



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan Director/Head of Department

In the matter of

Olympia Mills Limited

Number and date of notice: No. CSD/ARN/213/2015-208 dated July 13, 2023

Dates of hearings: August 16, 2023 and September 12, 2023

Present in the hearings: Mr. Zahid Hussain FCA and Mr. Asim Jaffery
Company Secretary

ORDER

Under Section 183 of the Companies Act, 2017 and Section 479 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/213/2015-208 dated July 13, 2023 (the SCN) issued under Section 183 of the Companies Act, 2017 (the Act) and Section 479 thereof against board of directors of Olympia Mills Limited (the Company), hereinafter collectively referred to as the Respondents.

2. Brief facts of the case are that review of annual audited financial statements for the year ended June 30, 2022 of the Company transpired that the Company has disposed of Property, Plant and Equipment, comprising of paper business assets (PPE) during the year ended June 30, 2022. In this regard, note 13.1.2 to the Accounts 2022, *inter alia*, disclosed that:

(Rs. in million)

Particulars	Cost	Accumulated Depreciation	Book value	Impairment	Net	Sale price	Gain
Paper, plant and machinery	63.487	24.983	38.504	4.5	34.004	35	0.995

3. In this regard, the Securities and Exchange Commission of Pakistan (the Commission) sought necessary clarifications from the Company through letter dated February 22, 2023. In reply, the Company through letter dated March 20, 2023 submitted that:

"The principal line of business of the Company is renting of its fixed assets specifically its immovable property, which constitute more than 95% of the Company's assets and income. Section 183(3) applies to disposal of an investment in a Company's undertaking in relation to its net worth (total assets) if it constitutes sizeable part (more than 25%) thereof."

4. As per disclosures given in the corresponding Accounts, in terms of which the aforesaid disposal of PPE was sizeable in terms of Section 183(3) of the Act. The reply of the Company was, however, not found in line with the requirement of Section 183(3) of the Act as the said provision requires that the Company cannot sell sizeable part of its assets unless its main line of business is selling of assets and similarly cannot lease sizeable portion of assets unless main line of business is leasing of assets. In term of Section 183(3)(a) of the Act, the Company was required to obtain



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the authorization or consent of the members in general meeting. However, the Company did not obtain authorization of its members for disposing of PPE and, *prima facie*, contravened the provision of Section 183(3)(a) of the Act. Hence, the proceedings were initiated against the Respondents and they were called upon to show cause in writing, within fourteen (14) days of the date of this Show Cause Notice (SCN) as to why penalties may not be imposed on the Respondents for the aforesaid contraventions of the requirements of the Act. The Respondents did not submit a reply within the given time, however, the Company sought extension to furnish a reply.

5. Subsequently, the Company vide letter dated August 3, 2023, *inter alia*, submitted that:

- The reply submitted by the Company through letter dated March 20, 2023 in response to the clarification sought by Commission through letter dated February 22, 2023 was not considered by the Commission.
- Section 183(1)(a) of the Act do not applies to the Company when the disposal relates to assets not part of Principal line of business and not sizeable. As per our understanding, the SCN is based on the disposal of class of asset (which was not sizeable and immaterial) and misinterpreted the concept of "Investment in undertakings" as a whole. The Company's principal line of business is renting of its fixed assets. In addition to the principal line of business i.e. renting business, the Company is also engaged in paper manufacturing business. Therefore, in calculating net worth, it should be divided in between two businesses to arrive at a sizeable part.
- The Commission's calculation was based on class of asset and not on "undertaking" basis. It is apparent that the above calculation takes value of "net worth" on the basis of last year equity figure of the Company accounts without proportioning it between Rent business and paper business which is incorrect. The requirements of Section 183(3)(a) applies to a "Undertakings" of a Company not the whole Company as a whole whereas the Company was engaged in two businesses. The Company already mentioned in the reply that the principal line of the Company was Renting of its fixed assets, which constitute more than 95% of its fixed assets. The provisions of Section 183(3)(a) become applicable to a company where investment of the company in that undertaking exceeds 20% of its net worth or it generates more than 25% of total income.
- Therefore, the calculation of net worth needs to be bifurcated into Rent business and Paper business. On the basis of the above, the revised calculation should be as follows:

Particulars	Total -2021	Rent Business Assets	Paper Business Assets
Total Fixed Assets in Rs. in million	647.318	631.024	36.409
Total Fixed Assets in %	100%	93.57%	5.4%
Proportionate Net Worth	14.8	13.84	0.96

- From the above calculation it is quite evident the investment of the Company in Paper business is merely 5.4% and does not exceeds 25% of its net worth nor it generate more than 20% of total income. Therefore, requirement of taking approval from Shareholders was not required.



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6. In order to afford the Respondents, opportunity of personal representation, hearing in the matter were fixed for August 16, 2023. The Company through letter dated August 10, 2023 sought adjournment. Thereafter, another hearing opportunity was allowed and the matter was fixed for September 12, 2023. On the date of hearing Mr. Zahid Hussain, FCA as Authorized Representative and Mr. Asim Jaffery Company Secretary appeared. The Authorized Representative reiterated his stance as was given through letter dated August 3, 2023. It was also submitted that paper business was only 5.4% of the total business. It was informed the Company may seek authorization of its members in the forthcoming general meeting. The board of directors controlled 90% shareholding. They were advised to submit a post hearing reply in the matter.

7. Subsequently, the Company vide letter dated September 15, 2023, *inter alia*, submitted in the following manner that:

- The Company's principal line of business is renting of Company fixed assets and not paper manufacturing business. A significant part (more than 90%) of Company's fixed assets are related to Principal line of business, consequently, there is no requirement to make compliance of Section 183 of Companies Act, 2017 where the Company sells assets not part of Principal line of business asset. As required, we are enclosing copy of Company's Memorandum & Article of Association. The calculation of net worth as per above discussion should as follows:

Particulars	Total -2021 (Rs. in million)	Rent Business Assets (Rs. in million)	Paper Business Assets (Rs. in million)
Total Fixed Assets	647.318	631.024	36.409
Total Fixed Assets in %	100%	93.57%	5.4%
Proportionate Net Worth	14.8	13.84	0.96

- Even otherwise, if Commission directs, the Company is ready to obtain post approval from Shareholders in order to make compliance. In light of above you are very kindly requested to accept our reply of Show Cause.

8. Relevant legal provisions are reproduced as under:

Section 183(3)(a)(i) and (ii) of the Act states:

"(3) The board of a company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely.

—
(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and Explanation. – For the purposes of this clause-

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited financial statements of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year;



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(ii) the expression "sizeable part" in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year;"

Section 183(6) of the Act states that:

"(6) Any contravention or default in complying with requirement of this section shall be an offence liable to a penalty of level 2 on the standard scale and shall be individually and severally liable for losses or damages arising out of such action."

9. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the Authorized Representative and replies submitted. It is stated that:

A. Disposal of paper business assets forms 'undertaking'

- (a) Relevant provision of Section 183(3) of the Act uses the word "undertakings" in the plural sense, through which it emulates that assets of the Company may be comprised of various groups of assets constituting undertaking. Therefore, it requires consideration that the assets disposed relates to which part of the undertakings of the Company. An undertaking according to Webster's Dictionary, only means something that is undertaken or a business work or project which one engages in or attempts, or an enterprise. In the given circumstances, the afore stated PPE (paper business assets) is to undertake distinct business activity i.e. paper production business. In view of the above, the entire paper business related assets of the Company i.e. the PPE, is comprised of the undertaking.
- (b) It is observed that clause (i) to the explanation given in Section 183(3)(a) of the Act is relevant as follows:
- (i) In terms of Section 183(3)(a) of the Act, the clause (i) of the explanation is applicable for determination of undertaking, if, *inter alia*, the investment in that undertaking constitutes twenty percent of the net worth or net assets of the Company. In given case, the written down value of the PPE (paper business assets), is construed as investment in that undertaking, which amounts to Rs. 43.294 million. The PPE, constitutes 229% of the net assets of the previous year 2021 (net assets of 2021: Rs. 14.8 million).

Particulars	(Amount in Rs.)
Net worth as per Accounts 2021 (A)	14,795,831
Undertaking Threshold (20% of Net worth) (B)	2,959,166
Paper Business Asset Disposed Of in 2022 (C)	PPE (Note 13.1)
Cost / WDV	WDV
WDV of assets as per note 13.1 to the Accounts 2021	43,300,000
WDV of Paper assets business disposed of in 2022 (D)	34,000,000
Undertaking as per clause (i) of explanation to the Section 183(3) of the Act	Yes
%age of Net worth – WDV of assets disposed in 2022 to Net worth of 2021 (D/A)	229%



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The aforesaid (PPE) paper asset business disposal in the year 2022, therefore, constitutes undertaking in view of the given clause (i) to the explanation of Section 183(3) of the Act.

- (ii) The Company's stance as furnished through letter dated March 20, 2023 and during the course of instant proceedings that assets disposed of were not pertained to principal line of business, hence, could not be considered as undertaking. However, the said stance is not cogent as the provisions of law do not make such distinction amongst assets pertaining to principal line of business and non-core businesses.
- (iii) The Company has disposed of its PPE (paper business assets) in the year 2022, which constitutes undertaking, hence, requires authorization or consent of the shareholders, in terms of Section 183(3) of the Act.

B. Disposal of paper business assets constitutes 'sizeable part of undertaking'

It is observed that clause (ii) to the explanation given in Section 183(3)(a) of the Act states twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year, constitutes sizeable part of the undertaking. In this regard, it is noted that:

- (i) The Company in its Accounts of 2021 and 2022, has disclosed the aforesaid PPE (paper business assets) as separate class of assets in balance sheet and as per relevant note 13 to the aforesaid Accounts.
- (ii) In terms of Section 183(3)(a) of the Act, clause (ii) of the explanation is applicable to sizeable part of the undertaking and, *inter alia*, in terms of the given provision, disposal of twenty five percent or more of the value of assets in that class of assets as per the audited financial statements of the preceding financial year, constitutes sizeable part. In given case of the Company, the aforesaid PPE (paper business assets), constitutes 79% of the total assets (net) in that class, as per previous Accounts of the year i.e. 2021.

Particulars	Amount in Rs.
WDV/ value of assets as per note 13.1 to the Accounts 2021 (class of assets) (A)	43,300,000
WDV of Paper assets business disposed in 2022 (B)	34,000,000
%age Disposed (B/A)	79%
Sizeable part of the uundertaking as per clause (ii) of explanation to Section 183(3) of the Act	Yes

Therefore, in terms of clause (ii) of the explanation of the Section 183(3)(a) of the Act, the PPE forms sizeable part of the undertaking.



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- (iii) It is relevant to highlight that the numerical calculations for determination of undertaking or sizeable part thereof is based on the preceding financial year. In order to have objectivity the law uses preceding year numbers as basis for the purpose of determination of undertaking or sizeable part thereof. The Company has submitted its numerical calculations based on the year 2021 only, as per para 7(a) above. However, in terms of the given provisions of the Act, the numerical calculation in this regard is based on the preceding financial year i.e. 2021, as stated. Based on the precedent year numbers, the Company disposed of its entire PPE (paper business assets), as stated, and the said PPE meets relevant threshold of being sizeable part of the undertaking, as per the provisions of Section 183(3) of the Act.

C. Whether Section 183 is applicable only on selling of assets related to principal line of business of the Company:

The Respondents are of the view that the Company's principal line of business is renting of fixed assets and not paper manufacturing business. It was stated that a significant part (more than 90%) of Company's fixed assets were related to principal line of business, consequently, there was no requirement to make compliance of Section 183 of Act and the Company sold assets which were not part of the principal line of business asset. I have reviewed the relevant object clause in the Memorandum of Association, which, *inter alia*, states that "1. To lease out/rent out factory building and plant and machinery as and when required which is now become principal line of business."

In this regard, it is stated that the requirements of Section 183(3) of the Act provide that the board of accompany shall not except with the consent of the general meeting either specifically or by way of an authorization, sell, lease or otherwise dispose of the undertaking or a sizeable part thereof unless the main business of the company comprises of the such selling or leasing. In terms of the given provisions, the Company may lease its sizeable part without the authorization of the shareholders if main business is leasing or renting and the Company may also sell its sizeable part without the shareholders authorization if the main business is selling thereof.

As per the object clause, as highlighted above, the Company's main business is leasing or renting instead of selling, however, sizeable part of PPE was disposed of in the year 2022, without the prior authorization of the shareholders. Hence, I am of the view that even if the Company's main business is leasing or renting, however, without the authorization of its shareholders, the board cannot dispose of its sizeable part without special or general authorization of the shareholders of the Company. Hence, violation of Section 183(3)(a) of the Act is attracted.

D. Prior authorization or consent of the members is of essence:

Section 183(3) of the Act necessitates authorization of members as it provides that the directors of a public company or of a subsidiary of a public company shall not except with consent of the general meeting either specifically or by way of an authorization, sell, lease or otherwise dispose of the undertakings or sizeable part thereof unless the main business of the company comprises of such selling or leasing. I am of the view



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that aforesaid disposal of PPE was made in violation of the requirements of Section 183(3)(a) of the Act, i.e. without taking shareholders' authorization or consent and the shareholders were deprived from key and relevant information prior to such disposal. The Respondents, hence, violated the requirements of Section 183(3)(a) of the Act.

10. Given the aforesaid, I am of the considered view that Respondents have violated the provisions of Section 183(3)(a) of the Act, hence, are liable for action in terms of Section 183(6) of the Act. I, therefore, in exercise of powers conferred hereby, impose an aggregate penalty of Rs. 350,000/- (Rupees Three Hundred Fifty Thousand only) on the Respondents as follows:

Sr. No.	Name of the Respondent	Amount of Penalty
1	Syed Inamuddin Ahmed	50,000/-
2	Mr. M. Waqar Monnoo	50,000/-
3	Mr. Siraj Sadiq Monnoo	50,000/-
4	Mr. M. Rehan Riaz	50,000/-
5	Mrs. Ghazala Waqar	50,000/-
6	Mr. Umair Ilyas Shafi	50,000/-
7	Mr. Arshad Iqbal	50,000/-
Total		350,000/-

11. The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited / United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and to furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue. It may also be noted that the said fines are imposed on the Respondents in personal capacity, therefore, they are required to pay the said amount from their resources.

12. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act

Shahzad Afzal Khan
Director/HOD
Adjudication Department-I

Announced: November 8, 2023
Islamabad

