



Before Amina Aziz – Director (CSD)

In the matter of

J. A. Textile Mills Limited

Number and date of SCN: CSD/ARN/315/2016-4385-91, dated May 19, 2016

Date of hearings: July 19, 2016
Present: Mr. Ajmal Shahab, Company Secretary

ORDER

**UNDER SECTION 160 AND 164 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings against the following directors including the chief executive (the “respondents”) of **J. A. Textile Mills Limited** (the “Company”):

1. Mr. Imran Zahid, Chief Executive
2. Mr. Zahid Anwar, Director
3. Ch. Rukhsana Begum, Director
4. Mr. Quratul-Ain-Zahid, Director
5. Mr. Muhammad Yousaf, Director
6. Mr. Muhammad Ali, Director
7. Mr. Muhammad Anwar-ul-Haq, Director

2. The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated May 19, 2016 under section 160 and 164 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

3. The facts leading to this case are that it has been revealed from minutes of Annual General Meeting held on October 31, 2015 (“AGM”) of the Company that the shareholders passed following resolution in the AGM;

“Resolved that cotton purchased from Asim Textile Mills Limited (related party) hereby discussed, considered and approved.”



4. It has been observed that the notice of the said AGM neither stated the aforesaid business nor complied with requirements of Section 160 (1)(b) of the Ordinance regarding the statement annexed to the notice of AGM setting out all material facts concerning such business and also failed to send to the members copy of draft resolution with the notice of the AGM as required by Section 164(1) of the Ordinance. Consequently, the SCN was issued to the Respondents to show cause as to why fine may not be imposed on them as provided under Section 160(8)(a) and 164(3) of the Ordinance for not providing the complete and material information to the shareholders necessary to understand the special business to be approved.

5. The relevant provisions of the Ordinance as referred above are reproduced as under:

160. Provisions as to meetings and votes. - (1) The following provisions shall apply to the general meetings of a company or meetings of a class of members of the company, namely:-

(b) where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;

(8) Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,--

(a) if the default relates to a listed company, to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues;

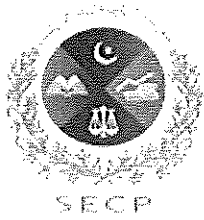


164. Notice of resolution. - (1) With the notice for a meeting, the company shall send to the members copies of draft resolutions, other than routine or procedural resolutions, which are proposed for consideration in the meeting.

(3) In the event of any default in complying with any of the provisions of this section, the company and every officer of the company who is knowingly or willfully a party to such default shall be liable to a fine which may extend to five thousand rupees if the default relates to a listed company and to a fine which may extend to two thousand rupees if the default relates to any other company.

6. The reply of SCN was submitted by the Company Secretary vide letter dated June 3, 2016 which is summarized below:

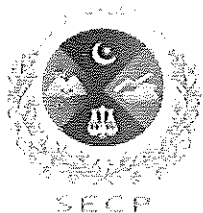
- (a) The transaction in relation to cotton purchased from related party "Asim Textile Mills Limited" has been discussed in board meeting held on 22.2.2015 and in compliance of section 193, 214 and 216 of the Ordinance, the matter was referred to AGM held on 31.10.2015 for approval from members of the company. Further, this transaction is considered at arm's length as per market norms and normal procedural business.
- (b) Although the matter has not been exclusively disclosed as statement annexed to the notice, however, being a procedural matter in normal course of business activity, it is appropriately discussed under agenda item No.4 of the notice of AGM dated October 8, 2015.
- (c) No mischief of arm's length procedures has ever been hit in these transactions and has fairly been disclosed in audited financial statements of the company.
- (d) Considering the above facts, it may be construed in all circumstances that company has not violated the provisions of section 160(1)(b) and 164(3) of the Ordinance.



7. The reply to the SCN was not found satisfactory therefore, in order to provide opportunity of personal hearing; the case was fixed before the undersigned for June 28, 2016 and upon request of the Company re-fixed for July 19, 2016. Mr. Ajmal Shahab, Company Secretary representing the Respondents, appeared and submitted that according to understanding of the Respondents the matter cotton purchased from related party was an ordinary business and not special business. He reiterated his assertions already made in his written reply of June 3, 2016.

8. I have analyzed the facts of the case; relevant provisions of the Ordinance; arguments put forth by the Respondents and their Representative in writing and during the hearing; and observed as under:

- (a) The provisions of section 160(1)(b) expressly identify special business as business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors. Therefore, it was not a matter of guessing whether it was an ordinary business or a special business. It is also understandable that in related party transactions there is a conflict of interest risk involved and where the directors themselves are interested in the transaction, the matter should be approved by the members in general meeting instead of the board only.
- (b) It has been argued by the representative that although the matter has not been exclusively disclosed as statement annexed to the notice however, being a procedural matter in normal course of business activity, it was appropriately discussed under agenda item No.4 of the notice of AGM dated October 8, 2015. The agenda item No.4 reads as – “To transact any other business with the permission of the Chair.” The argument is weak and having no relevance in the face of express provisions of law i.e., section 160(1)(a) of the Ordinance which require that notice of the meeting alongwith a statement of the business to be transacted at the meeting shall be given to the members of the company. The Company passed special business as other business without providing information to shareholders in the notice of AGM without enclosing statement under Section 160 of the Ordinance setting out all material facts concerning such business. The objective of the annexation of statement of material facts is to provide specific information to the members so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively.



- (c) The admission by the Company Secretary in his written reply of the fact that matter has not been exclusively disclosed is enough to establish violation of relevant provisions of section 160 and 164 of the Ordinance as noted in the SCN.

9. For the foregoing reasons, I am of the firm opinion that the provisions of section 160 and 164 of the Ordinance have been violated by the Respondents. Therefore, in exercise of the powers conferred by Section 160 of the Ordinance, I hereby impose a fine of Rs.10,000/- (Rupees ten thousand only) each on the respondent directors including chief executive. Likewise, in exercise of the powers conferred by Section 164 of the Ordinance, I hereby impose a fine of Rs.5,000/- (Rupees five thousand only) each on the respondent directors including chief executive.

10. The respondent directors including chief executive are hereby directed to deposit the aforesaid fines aggregating to Rs.105,000/- (Rupees one hundred and five thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers for information and record, failing which proceedings under the Land Revenue Act,1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Respondents in their personal capacity and are required to pay the said amount from their personal resources.

Amina Aziz
Director

Announced
December 21, 2016
Islamabad

