



Corporate Supervision Department
Company Law Division

Before Zafar Abdullah – Commissioner (CSD)

In the matter of

Landmark Spinning Industries Limited

Revision sought for: Order dated May 7, 2013 of Head of Department – Enforcement (Now Corporate Supervision Department) under Clause (b) of Section 309 read with Section 305 of the Companies Ordinance, 1984

Date of Final Hearing: March 7, 2016

Latest Information provided on: July 25, 2015

Present: Mr. M. Amin A. Hashwani, Chief Executive and Mr. S.M. Yousuf

ORDER

Revision Application under Section 484 of the Companies Ordinance, 1984

This Order shall dispose of the application dated July 4, 2013 filed by Landmark Spinning Industries Limited (the "Company") and its directors (together referred to as the "applicants") under section 484 of the Companies Ordinance, 1984 (the "Ordinance") for revision of the order dated May 7, 2013 passed by the Head of Department (Enforcement, now Corporate Supervisions Department) under section 309 (b) read with section 305 of the Ordinance. In terms of the order, after carrying out proceedings and providing opportunity of hearing, the order was passed and Joint Registrar of Companies, Company Registration Office Karachi was authorized to present a petition for winding up of the Company before a competent court. The original impugned order was passed, inter alia, on the following grounds:

- The Company, after remaining idle for seven year, started its operation in year 2001 but again closed its operations in November 2002. Since then, the Company has not been able to resume its operations after passage considerable period of time.
- The management could not come up with any revival plan or alternative solution to the issues regarding suspension of business.
- The management was relying on expected gas transmission from Iran to overcome the gas shortage, which did not appear to be practicable.
- The management could not substantiate any concrete efforts on their part in respect of gas allocation to the Company.



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- The Company's own audited financial statements for the year 2011 disclose under note 23 frequent power breakdowns in winder industrial and resultant damage to machinery, unfavorable market conditions, prices of raw cotton and increase in overhead cost.
 - Section 305(c) of the Ordinance clearly stipulates that the company is subject to be wound up if it suspends its business for whole year.
2. The Company has filed application for revisions on the following grounds:
- **Supply of Gas to winder Estate:** Prospects of supply of gas to Winder Industrial state consequent upon Pak Iran agreement for supply of gas. This was not given due consideration while passing the impugned order.
 - **Impossibility to continue or revive its operations:** This ground of the impugned order is unfounded. The project of the Company is viable and fit for going into operations as soon as the gas is made available.
 - **No documentary evidence provided:** It was unrealistic that Government would provide written commitment that gas would be provided to Winder estate within certain period of time.
 - **No economic benefit transferred to the Shareholders:** The impugned order ignores that general public holds less than 1% shares and there is no complaint from these shareholders or even from any institutional shareholders.
 - **Meager hope of the Management for the future of the Company:** Management is willing to commence the operation, which depends on gas supply. Management has invested Rs. 67million in equity and Rs. 203 million for retirement of loan of financial institutions. Such investment was made on management's conviction of resuming operations upon supply of gas.
 - Circumstances mentioned in the winding up orders on which reliance was placed while passing impugned order are different from the instant case. Company is not defaulter on KSE, holds its general meetings and files all its statutory returns timely. The impugned order solely on the basis of non-operations of the Company for more than a year is not justified.
 - **Legal cases cited by the Legal Counsel:** The Company cited case of higher courts including Supreme Court of Pakistan, Higher Courts of India in support of arguments that the Company on the 'basis of suspension of business is not subject to winding up'.
3. A hearing in the matter was held on August 20, 2013 and Mr. Farooq Akhtar, the counsel of the applicants appeared on behalf of the applicants. He requested to grant extension based on the plea that supply of gas might be available which was necessary to commence operations. The extension was granted till December 31, 2014 subject to the submission of following documents to the Commission, and it was communicated formally through letter dated August 26, 2013:
- i. Gas supply status report, on quarterly basis;



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- ii. Revival plan, immediately upon supply of Iranian gas to the Company; and
- iii. Alternative revival plan of the Company, latest by December 31, 2014 in case of non-availability of gas.

However, the aforesaid documents were not submitted by the applicants and operations of the Company also remained suspended. Last hearing in the matter was held on March 7, 2016 and Mr. Amin A Hashwani, chief executive along with Syed Muhammad Yousuf, chief accountant appeared on behalf of the directors and the Company. With reference to the proceedings, they stated as under:

- The entire bank financing has been paid off and day to day expense are being met by the management.
- The only obstacle in commencing operations is non-availability of gas supply.
- Majority shareholding is held by the sponsors/directors and 35% shareholding is with financial institution including National Bank of Pakistan ("NBP") that holds 32% shares of the Company. Shareholding of general public is only around 5%.
- Law and order situation has improved in Winder Industrial Estate.
- Hopefully the gas supply problem will be resolved in a years' time.
- BMR of the plant and machinery will be required to the tune of Rs300 million.

4. Based on the submissions during hearing, the applicants requested for revision of the impugned order and allow time to the Company for revival of its operations. The applicants were allowed ten days' time for submission of a revival plan and related information, however, no plan was submitted by them. Subsequently, through letter dated May 2, 2016, they were advised to submit the following information / documents to substantiate their submissions:

- i. Complete revival plan with definite timeline and projections with concrete basis;
- ii. Letter of comfort from National Bank of Pakistan;
- iii. Expected expenditures to be incurred on BMR of the plant.

5. Subsequently, the applicants through letter dated May 17, 2016 submitted the following information and documents:

- Revival plan with timelines and financial projections for revival of unit from November 2017 to June 30, 2021.
- Power utilization/ generation details with options and a detailed comparison of energy usage for power generation (Annex-2)

7th Floor, NIC Building, 63-Jinnah Avenue
Islamabad, Pakistan

PABX: + 92-51-9207091-4, Fax: +92-51-9100454, 9100471, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk



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- Anticipated expenses on BMR (Annex-3)
- Summary of Operating Expenses (Annex-4)
- Depreciation Schedule (Annex-5)
- Financial Feasibility (Annex-6 & 7)
- Resolution of the BOD of the Company dated March 15, 2016, wherein it has been resolved to authorize the CEO of the Company to represent and pursue the case of reviving the unit and take all measures possible in this regard for its smooth restarting and operations. The BOD's minutes state that in view of ongoing discussions between APTMA and Ministry of Commerce to revive the sick textile units and the energy policy of the government to provide reliable energy to all industries, it is expected that gas/energy will be provided to Winder Industrial Area by next year. It was stated by the CEO that the NBP's nominee director Syed Raza Abbas has been actively attending BOD's meetings and full support of NBP can be gauged from the aforesaid BOD's resolution subscribing to revival plan for bright prospects of the unit and seeking time till the end of 2017.
- Till date there appears to be no complaint or objection from any shareholders & creditors in this count.
- Assurance that the revival plan as per the management's commitment would be effected and placed in letter and spirit for ultimate benefit and interest of the Company and its shareholders.

6. Having reviewed the revival plan, the following discrepancies were observed, which were communicated to the applicants through letter dated June 30, 2016 with advice to provide clarification within ten days:

- a) The proposed revival plan does not include the key information on sources of funds for CAPEX, working capital requirements and revival of operations of the Company. Lack of such vital information renders the revival plan unsubstantiated and a mere paper work, as in the absence of required financing, commencement of operations would be impossible.
- b) The aforesaid revival plan, among other variable factors, uses the key assumption of supply of gas to the unit for generating electricity. However, in the absence of any firm commitment guaranteeing the supply of gas, the revival does not appear to be possible. Alternatively, if the Company uses diesel for generation of electricity, there will be a cost



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overrun from Rs.6.4 per unit to Rs.18.25 per unit resulting in additional cost of Rs.34 million, 76.788 million and Rs.122.861 million in the projected profit and loss accounts. In turn, the projected profit will turn to net after tax losses. This renders the plan unfeasible.

- c) Attaining the projected level of production and sales is a question mark, given the overall competitiveness issues of Pakistani textile industry. However, no information on the marketability and demand of the Company's products has been provided.
- d) The projections prepared by the management also do not appear to be consistent, as enumerate below:
- i. The sale has been projected to increase by 103%, 50% and 2% vis-à-vis projected increase of 94%, 43% and 1.6% in cost of sales, which appears to be on a lower side and is not prudent.
 - ii. Projected administrative, selling and finance expense aggregating to only 0.56% of the sales appear to be on a much lower side. An actual increase in such expenses will further deteriorate the chances of profitable operations, which are imperative for revival.
- e) The requisite letter of comfort from National Bank of Pakistan with regard to the revival has not been provided.

7. Based on request of the respondent, the time for submission of the requisite clarification was extended till July 26, 2016. Through letter dated July 22, 2016, the applicants submitted clarification to the Commission's queries, and a brief of the submissions is produced below:

- a) All costs for revival plan will be undertaken by the Directors namely Mr. Nizam Akbarali Hashwani and Mr. Abdullah Hashwani who have sufficient resources for injection of funds for CAPEX, working capital and other expense related to revival.(Copies of Tax returns, CDC Investor Account of directors enclosed). They have given undertaking to inject funds in shape of interest free loan of Rs. 120 million for revival of the Company on need basis by executing a contract.
- b) In the revival plan, the first option to utilize natural gas as energy source for the project and given various initiatives and projects underway, gas supply is possible. However, the Company



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has also alternative options including mid-sized Chinese coal power plant for which the coalmines in Chamalang, Balochistan can provide the fuel. Wind and solar energy are also viable option due to drastic reduction in costs. Hence, economical power generation is possible to make the project cost competitive.

- c) The projected production and sales have been conservatively estimated on incremental basis. The competitiveness of the unit will be based on course count and on cheaper input raw materials due to close vicinity of cotton growing area with more than 30,000 bales in Lasebella and Khuzdar districts. There is a provision to set-up a ginning factory within the premises enabling the Spinning Unit to source the raw material at economical prices to make the input cost cheaper.
- d) The usage of machinery in first year is only projected at 11,780 spindles that will gradually increase in year 2 and 3 (Annex-6). Through reviewing the same the cost of sales can be gauged to be on lower side in the revival plan to ensure sustainability.
- e) The projected administrative, selling and finance expenses are estimated with a view that financial cost would be minimum as directors have undertaken to inject funds free of interest or by means of equity injection during the revival plan to the extent of Rs.120 million. The management is considerably experience to run the project at a low cost to ensure viability for shareholders' benefit by utilizing precious investment in Baluchistan.
- f) The Company is free from any bank liability and NBP is not a lender and has no equitable mortgage or charge on its assets. NBP is rather a shareholder, represented by its nominee director Syed Raza Abbas Jaffery on the Company's board for past 12 years. Mr. Jaffery has been attending the meetings of the Company regularly and he has actively participated in major decisions of the Company including the revival plan. Therefore, letter of comfort from NBP would not be necessary.

The applicants also provided revised financial feasibility for revival of unit after correction of some typographical errors.



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8. Relevant provisions of section 484 of the Ordinance are quoted below:

Revision and review.- (1) Any order, other than an order under section 476, passed or made under this Ordinance by the registrar or officer or by an officer subordinate to the Commission or exercising powers of the Commission, not being an order of the Court, shall be subject to revision by the Commission upon application being made by any aggrieved person or the registrar within sixty days from the date of such order; and the Commission's order in revision shall be final.

In terms of the Commission's notification SRO 808 (I) / 2008 dated August 30, 2008, the relevant Commissioner has the power to hear a revision application under section 484 (1) against an order passed by Executive Director / HoD (CSD) in pursuance of the delegated powers.

9. Having analyzed the content of the revision application and arguments put forth by the applicants, I have observed as under:

- The applicants' main plea that passing the impugned order solely on the basis of non-operations of the Company for more than a year is not justified, cannot be acceded because the provisions of section 305 (c) and 309 (b) are clear and applicable in case where business of a company is suspended for more than a year. In the instant case, the Company, after remaining idle for seven year, started its operation in year 2001. Merely, after the period of one year or so, the Company again closed its operations in November 2002. The Company has not been able to resume its operations after passage of considerable period of time. The Company's business activities have been suspended since for past many years, therefore, the aforesaid provisions of the Ordinance have been rightly invoked.
- Moreover, the applicants failed to present any concrete revival plan or any material thing in support of its efforts to revive the Company prior to passing of the impugned order, therefore, there was no option but to pass the order authorizing the Joint Registrar of companies to file petition for winding up of the Company. The applicants were solely relying



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on the Pakistan Iran gas pipeline, which has been subject to various factors beyond control of the management and no alternative plan for energy and power generation was submitted.

- It is pertinent to mention that only after hearing in the subject application for revision; the applicants have presented a revival plan with financial projections, which were not previously presented. Despite there being some observations, which have been shared with the applicants, on the viability of the revival plan and financial projections submitted by them, the applicants have taken the ownership of the revival plan and the accompanying financial projections and have reemphasized that they are seriously striving to revive the Company. They have also stated that in case there are impediments in supply of natural gas to the Company, they have alternative plan to install a coal fired power plant and use of solar/wind energy. Moreover, they have also presented the option to set up a ginning unit to ensure availability of cheaper raw material for the Company's spinning unit by utilizing cotton crop of the nearby areas in Baluchistan. Their commitment is also substantiated by the undertaking from two of the sponsors / directors for providing interest free financing to the Company.
- The applicants have further highlighted that entire bank financing has been paid off and major institutional investor i.e. NBP is supporting the revival of the Company, as substantiated by participation of its nominee director in the meetings of the Company's board of directors and his endorsement of the proposals. It has been further stated that general public only has less than 5% shareholding in the Company and there has been no complaint filed by any shareholder.

10. I have examined the subject application considering the latest facts and submissions of the applicants as mentioned hereinabove. The above stated development with regard to revival plan presented by the applicants, presenting alternative option to generate electricity by using coal fired plant, wind and solar energy and option to set up a ginning unit substantiates the seriousness of the efforts of the management towards revival of the Company's business. Therefore, in the light of the facts on record, I hereby revise the impugned order dated May 7, 2013 such that the Joint Registrar of Companies is no more authorized to submit a petition for winding



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up of the Company. The impugned order is revised subject to the condition that the Company and its directors shall not sell, lease or otherwise dispose of any of the fixed assets of the Company and they will make concerted efforts to revive its operations in line with the revival plan presented to the Commission.

The department is advised to keep the Company under close observation and to assess the case after one year's time to decide as to whether to re-initiate the proceedings for filing petition for winding up of the Company.

Zafar Abdullah
Commissioner (CSD)

Announced:
December 21, 2016
Islamabad