this regard. The Company submitted following reply vide letter dated February 25, 2017;

- The restructuring agreement was signed with the bank and the same was fully disclosed in the annual accounts for the financial year 2011 and 2012, the approval of the same was sought from the members in the annual general meeting ("AGM") held on October 6, 2012 and January 10, 2014 prior to its sale.
- There was a provision in the restructuring agreement that if the management will not sell various assets within a timeframe, then the bank will be at a liberty to sell the same to anyone. Since even the bank could not find a ready buyer and could not resist the pressure from State Bank of Pakistan, decided to buy property located at LF-32 & 33 in Landhi Industry Area without the plant and machinery. This fact was fully disclosed in the annual accounts for the year 2013 and the same was duly approved by the members in their AGM held on April 30, 2015.
- Since the bank was not willing to buy the machinery, we had no alternative but to dispose off the machinery as the bank wanted the possession of the land and building of property located at LF-32 & LF-33.
- Since the machinery was hypothecated with the bank and upon their consent we advertise for the sale of machinery in the news papers, clipping was enclosed with the letter. As we were not able to get suitable prices, advertisements were made for more than one time, after which we received the bids from various parties and the machinery was sold to highest bidders.
- The restructuring agreement with the banking company was made on May 23, 2011 which was duly approved by the shareholders in the AGM held on October 6, 2012 and subsequently on January 10, 2014 prior to its sale. The machinery consisting of spinning



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units (28,512 spindles) was disposed of during the year 2013-2014. The cost of plant and machinery was Rs. 952 million and not Rs. 747 million as mentioned in SCN. The sale of machinery work out to 21.7% and not 27.7% , moreover the ratio work out to 16.3% on the basis of total fixed assets.

6. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 196 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the respondents in writing and during the hearing and observed that the company has not provided any evidence of shareholder approval of sale of 28,512 spindles, therefore, I have reasonable grounds to believe that the respondents sold sizeable part of assets without the authority of general meeting in contravention to Section 196 of the Ordinance. However it has been observed that machinery was sold due to under taking given to Habib Metropolitan Bank Limited and this information was disclosed in the relevant financial statements, moreover as per Company's letter dated October 10, 2016 the machinery sold was in scrap condition which was purchased 30-40 years ago and has written down value of Rs. 23.349 million. Furthermore, as per financial statements for the financial year 2014 the machinery was sold for Rs. 27.417 million through negotiation, more than it's written down value. Therefore, I am taking a lenient view and the case is hereby disposed of with stern warning to the respondent to be careful in future regarding compliance with applicable accounting standards and legal framework.

Abid Hussain
Executive Director

Announced:
June 5, 2017
Islamabad

