



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Olympia Spinning and Weaving Mills Limited

Number and date of notice: No. CSD/ARN/213/2015-2205-11 dated January 10, 2017

Date of hearing: February 15, 2017, April 13, 2017, April 20, 2017, May 24, 2017

Present: Mr. M. Waqar Monnoo, Chief Executive, Olympia Spinning and Weaving Mills Limited

Mr. Anas Makhdoom, Makhdoom & Company (Authorized Representative)

Mr Asim Jaffery, CFO/Company Secretary, Olympia Spinning and Weaving Mills Limited

ORDER

**UNDER SECTION 196 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984
IN THE MATTER OF OLYMPIA SPINNING AND WEAVING MILLS LIMITED**

This order shall dispose of the proceedings initiated against the Directors including the Chief Executive (*the "respondents"*) of Olympia Spinning and Weaving Mills Limited (*the "Company"*) through show cause notice ("*SCN*") dated January 10, 2017 issued under the provisions of Section 196 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the review of annual audited accounts of the Company for the year ended June 30, 2016, reveal disposal of a sizeable portion of the Company's assets during the year including 10.72 acres of land along with the spinning plant and machinery having book value of Rs.709.122 million which constituted 36.8% of total assets and 39.51% of the Plant Machinery & Equipment of the Company. It was observed that the Company sold all of the Plant and Machinery – Spinning amounting to Rs.663.877 as on July 1, 2015. As per record of the Commission shareholders' approval had not been obtained by the Company before disposal of the assets.

3. In view of the above, the SCN was issued for *prima facie* contravention of the provisions of section 196 of the Ordinance as no valid authorization was in place from the shareholders for the sale of aforesaid assets forming a sizeable part of the undertakings. The reply from the Company



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was received vide letter dated February 6, 2017 wherein it was informed that, "provisions of section 196(3) are not applicable since assets of the Company were already mortgaged with certain banks /financial institutions and their charge was already registered with SECP, hence, in exercise of mortgage rights, the banks/financial institutions have forcefully acquired the assets of the Company by way of enforcement of security to partially satisfy the debt." It was further informed therein that, "the Company has not sold any of its assets but transferred to the charge/mortgage holder banks in partial settlement of debt obligations of the Company". Hearing opportunities were provided to the Respondents on February 15, 2017, April 13, 2017 and April 20, 2017, however same were adjourned on their request. The hearing fixed for May 24, 2017 was attended by Mr. M. Waqar Monnoo, Chief Executive of the Company, Mr. Anas Makhdoom, Makhdoom & Company and Mr Asim Jaffery, CFO/Company Secretary of the Company hereafter referred to as Representatives. On a query to clarify the issue of approval of the shareholders for the sale of assets the Representatives informed that a detailed reply has been sent to the Commission a day earlier dated May 22, 2017. It was further stated that the rights of the Banks are clearly laid out in Section 19 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "FIO 2001") in presence of a Decree and the banks have forcefully taken the mortgaged assets of the Company. The respondents were required to submit the court decrees accordingly as same were not available with the Commission. The written submissions of the Company referred to by the respondents in the hearing were received on May 25, 2017 wherein the Company had attached a legal opinion on the applicability of Section 196 of the Ordinance. The legal opinion submitted in support of the reply of the Company was obtained from A. K. Brohi & Company, Legal Consultants. The legal opinion *inter alia* stated as under:

"8. As has already been mentioned above, Decrees were obtained by the Banks and the obligations thereunder have been violated by the company. Clauses 7.2 and 9.2 of the Settlement Agreements, which are part of the Decrees mentioned hereinabove, are therefore triggered and they provide for the banks' rights in case the Company defaults. They provide inter alia as follows:

Clause 7.2 of Decree dated 31.12.2010 "In case of occurrence of any Event of Default, UBL shall be entitled without limitation:

- a) To declare all amounts payable by the customer under this agreement as immediately payable;*



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- b) *To levy execution without notice and to obtain from the Court the immediate attachment, without and sale by private treaty or public auction of all collateral, whether movable or immovable;*
- c) *.....*
- d) *.....*
- e) *To forthwith and without notice to enforce and realize the Securities provided under this Agreement*
- f) *Commence execution proceedings without notice against Company and the Guarantors in the Honorable High Court of Sindh in terms of this Agreement; and in general;*
- g) *To take all steps as it may be entitled to under the laws and regulations in force in Pakistan."*

Clause 9.2 of the Decree dated 24.10.2010 "In case of occurrence of any Event of Default, Bank shall be entitled without limitation:

- i. To declare all amounts payable by the Customer under this Agreement as payable;*
- ii.*
- iii.*
- iv. To forthwith enforce and realize the Securities provided under this Agreement*
- v. To file execution against the Customer and the Directors in the Hon'ble High Court of Sindh in terms of this Agreement; and in general;*
- vi. To take all steps as it may be entitled to under the laws and regulations in force in Pakistan."*

9. These settlement agreements are part of the Decrees passed by the Hon'ble High Court and therefore the Banks would be within their rights and entitled to commence execution proceedings and thereby attach and auction the Securities immediately.

10. In light of the same the Banks have, infact, sent the Company with Demand Notices and subsequent Notices from their legal counsel, apprising it of the fact that the Bank have decided to acquire the Securities and directing it not to create any hindrances in the said acquisition and to hand over peaceful possession thereof.

11. In any case, the rights of the Banks are clearly laid out in Section 19 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "FIO 2001"), which provide that:

(19). Execution of decree and sale with or without intervention of Banking Court.-



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- 1- Upon pronouncement of judgment and decree by a Banking Court, the suit shall automatically stand converted into execution proceedings without the need to file a separate application and no fresh notice need be issued to the judgment-debtor in this regard.....
- 2-
- 3- In cases of mortgaged, pledged or hypothecated property, the financial institution may sell or cause the same to be sold with or without the intervention of Banking Court either by public auction or by inviting sealed tenders and appropriate the proceeds towards total or partial satisfaction of the decree. The decree passed by a Banking Court shall constitute and confer sufficient power and authority for the financial institution to sell or cause the sale of the mortgaged, pledged or hypothecated property together with transfer of marketable title and no further order of the Banking Court shall be required for this purpose.

12. It is also illustrative to refer to the definition of a mortgage as provided in the Transfer of Property Act, 1882 (the "TP ACT"). Section 58 (a) of the TP Act provides that "A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liabilities". The Mortgagee, therefore, holds an interest in the particular property.

13. It is clear from the above that the Banks, in this scenario, have extensive rights over the property, especially when the property in question is mortgaged. The mortgagor has transferred his interest in the property and only retains the right of redemption. This is also reinforced by the fact that in this case, the charges have already been registered with the SECP. The transaction of debt-asset swap is therefore nothing but a forcible acquisition by the Bank and in order to safeguard its interests, the Company has no choice but to enter into this transaction or face dire consequences i.e. initiation of recovery proceedings and the inevitable auction of the property at a low price, which would obviously be detrimental to the company's business and therefore it does not amount "selling, leasing or otherwise disposing of the undertaking" as that provision relates to voluntary transaction."

4. Subsequent to the hearing held on May 24, 2017, the Company vide letter dated May 30, 2017 also submitted consent decrees from the high Court of Sindh and the settlement agreements with the Banks.

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5. Before proceeding further, it is necessary to advert to the relevant provisions of Clause (a) of sub-section (3) of section 196 of the Ordinance provides as under:

"The directors of a public company or of a subsidiary of a public company shall not except with the consent of the general meeting either specifically or by way of an authorization, 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;

6. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 196 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

7. Sub-section (4) of Section 196 of the Ordinance states that:

"Whosoever contravenes any provision of this section shall be punishable with a fine which may extend to 1[one hundred thousand] rupees and shall be individually and severally liable for losses or damages arising out of such action."

8. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the representative during the hearing and observed that the assets have been taken over by the banks under a court decree from the High Court of Sindh. In light of the arguments put forth in the written submissions, I am of the view that the Company had defaulted in the repayments to the banks, the settlement agreement/compromise application have been made the order of the court and the banks have acted in accordance to that while invoking the clauses of default and the pursuant compulsion faced by the Company to dispossess the relevant assets. I, based on the submissions made by the respondents, close the matter without any adverse order.

Abid Hussain
Executive Director
Corporate Supervision Department

Announced:
December 15, 2017
Islamabad

