



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

National Fibres Limited

Number and date of notice: CSD/ARN/227/2015 dated December 01, 2015
Date of hearings: December 16, 2015, December 30, 2015, February 10, 2016,
November 16, 2016 and December 16, 2016.
Present: Mr. Hashmat Ali Habib, authorized representative

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 December 01, 2015 under Section 309 read with Section 305 of the Companies Ordinance, 1984 (“Ordinance”) issued to National Fibres Limited (“Company”) and directors (collectively called “respondents”) of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office Karachi, approached this office for grant of sanction in terms of clause (b) of Section 309 read with clause (b) and (c) of Section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the grounds that the Company has suspended its operations and failed to file any statutory return since 1999. The Company has also failed to hold its AGM since 1999.

3. Show cause notice dated December 01, 2015 was served on the Company under Section 309 read with Section 305 of the Ordinance indicating the aforesaid grounds to present a petition for winding up of the Company. Meanwhile, National Bank of Pakistan (“NBP”) in context of the aforesaid show cause notice stating the following in their letter dated December 07, 2015:

- The Company is a polyester filament yarn manufacturing unit set up in eighties under the Federal Chemical & Ceramics Corporation Limited (FC&CCL). NDFC (now NBP) along with a number of other financial institutions provided the finances for setting up the unit. After initial teething problems, the unit became a highly profitable company. These loans were subsequently restructured under government directive to enable the company to overcome its initial problems.



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By virtue of this restructuring NDFC along with Islamic Development Bank, Jeddah also became equity holders of the Company.

- The Company was acquired by Schon Group in 1992 from the Privatization Commission in open bidding.
- The project operated profitably till 1995. Thereafter it suffered losses due to worldwide shortage of raw material. During the absence of Schon group directors, the management of the project was handed over to NDFC on court orders dated December 04, 1997. The project was later sold under a decree obtained by Habib Bank Limited (“HBL”) in a case (B-86 of 2000, Execution 36/2001). The appellant has preferred High Court Appeal # 143/2015 passed by the learned single Judge of the Honorable High Court of Sindh Karachi in Execution Application No. 36/2001.
- The Court dismissed the above appeal on October 15, 2015.

4. The respondents were provided opportunities of personal hearings on December 16, 2015, December 30, 2015, February 10, 2016, November 16, 2016 and December 16, 2016. Mr. Hashmat Ali Habib (“authorized representative”) appeared before the undersigned on behalf of the Company on December 16, 2016. He also presented written submissions and reiterated the facts in the written submissions. The submissions are summarized as follows:

- The office of the Company had shifted to a different location due to which the show cause notice and relevant correspondence was returned undelivered thereafter the same sent to the directors’ personal addresses was received.
- Amongst the directors mentioned in the show cause notice dated November 15, 2016, Mrs. Jamila Akhtar has expired in 2012 and Mr. Khalid Mehmood Siddiqui resigned from dictatorship which was accepted by the revived board with effect from January 13, 2006. Mr. Manzur-ul-Haq was appointed as Chief Executive by NDFC and Court until 2004. Lastly, Mr. Muhammad Yousuf is a nominee director of Islamic Development Bank, Jeddah that holds 21% equity in the Company.
- The submission clearly stated that the reply is from respondent no. 1, 6, 7 and 8 that is Mrs. Farah Nasir Hussain, Mr. Nasir Hussain, Mr. S. Amir Hussain and Mr. S. Tahir Hussain.
- In year 1997, Schon group, flew out of country after initiation of accountability proceedings by NAB.



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- In year 1997, an application was filed under section 290 of the Ordinance against the Company and its directors and interim order under Section 292 of the Ordinance was passed by High court of Sindh whereby management of the Company was handed over to NDFC on the pretext of its commitment to rehabilitate the Company. The Board of Directors of the Company was suspended on March 02, 2000 and hence the role of the Schon group was restricted to shareholders only.
- In year 2000, HBL, another creditor filed a suit of recovery against the Company. The operations of the Company had already been shut down after bearing losses consistently for 4 years. The case was decreed ex-parte.
- The High Court Sindh sanctioned the sale of assets of the Company. The same were sold to Mr. Zubair Amin Motiwala, an independent bidder. The possession of assets was handed over through official assignee, Sindh High Court, to Mr. Motiwala on April 23, 2002 in presence of NDFC.
- The Schon group appealed against the sale of assets in Supreme Court of Pakistan for reversal of sale and restitution of property, the apex court via order dated May 12, 2016 remanded the case to Sindh High Court where the appeal is presently pending.
- It is also pertinent to mention here that when the sale of assets was decreed against National Fibres Limited, NDFC filed for winding up of the same before the High Court. However, when the fact disclosed upon the directors of Schon group they resented to it and opposed the proceedings. National Bank submitted to the Court to either relieve NBP of its responsibility to manage the Company or wind it up. The Court ordered to free NBP of its responsibility to manage NFL and hence the previous position of the Schon group was restored as directors
- The respondents after regaining their status as directors immediately filed Form A and Form 29 for the 7 years (2005-2011) under the SECP's Company Regularization Scheme (CRS).
- Lastly, the respondents requested to hold the matter until the decision of the appeal.

5. It is necessary to advert to the following relevant provisions of the Ordinance:

Section 305 of the Ordinance states *a company may be wound up by the Court if:*

(b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;



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(c) *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 authorized by the Commission in that behalf.*

6. 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).

7. Before proceeding further, it would be necessary to deliberate upon certain important facts regarding the Company. The Company was incorporated in Pakistan on January 07, 1976, as a public limited company under the Ordinance. The shares of the Company are quoted on Pakistan Stock Exchange. Principal business of the Company is to manufacture and market polyester fibre and filament yarn. Management of the Company has major shareholding which is about 53% and its interest is directly affected by revival of Company but the situation is not very hopeful. The assets have already been disposed of. The directors have appealed against the sale however; the fact remains that the Company has been operationally closed since 1999. The respondents have themselves relied fate of the Company on the decision of court. The Company is merely a shell company with no means of reviving or being operational. Further, directors are neither legally in a position nor have submitted any prospective plans to revive the Company.

8. The comments of the authorized representative are also not cogent as they either primarily focus on past events or uncertain future of the management of the Company being dependent on the High Court decision. It is established fact that the Company is not a going concern and in the current circumstances, the chances of revival of the Company are bleak. The company has not held its AGM and filed its interim accounts since the year 1999. AGM is an institution for the protection of the shareholders where the accounts are laid for their review and consideration. The shareholders who have



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invested in the Company should have complete information about its financial health. Such infringement of the shareholders' right is not tolerated but punishable under law.

9. 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. However 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. 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.

10. 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 1999. It is a settled principle of law that a company is liable to be wound up under clause (b) and (c) of section 305 of the Ordinance if it has suspended its business for a whole year furthermore there is no reasonable plan or grounds for its revival.

11. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize *Additional* Registrar, Company Registration Office, Karachi to present a petition for winding up of National Fibres Limited.

Abid Hussain
Executive Director

Announced:
June 06, 2017
Islamabad

