

Before
Amir M Khan Afridi, Director/Head of Department (Adjudication-I)

In the matter of Show Cause Notice issued to Kohinoor Spinning Mills Limited

Dates of Hearing	April 8, 2019; September 16, 2020; November 25, 2020; March 15, 2021; April 26, 2021
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Order-Redacted Version

Order dated June 30, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Kohinoor Spinning Mills Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 31, 2019
2. Name of Company	Kohinoor Spinning Mills Limited (the Company)
3. Name of Individual*	The proceedings were initiated against directors of the Company.
4. Nature of Offence	Violations of Under Section 134 and Section 140 read with Section 479 of the Companies Act, 2017.
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have gone through the fact of the case, I have observed the following:</p> <p>a) In matter of agenda items not stated in notice of AGM as special business, the minutes of the AGM held November 27, 2017 provided by the Company reflected the following:</p> <p><i>(i) Agenda regarding ratification and approval of transactions carried out with related parties</i></p> <p><i>The minutes of AGM under the aforesaid agenda state the following:</i></p> <p><i>“Mr. Imran Butt sought Chairman’s approval to being forward a business not included in meeting agenda. The Chairman graciously accorded the approval. The member stated: “The transactions carried out in normal course of business with related parties are being approved by the Board as recommended by the Audit Committee on quarterly basis pursuant to clause 5.19.6 (b) of the Code of Corporate Governance, 2012, However, as the majority of Company Directors were interested in these transactions due to their common directorship and holding of shares in the related parties, the quorum of directors could not be formed for approval of these transactions. In view of the above, the normal business transactions</i></p>

conducted during the financial year ended June 30, 2017 with related parties as shown in relevant notes to the audited Financial statements should be placed before the shareholders for their consideration and approval/ ratification. Also it is expected that the Company would be conducting such transactions with related parties in the normal course of business in the upcoming financial year. The majority of directors are expected to be interested in these transactions due to their common directorship and shareholding in the related parties. Therefore such transactions with related parties would be required to be approved by the shareholders. In view of the above and in order to comply with the provisions of clause 5.19.6 (b) of the Code of Corporate Governance, 2012, the shareholders are required to authorize the Chief Executive Officer to approve transactions to be carried out in normal course of business with related parties during the ensuing year ending June 30, 2018. The Directors are interested in the resolution to the extent of their common directorships and their respective shareholding."

Mr. Imran Butt (Folio No.: 10629/30950/C) proposed the following ordinary resolution:

"Resolved that the transactions carried out in normal course of business with related parties as disclosed in respective notes to the audited financial statements for the year ended June 30, 2017 be and are hereby ratified and approved."

"FURTHER RESOLVED that the Chief Executive Officer of the Company be and is hereby authorized to approve all the transactions to be carried out in normal course of business with related parties during the ensuing year ending June 30, 2018 and in this connection the Chief Executive Officer be and is hereby also authorized to take any and all necessary actions and sign/execute any and all such documents/indentures as may be required in this regard on behalf of the Company."

The resolution was passed unanimously.

With regard to the aforesaid business, the above minutes of AGM clearly state that the approval of Chairman was sought for bringing forward business of approval / ratification of transactions carried out with related parties not included in meeting agenda. It was also stated that the purpose of seeking approval/ ratification from shareholders in AGM was owing to majority directors being interested in the subject transactions with related parties due to common directorship and shareholding and therefore quorum of meeting of board of directors approving the said transactions was rendered incomplete (in terms of Section 178 of the Act). The Company therefore placed the said transactions before the shareholders, being the appropriate forum, in the aforesaid AGM for their approval/ ratification.

In terms of Section 134 of the Act, any business except the consideration of financial statements and the reports of the board

and auditors, the declaration of any dividend, the election of directors and the appointment of the auditors is considered special business. Therefore, the business of placing related party transactions before shareholders, in view of the majority directors being interested, is special business and cannot be considered part of agenda of approval of annual audited financial statements. It may be noted the same is also stated in the minutes. Therefore, the assertion of Respondent that the aforesaid business was part of agenda item "approval of audited annual accounts" being an ordinary business under section 134 (2) of the Act, factually and legally, does not hold merit.

(ii) To obtaining consent of the shareholders to circulate Annual Audited Accounts together with the Directors' and Auditors' Reports Thereon to the shareholders through CD/DVD/USB at their Registered Addresses:

"Another member, Mr. Rizwan Hameed (Folio No.: 12005/1434/C) sought Chairman's approval to bring forward another business not included in meeting agenda. The Chairman once again graciously accorded the approval. The member stated:

"The Securities and Exchange Commission of Pakistan has vide S.R.O 470(I)/2016 dated May 31, 2016 allowed the companies to circulate the annual reports including annual audited accounts, notices of annual general meetings and other information contained therein of the Company to its members through CD/DVD/USB subject to consent of the shareholders in the general meeting. This will save time and expenses incurred on printing of the annual report. The Company shall supply the hard copies of the aforesaid document to the shareholders on demand, free of cost, within one week of such demand. After approval of the shareholders, the Company will place a "standard request" form on its website to enable the members to communicate their need of hard copies of the documents along with postal and email address of the Company Secretary/ Share Registrar to whom such requests shall be made. The Directors are interested in the resolution to the extent of their common directorships and their respective shareholding."

Accordingly, this matter was placed before the shareholders for their approval and to pass the following ordinary resolution:

"RESOLVED that the consent & approval of the members of the Company be and is hereby accorded and the Company is authorized to circulate its annual audited financial statements of the Company together with the Directors' and Auditors' Report thereon to the shareholders through CD/DVD/USB at their registered addresses, instead of transmitting the said accounts in hard copy."

"FURTHER RESOLVED that the Chief Executive and Company Secretary be and are hereby authorized singly to give effect to this resolution and to do or cause to do all acts, deeds and things that may be

necessary, ancillary or incidental to implementing the aforesaid resolution.”

The above resolution was passed unanimously.

In terms of Section 134 of the Act, any business except those as mentioned in para 10(a)(i) above are special business including circulation annual audited accounts together with the Directors' and Auditors' Reports thereon to the shareholders through CD/DVD/USB at their Registered Addresses in terms of S.R.O 470(I)/2016 dated May 31, 2016. Hence the Company was required to include the said agenda in the notice of AGM as special business however the Company failed to do so. Moreover, the minutes of the aforesaid AGM also state the aforesaid agenda was not included in the notice of AGM. This implies that the assertion of Respondents that the aforesaid agenda was part of agenda item 'approval of audited annual accounts', an ordinary business under subsection (2) of section 134 Act, factually and legally, does not hold merit.

b) As per requirements of subsection (3) of section 134 of the Act, where any special business 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. Considering the aforesaid agenda (of transaction with related parties and circulation of Accounts 2017 through CD/DVD/USB) was special business, statement of material facts was required to be annexed with the notice of AGM dated November 05, 2017. The Company failed to attach statement of material facts with notice of meeting in violation of subsection (3) of section 134 of the Act.

c) In terms of section 140 of the Act, in case of any special business, the notice of general meeting is required to be accompanied by the draft resolution. Considering the aforesaid agenda (of transaction with related parties and circulation of Accounts 2017 through CD/DVD/USB) was special business, therefore the notice of AGM dated November 05, 2017 was required to be accompanied by draft resolution. The notice of AGM dated November 05, 2017 was not accompanied by draft resolution in violation of section 140 of the Act.

d) It has been asserted by the Respondents in their submission that both the agenda items placed before members were passed through ordinary resolution by member in AGM. In this regard, it is stated that proceedings under SCN were not invoked on matter of passing ordinary resolution rather it was special business and all the requirements with respect to disclosures including "Statement of Material Facts" and draft Resolution were required to be made part of the Notice. It is however imperative to mention that unless provided under the Act to pass special resolution, special business

	<p>shall be passed as ordinary resolution. Nonetheless, in matter of subject proceedings, passing ordinary resolution does not exonerate the Respondents from the requirements of section 134 and 140 of the Act.</p> <p>From the above discussion and after careful consideration of all the facts of this case, it is evident that the respondents have failed to include the two aforementioned agenda items, i.e. "transaction with related parties" and "circulation of annual audited financial statements through CD/DVD/USB", in the notice of AGM as special business, thereby failed to attach statement of material facts and draft resolution with the notice of the AGM dated w.r.t both the aforesaid special business. Therefore, I am of the view that the provisions of Section 134 and section 140 of the Act have been contravened and the respondents are liable under subsection (12) of Section 134 and subsection (3) of section 140 of the Act. Taking cognizance of the submissions of the respondents and in exercise of the powers conferred under aforesaid provisions of the Act.</p> <p>Penalty order dated June 30, 2021 was passed by Director/HoD (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs.250,000/- was imposed on all respondents.
7. Current Status of Order	No Appeal has been filed by the respondents.