



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Nazir Cotton Mills Limited

Number and date of Notice: CSD/ARN/151/2015-489 dated September 7, 2017

Date of hearing: November 30 2017 & February 22, 2018

Present: Mr. Muhammad Hayat Jasra, FCMA
Mr. Maqbool Hussain Bhutta, Director, Nazir Cotton Mills Limited
(Authorized Representatives)

ORDER

UNDER SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the Directors of Nazir Cotton Mills Limited (*the "Company"*) for default made under the provisions of Section 492 read with Section 476 of the Companies Ordinance, 1984 (*"the Ordinance"*) initiated vide Show Cause Notice dated September 7, 2017 (*the "SCN"*).

2. Brief facts leading to this case are that review of the annual audited accounts for the year ended June 30, 2015 of the Company (*the "Accounts"*) revealed that Company classified its plant and machinery, land and building as 'Assets Held for Sale' and measured these at lower of carrying amount and fair value less cost to sell. Note 6.1 to the Accounts revealed that moveable and immovable properties were ordered by the Honorable Lahore High Court (*the "Court"*) to be auctioned and the Court auctioneers were appointed in March 2009. However, Company started classifying its assets as held for sale from the year ended June 30, 2012. Furthermore, it was observed that in terms of the requirements of International Financial Reporting Standard-5, 'Non-current Assets Held for Sale and Discontinued Operations' (*"IFRS-5"*), assets held for sale are to be carried at lower of carrying amount and fair value less cost to sell. However, contrary to the requirements of IFRS-5, the Company during the year 2015 recorded a surplus of Rs.165.32 million on assets held for sale as given below:



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(Rs. in million)

Description	Revalued Amount	Carrying Amount	Revaluation Surplus
Land	81.92	7.34	74.58
Building	70.22	3.17	67.05
Plant & machinery	60.00	36.31	23.69
Total	212.14	46.82	165.32

3. It was observed that the Company did not classify the subject assets as held for sale as required in IFRS 5 in the accounts for the year ended June 30, 2009, June 30, 2010 and June 30, 2011 and depreciation was charged on the fixed assets, which resulted in material misstatement in the above referred accounts of the Company. The detail is as under:

(Rupees in million)

Particulars	2009	2010	2011
a) Fixed Assets Classified as held for sale	No	No	No
b) Amount of depreciation charged on building and Plant & Machinery	2.9	5.6	5.4
c) Total assets	123	118	111
Materiality (Percentage - b/c)	2.4%	4.7%	4.9%

4. In view of above, it appeared that the annual accounts of the Company for the year ended June 30, 2009, June 30, 2010 and June 30, 2011 were misstated on the accounts that the Company had not recorded the movable and immovable assets as per the requirement of IFRS 5.

5. Moreover, Annual audited accounts for the year ended June 30, 2015 and June 30, 2016 were misstated on the account that the Company recorded the Non-current assets held for sale at revalued amount and recorded the surplus of Rs 165.32 million. The above said non-compliances made the directors of the Company *prima facie* liable to the penalty as stated under Section 492 of the Ordinance. Therefore, SCN dated September 07, 2017 was issued to the Respondent to show cause in writing within fourteen days from the date of this notice as to why penalty may not be imposed on you for contravening the afore-referred provisions of the Ordinance.

6. Subsequent to the issuance of SCN, hearing in the matter was fixed on November 30, 2017. Mr. Maqbool Hussain Bhutta, CFO and director of the Company attended the said hearing. During the hearing proceeding, Authorized Representative was advised to submit the written reply to the SCN, which he agreed to. Thereafter, Mr. Muhammad Hayat Jasra from M/s Abdul



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Rehman Qureshi & Associates submitted the reply to the SCN, vide letter No. NCML/01/11 dated January 26, 2018. It was submitted that:

- The Company did not adopt the method to classify its assets on net realizable value instead of carrying value due to Show Cause Notice of SECP dated May 21, 2012 under Section 265 of the Ordinance. In the said SCN, it was objected that the accounts for the year ended June 30, 2007 to June 30, 2011 was prepared on Going Concern basis despite the significant doubt on the Company's ability to continue as going concern. After consulting the Auditors, the Company decided to prepare its financial statements on realizable value method.
- The management never surrendered to their cause that the Company shall remain alive and the same business of textile or some other viable business with the permission of competent authority shall be started.
- The Company wanted to take the financial benefit through revaluation of its land, building and plant & machinery. Thus, the company created a Revaluation Surplus quite genuinely. Every listed company has the right to revalue its assets.
- During the period 2009 to 2011, sponsor directors were trying not to close the operation of the mill. It was the view that IFRS 5 was applicable to those companies whose business was closed and their ultimate fate is to wind up. In our case, it was determined not to go to winding up.
- The decision to prepare the accounts independent of IFRS 5 was based on the deliberation of auditors.
- In wake of settlement with the banks, the pressure on the company because of court order for auction of its properties was released. The company was now relaxed to proceed in accordance with its mission to keep it alive by creating fund through sale of surplus assets. Hence, it prepare its accounts in accordance with IFRS 5 from 2012 onward.
- In view of submission, there is no misstatement in accounts for the year 2009, 2010, 2011, 2015 and 2016.
- In case there is an error in accounting principles, the company be advised to rectify the error. We believe that Section 492 is not relevant to the case to this company. Any error in the accounts of the company, which is not operational, may have no impact on the interest of any party.

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7. Considering the written submission with respect to the SCN, the Company was provided a hearing opportunity on February 22, 2018. Mr. Muhammad Hayat Jasra FCMA, and Mr. Maqbool Hussain Bhutta appeared as the authorized representatives on behalf of the Respondents. During the hearing proceeding, they reiterated their viewpoint as submitted in written reply to the SCN.

8. I have gone through the fact of the case, arguments put forward during the hearing proceedings and written submission made in reply to the SCN. At the outset, I would like to mention here that the statutory financial statements for companies are required to be prepared in accordance of approved accounting standards comprising IFRS, as applicable in Pakistan, in addition to the requirements of the Ordinance. There is no general dispensation from the measurement, recognition and disclosure requirements of IFRS if the entity is not expected to continue as a going concern. Provisions of IFRS 5 are very clear and explicit in this regard. Therefore it was mandatory for the Company to classify its plant and machinery, land and building as 'Assets Held for Sale' and measure these at lower of carrying amount and fair value less cost to sell, in terms of the requirements of IFRS-5. Relevant provisions of IFRS 5 in this regard are reproduced below:

Para 6 provides that:

"An entity shall classify a non-current asset (or disposal group) as held for sale if its carrying amount will be recovered principally through a sale transaction rather than through continuing use"

Para 15 provides that:

"An entity shall measure a non-current asset (or disposal group) classified as held for sale at the lower of its carrying amount and fair value less costs to sell"

Para 25 provides that:

"An entity shall not depreciate (or amortize) a non-current asset while it is classified as held for sale or while it is part of a disposal group classified as held for sale. Interest and other expenses attributable to the liabilities of a disposal group classified as held for sale shall continue to be recognized"

9. In the instant matter, Note 6.1 to the Accounts shows that the Honourable Lahore High Court Lahore ordered to auction the moveable and immovable properties of the Company. In this regard, the Honourable Court also appointed the auctioneers in March 2009. This Order implies that the said assets were to be classified under IFRS 5, as criteria specified in the said standard was

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being satisfied. In this regard, it is observed that the Company did not classify these assets under IFRS 5 during the year ended June 30, 2009, June 30, 2010 and June 30, 2011. The Company later on, in its accounts for the period ended June 30, 2012 adopted the IFRS 5, as stated in Note 6.2 to the Accounts for the period ended June 30, 2012.

10. With regard to revaluation carried out on assets held for sale categorized under IFRS 5, the provisions of Para 15 of IFRS 5 are unambiguous which requires that an entity shall measure a non-current asset (or disposal group) classified as held for sale at the lower of its carrying amount and fair value less costs to sell. Therefore, the revaluation carried out by the Company and recorded in its annual audited accounts for the year ended June 30, 2015 and June 30, 2016 are in contravention with the provision of IFRS 5.

11. Furthermore, the argument put forth that the Company wanted to take the financial benefit through revaluation of its land, building and plant & machinery, is not tenable. It is mandatory for the Company to prepare the financial statements in accordance with IFRS, as envisaged in the Ordinance. Therefore, revaluation carried out by the Company and recording surplus is contradictory with the requirement of IFRS 5.

12. In view of above, I am of the opinion that that the Company has failed to comply with the requirements of IFRS-5 by not classifying the respective assets as 'held for sale in the financial statements of the Company for the period ended June 30, 2009, June 30, 2010 and June 30, 2011. Furthermore, the Company misstated in its annual audited accounts for the year ended June 30, 2015 and June 30, 2016 by stating its noncurrent assets held for sale under IFRS 5 at revalued amount. The non-compliance of IFRS 5 resulted in misstatement and rendered the accounts misleading.

13. I would like to advert here the provisions of Section 492 of the Ordinance provides that:

Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.

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14. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under Section 492 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

15. In view of above, I am of the considered view that the Respondents are liable for the penalties as provided under the provisions of Section 492 of the Ordinance. I hereby impose a penalty of Rs.50,000 (Rupees fifty Thousand only) on each of the Respondents and warn them to ensure strict compliance of the law and all the applicable standards in the future. The detail of penalties imposed is as under:

S.#	Names of Directors	Penalty imposed (Rs)
1	Mian Shahzad Aslam	50,000
2	Mian Farrukh Naseem	50,000
3	Mian Aamir Naseem	50,000
4	Mr. Maqbool Hussain Bhutta	50,000
5	Mr. Muhammad Asghar	50,000
6	Mr. Muhammad Abbas	50,000
7	Mr. Sibgat Ullah	50,000
	Total	350,000

16. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this Order and furnish receipted bank vouchers to the Commission. In case of non-deposit of fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on the Respondent in their personal capacity; therefore, they are required to pay the said amount from personal resources.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
May 25, 2018
Islamabad