



Securities and Exchange Commission of Pakistan  
*Enforcement and Monitoring Division*

[Islamabad]

Before Rashid Sadiq, Executive Director

*In the matter of:*  
SERVICE INDUSTRIES TEXTILES LIMITED

Number and date of notices	19 (91)/CF/ISS/2001 dated February 18, 2002
	EMD/233/190/2002 Dated January 01,2003
Date of final hearings	October 15, 2002 and January 17, 2003
Present	Mr. Mustafa Ramday, advocate
Date of Order	January 21, 2003

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ORDER UNDER CLAUSE (a) OF SUB-SECTION (3) OF SECTION 196  
AND UNDER CLAUSE (b) OF SUB SECTION (1) OF SECTION 160  
OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the directors, Chief Executive and Secretary of M/S Service Industries Textiles Limited (hereinafter referred to as “the Company”) for selling a complete spinning mill (herein after referred to as Spinning Unit No.1) comprising 18,700 spindles in contravention of the provisions of Clause (a) of Sub-section (3) of Section 196 and Clause (b) of Sub-section (1) of section 160 of the Companies Ordinance, 1984 (the ‘Ordinance’)



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2. In order to decide this matter, a brief narration of the background facts leading to the issue of show cause notice is necessary. The Enforcement and Monitoring Division of the Securities and Exchange Commission of Pakistan (the “Commission”) has conducted an examination of the annual accounts of the Company for the year ended September 30, 2000 received at the Commission under Sub-section (5) of Section 233 of the Ordinance and it was revealed that the auditors of the Company M/S Taseer Hadi Khalid & Co., Chartered Accountants have given qualified opinion in their report signed by them on May 19, 2001 on various issues including the significant loss on the sale of machinery, which could not be verified by them ***‘due to lack of evidence pertaining to market value of the machinery’*** Since the sale of Spinning Unit No.1 by the directors of the Company without complying with the requirements of law is the main issue in this case, the auditors qualification in this respect, being relevant to the issue, is reproduced as follows:

*“During the year, the company sold a portion of its plant and machinery for Rs. 27 million approximately, which had a written down value of Rs 120 million approximately, thereby incurring a significant loss on this sale. It was not possible for us to verify the appropriateness of price in the absence of evidence pertaining to market value of obsolete machinery.”*

3. It was also noticed from the perusal of the aforesaid accounts that the total spindles installed have reduced from 47,420 to 28,720 and resultant reduction in production capacity from 9,468,890 kgs to 5,734,850 kgs after conversion into 38/s count. As 18,700 spindles along with back process constituted a complete spinning unit and 40% of the total installed spindles, it was an undertaking/a sizeable part of the overall undertaking of the Company. Its sale, therefore, required consent of the general meeting of



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the Company as required under Clause (a) of Sub-section (3) of Section 196 of the Ordinance. On perusal of the notices of the general meetings available on record of the Commission, it transpired that the sale of machinery was never included as an agenda item in any general meeting held during last several years. The director's report attached to the audited accounts for the year ended September 30, 2000 was also perused, however, nothing could be found there in respect of sale of Spinning Unit No.1. It was in these circumstances that the Enforcement and Monitoring Division decided to take up this matter with the Company.

4. Consequently, a notice dated February 18, 2002 was issued to the directors, Chief Executive and Secretary of the Company to show cause as to why action under Sub-section (4) of Section 196 of the Ordinance may not be taken for the violation of the mandatory requirements of the Ordinance. Another show cause notice was issued to the directors on January 01, 2003 for passing a resolution for sale of Spinning Unit No.1 in the annual general meeting held on March 31, 2000 in violation of Clause (b) of Sub-section (1) of Section 160 of the Ordinance.

5. In order to provide an adequate opportunity to defend this case, the case was fixed a number of times, the final date being October 15, 2002 in respect of proceedings under Section 196. Mr. Mustafa Ramday, advocate represented the directors and Chief Executive of the Company in the said proceedings. He also filed written reply to the show cause notice. His main contentions can be summarized as under:

- a) The disposal of the old and obsolete machinery ***against replacement with better-conditioned second hand machinery***



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was carried out under the authority of the Board of Directors. Consent of the shareholders was duly obtained in the 38<sup>th</sup> Annual General Meeting held on March 31, 2000. In order to substantiate his assertion, he placed on record copies of the minutes of the meeting of the Board of Directors and Annual General Meeting held on May 11, 1999 and March 31, 2000 respectively. He, thus, concluded that the Company has not contravened the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance.

b) ***The machinery was sold and replaced with second hand / better quality machinery*** so as to advance the sole objective of improving production and profitability of the company by paying off long term and short term loans and pay dividends especially to minority share holders. The Company could not find the required spare parts due to outdated / obsolete make and model of the machinery. As a result, the machinery remained inoperative for the last 2-3 years. In order to substantiate the improvement after sale of machinery, the following data of sales and profitability was also presented by the Learned Counsel:

<u>Year</u>	<u># of Spindles</u>	<u>Sales</u>	<u>Operating Profit / (Loss)</u>
1998	47,420	333 M	(57) M
1999	47,420	334 M	(47) M
2000	28,720	438 M	84 M

On the basis of the above information, he concluded that the disposal / replacement of the machinery resulted into



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enhanced profitability and the Company was able to convert its losses into profits by virtue of the said replacement.

- c) *The consideration for the sale of machinery was not cash rather the management replaced the same with second hand better quality machinery, as the machinery so disposed off, was not in operation for nearly one year with irreparable mechanical problems.* The agreement was finalized after due consideration of offers from other dealers/brokers keeping in mind the best possible rates.
- d) On the issue of loss on sale of machinery, the Learned Counsel has the contention that had there been no revaluation, the written down value of the machinery would have been Rs 15,671,535/-. The machinery was sold at Rs. 27,061,253/- resulting into a profit of Rs. 11,398,718/-. He argued that the revaluation is generally carried out without covering forced sale. While disposing of a revalued asset, revalued cost should not be considered while calculating profit and loss on disposal.
- e) On the issue of auditors' qualification, he contented that the sale and purchase of obsolete machinery is dealt with in the unorganized sector, therefore, it is generally finalized after verbal inquiries from different dealers. According to normal practice of such trade, it is not possible to provide quotations or other evidence regarding sale of old and obsolete machinery.



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f) The Learned Counsel has also invoked Section 488 of the Ordinance to seek relief from the liability for non-compliance of Section 196 of the Ordinance. In this respect, reliance was also placed by the Leaned Counsel on several case laws reported as:

- i) D. Doss vs. C. P. Connell The Indian Law Reports [1938] Madras 292
- ii) AIR 1959 Bombay 248
- iii) [1956] 3 All E. R. 624
- iv) 1997 CLC 1347
- v) AIR (31) 1944 Madrass 536
- vi) AIR 1960 Kerala 15
- vii) 1979 Com. Cases 426

6. In respect of show cause notice under Section 160 of the Ordinance, no reply was received from any director. The case was fixed for hearing on January 10, 2003, which was adjourned at the request of Learned Counsel for the Company to April 17, 2002. On the date of hearing, no one appeared, however, a letter was received from the Learned Counsel stating that despite repeated efforts on his part, he had not been able to get in touch with his clients. This demonstrates that the directors are not interested in defending the proceedings under Section 160 of the ordinance. I, therefore, proceed on the basis of documents and information available on record. As the issues raised in the two show cause notices are inter-related, therefore, the same are being discussed hereunder together.



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7. I have heard the Learned Counsel at length and have also examined the record and the relevant provisions of law applicable to this case. For ease of reference, the relevant provision, contained in Clause (a) of Sub-section (3) of Section 196 of the Ordinance are, to the extent relevant, reproduced as under:

*“(3) 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 undertaking or a sizeable part thereof, unless the main business of the company comprises of such selling or leasing;”*

8. The aforesaid provision restrict the powers of the directors of a public company or of a subsidiary company of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of the general meeting. The objective of these provisions is that the directors must consult the shareholders when an undertaking or a sizeable part thereof is intended to be sold. The prior consent of the shareholders, therefore, is a condition precedent for selling or disposing the undertaking or a sizeable part thereof. This has been given special significance by providing that default of these provisions would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

9. Now reverting to the argument of the Learned Counsel that the Company has obtained consent of the shareholders, it has been observed that this consent was obtained by the Company in the Annual General Meeting held on March 31, 2000 while considering “any other business”. The Learned Counsel has admitted that the Spinning Unit No.1 was an



undertaking / a sizeable part of the overall undertaking of the Company for the purposes of Clause (a) of Sub-section (3) of Section 196 of the Ordinance. What he has disputed is that there was no contravention of the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance, as the sale of assets was approved by the shareholders in the Annual General Meeting held on March 31, 2000. For proper appreciation of his argument, it is necessary to look at the relevant part of the minutes of the aforesaid Annual General Meeting of the Company. This is reproduced as under:

**Minutes of 38<sup>th</sup> Annual General Meeting held on March 31, 2000**

*“4. To Approve Disposal of Machinery*

*The following resolution was passed unanimously:*

*Resolved that the plant and machinery, which is nearly 40 years old and has become obsolete, may be replaced with a more useful and better-conditioned second hand machinery. The Chief Executive of the Company is hereby authorized to finalize the deal.”*

10. As for as the approval of the shareholders, as stated above, is concerned, it was obtained while considering other business, which is contrary to the requirements of Clause (b) of Sub-section (1) of Section 160 of the Ordinance, as the notice of meeting circulated to the shareholders did not contain any such business intended to be transacted. As the main thrust of the Learned Counsel is that the shareholders consent was obtained prior for the sale/disposal of the Spinning Unit No.1, therefore, it is necessary to see if the requirements of Clause (b) of Sub-section (1) of Section 160 of the Ordinance were fulfilled or not? In this respect, the notice of the Annual General Meeting held on March 31, 2000 is the relevant document, which



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needs to be examined. For ease of reference, its contents are reproduced as follows:

**NOTICE OF MEETING**

Notice is hereby given that the 38<sup>th</sup> Annual General Meeting of the members of the will be held on Friday 31 March 2000 at 1100 hours at Branch Office, Atari

Saroba, Atta Baksh Road, bank stop, Ferozpur Road Lahore to transact the following business:

1. To confirm the minutes of the 37<sup>th</sup> Annual general Meeting.
2. To receive and adopt the audited accounts together with the Directors and Auditors reports for the year ended September 30, 1999.
3. To appoint auditors and to fix their remuneration.
4. Any other business with the permission of the chair.

Lahore  
10 March 2000

BY ORDER OF THE BOARD  
Ralph Nazirullah  
Secretary

As can seen from the notice of the meeting reproduced above, there is no mention of any business pertaining to sale of spinning unit No.1 to be transacted at the aforesaid Annual General Meeting. The notice of the said meeting conveyed to the Commission and the stock exchanges also did not contain any indication that the Company has proposed any such business for consideration of the shareholders as required under the provisions of Clause (a) of Sub-section (3) of Section 196 of the Ordinance. It is to be noted that sale of a sizeable part of the undertaking of the Company was a special business and in order to propose this business, it was obligatory to annex a statement of material facts to the notice of the meeting as required



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under Clause (b) of Sub-section (1) of Section 160 of the Ordinance, which is reproduced hereunder:

- (b) *“Where any special business, that is to say business other than consideration of accounts, balance sheet and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a **statement setting out all material facts concerning such business**, including, in particular the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement.”*

The notice of the meeting, therefore, was not issued as per requirements of aforesaid provision of law. The resolution passed, therefore, was not in accordance with the requirements of Clause (b) of Sub-section (1) of Section 160 of the Ordinance. The total number of the shareholders of the Company as of June September 30, 2002 as reflected in the Form 34 is 1,077 whereas only 93 shareholders attended the aforesaid annual general meeting, which means that more than 90% of the shareholders were not even aware of the sale of spinning Unit No.1. It has also been noted that the Company did not even respond to the query of the Commission as to why the sale of Spinning Unit No.1 was not included in the agenda circulated to the shareholders, the Stock Exchange and the Commission. Moreover, the



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Company and its directors have neither responded to the show cause notice issued under Section 160 of the Ordinance nor did they appear before me on the hearing dates fixed at their convenience to argue the case. I, therefore, do not agree to the arguments of the Learned Counsel that the shareholders approval was obtained in accordance with the requirements of law for the sale of spinning Unit No.1. The mandatory requirements are meant to ensure that the shareholders are consulted prior to sale of the undertaking or a sizeable part thereof; therefore, their breach cannot be encouraged. The Directors / Chief Executive of the Company have, therefore, made themselves liable for punishment under Clause (a) of Sub-section (8) of Section 160 and Sub-section (4) of Section 196 of the Ordinance.

11. Having decided that the shareholders approval was not obtained in accordance with the requirements of Clause (a) of Sub-section (3) of Section 196 of the Ordinance and Clause (b) of Sub-section (1) of Section 160 of the Ordinance, it is necessary to determine as to whether the sale transaction was transparent and whether there had been any losses arising out of the aforesaid action. This is also important because the shareholders were not taken into confidence prior to the disposal of a sizeable part of the undertaking of the Company. This gives rise to apprehension that the management has not only suppressed but also concealed the information about sale of Spinning Unit No.1 from the shareholders of the Company. Further, the Company has entered into an agreement for sale of machinery on October 12, 1999 i.e., much before date of the Annual General Meeting held on March 31, 2000. Moreover, the Spinning Unit No.1 was not “replaced” as approved by the Board of Directors. The minutes of the meeting of the Board of Directors held on May 11, 1999 where sale of



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Spinning Unit No.1 was approved also reflected lack of discussion, deliberation and application of mind on this important issue. The said minutes did not even mention as to why the Spinning Unit was being disposed off and what kind of procedure was to be followed to ensure that the Company get maximum price for the said unit. The relevant extracts of the minutes of the Board of Directors held on May 11, 1999 are reproduced below:

*“Resolved that plant & machinery which has become obsolete be and is hereby replaced with better conditioned second hand machinery in order to improve efficiency and quality of production by way of rightsizing the plant.”*

In this regard, the Learned Counsel has the contention that the sale agreement was finalized after due consideration of the offers from other dealers and brokers. The Commission through its letter dated May 14, 2002 has required the following information in respect of sale of Spinning Unit No.1:

- a) The procedure followed by the Company for sale of Unit No.1 comprising 18,700 spindles;
- b) Copy of experts’ valuation report and other related documents evidencing the transparency of the sale transaction;
- c) Reasons for not including in the Agenda the sale of Spinning Unit No.1 as per requirements of Clause (b) of Sub-section (1) of Section 160 of the Ordinance.



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In spite of repeated requests during the course of hearings, the Learned Counsel was not able to present any information on the aforesaid queries. A copy of the agreement executed on October 12, 1999 between the Company and Messrs A J Saya & Company of Bilal Ganj Lahore was, however, provided. As this is an important document, therefore, its contents are reproduced as under:

*AGREEMENT*

This agreement is made at Gujrat on the **12<sup>th</sup> day of October**, 1999 by and between:

SERVICE INDUSTRIES TEXTILES LIMITED

G.T. Road, Gujrat having its Head Office at

38-Empress Road, Lahore through its

Chief Executive Mr. Mohammad Hameed

(hereinafter called as 'The Company')

AND

MESSRS A J SAYA & COMPANY

Mohni Road, Bilal Gung, through its

Proprietor Malik Ijaz Ahmed

(hereinafter called as 'The Contractor')

WHEREAS the Company wishes to replace some of its obsolete machinery by way of disposal of the same and getting in exchange useful and better conditioned second hand machinery in order to make its spinning project more viable. The Contractor approached the Company for effecting the transition **on the basis of barter system** in 10 to 12 transactions on the following terms and conditions mutually agreed:

The Company shall prepare and hand over to the Contractor a complete list of machinery, which is to be disposed of in a week's time latest by



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20<sup>th</sup> October, 1999. The list will not be changed or altered unless both the parties agree

The Company shall prepare and hand over to the contractor a list with exact and complete specification in respect of all the machinery required in replacement in a week's time latest by 20<sup>th</sup> October 1999. The list will not be changed or altered unless both the parties agree.

The Contractor will submit to the Company a detailed proposal before each transaction.

The Company will get the machinery inspected by the representative prior to the execution of each transaction.

All freight and unloading charges on machinery received at the project will be borne by the Company.

All freight and loading charges on machinery sent from the project will be borne by the Contractor.

The Contractor will be responsible for dismantling the machinery and will bear all the expenses in this respect, if any.

The Contractor agree to perform all the transactions within a period of six months from the date of this agreement latest by 11<sup>th</sup> April, 2000, otherwise a penalty of Rs.1,000.00 (Rupees: One thousand only) will be imposed by the Company.

In witness hereinabove this agreement is mutually agreed and signed:

For SERVICE INDUSTRIES TEXTILES LIMITED

for M/S S J SAYA & COMPANY

(MOHAMMAD HAMEED)

(MALIK IJAZ AHMED)



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12. Although the list of machinery was not a part of the aforesaid agreement, detail of the machinery disposed off and the machinery received in lieu thereof were placed on record. As these lists are the subject of agreement dated October 12, 1999 and would be a determining factor for any loss suffered by the Company on their sale, therefore, the same are reproduced hereunder:

**LIST OF MACHINERY DISPOSED OFF**  
**DURING THE YEAR 01-10-99 TO 30-9-2000**

<b>S.No.</b>	<b>DESCRIPTION OF MACHINERY</b>	<b>Quantity</b>	<b>Value Rs.</b>
01	Chery Harashoki D-400 MT Japan	4 Nos.	1,840,000
02	Simplex Frame Howa, RM 100 104 Spindles Japan	4 Nos.	520,000
03	Simplex Frame Howa, RM 100 124 Spindles, Japan	1 No.	62,500
04	Simplex Toyoda FX6 124 Spindle each with Drafting System	4 Nos.	300,000
05	Ring Frame Howa, Japan, 400 Spd each	34 Nos.	2,550,000
06	Ring Frame Rx4 Toyoda Japan 414 Spd Japan	10 Nos.	900,000
07	Auto Cone Mach Coner Murata 50 Spd Japan	3 Nos.	2,400,000
08	Auto Cone Mach Coner Murata 50 Spd Japan	2 Nos.	1,600,000
09	Auto Cone Mannual winder Murata 120 Spd	3 Nos.	1,275,000
10	Auto with Cone Compressor Sanco VS-15C-8, Kg/Cm2	3 Nos.	4,200,000
11	Budle Press, Japan	1 No.	20,253
12	Card CK-70 Toyoda Japan	16 Nos.	792,000
13	Drawing Frame Howa Japan	1 No.	275,000
14	Simplex Frame Toyoda FX6 129 Spindle each Japan	5 Nos.	330,000
15	Ring Rame RX-4 430 Spindle	2 Nos.	190,000
16	Card Toyoda Japan	2 Nos.	
17	Card Howa	4 Nos.	360,000
18	Card Howa	12 Nos.	304,000
19	Card Howa	12 Nos.	1,480,000
20	Simplex Toyoda FL-16 120 Spd	1 No.	62,500
21	Lap Former Sh-4, Toyoda	1 No.	
22	Comber CM-10 Japan	5 Set	7,600,000
	<b>Total Rs.</b>		<b>27,061,253</b>

**YEAR 2001-02 - LIST OF MACHINERY REPLACED**

<b>S.No.</b>	<b>MACHINERY</b>	<b>Quantity</b>	<b>Value Rs.</b>
01	Magzine Driver for mach Coner	One Lot	476,000
02	Two Speed Motor of Card	17 Nos.	425,000
03	Circuit Breaker for Electric Panel & Capicitors	One Lot	65,520
04	Card Conversion Howa to Crasrol ATE	1 No.	550,000
05	Toyoda Card Machine, CNR	2 Nos.	1,114,296
06	Toyoda Card Machine, CNR	3 Nos.	1,671,426
07	Toyoda Card Machine, CNR	5 Nos.	2,785,710



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08	Toyoda Card Machine, CNR	4 Nos.	2,228,568
09	Two speed Motors of Card Machine with Carding Wire	10 Nos.	471,500
10	Two Speed Motors for Card	25 Nos.	625,000
11	Generator Parts (various)	One Lot	647,264
12	Ring Frames – Overhead Blowers	15 Nos.	900,000
13	Spindle Bolsters	For 10 Ring Machines	2,103,520
14	Spindle Bolsters	For 8 Ring Machines	1,682,816
15	Spindle Bolsters	For 10 Ring Machines	2,103,520
16	Spindle Bolsters	For 6 Ring Machines	1,202,144
17	Air Conditioning Return Fan	1 No.	24,800
18	G 1 Nozzle Guide	99 Nos.	198,000
19	Auto Cone Nozzle G1	125 Nos.	500,000
20	Auto cone Nozzle G1	75 Nos.	
	Magzine Can	50 Nos.	525,000
21	Magzine Can	10 Nos.	
	Auto Cone Nozzle G1	50 Nos.	
	Auto Cone Uster C 3	1 No.	248,500
22	Hard Chroming of Ring Appron Bar	817 Pcs	122,550
23	Aluminim Adopter	3490 Nos.	
	Pneumafil Fan including Motor	7 Nos.	129,250
24	Pressure Arm Slide, Cradle Shaft	8 Set	924,280
25	Pressure Arm Slide, Cradle	15 Set	1,733,040
26	Pressure Arm Slide, Cradle and Ring Appson Bur	5 Set	764,680
27	Ring Frame – Overhead Blowers	8 Nos.	480,000
28	Ring Frame – Overhead Blowers	11 Nos.	660,000
29	Magzine Cans	12 Nos.	54,000
30	Card Cans	11 Nos.	16,500
31	Card Conversion Parts (Coller Box, DOF Moslet, Cylinder Pullies etc.)	5 Set	625,000
32	Drawing conversion Parts	1 Set	50,000
		<b>Total Rs.</b>	<b>26,167,884</b>

13. The aforesaid agreement contemplated replacement of Spinning Unit No.1 by its disposal and getting in exchange useful and second hand machinery. It is, however, silent as to the cost of the machinery disposed of and the cost of the machinery, which was stated to have received by the Company in lieu thereof. The spinning unit No. 1 which was revalued by M/S Razzaque Umerani & Co., surveyors and valuation consultants on December 31, 1995 for Rs. 178.523 million (revalued cost) having book value of 120.261 million as on September 30, 2000 have been sold by the



Company at Rs. 27 million only resulting into a loss of Rs 93 million. The contention of the Learned Counsel that the revalued cost should not be considered while calculating profit and loss on disposal is not valid being contrary to the generally accepted accounting principles.

14. Regarding the argument that the sale of the undertaking was not on cash, it has been noted from the audited cash flow of the Company for the year ended September 30, 2000 that cash amounting to Rs. 27.061 million is reflected as received from the disposal of fixed assets. This further raises apprehension about the transparency of the transaction and raises doubts that the Company has also not replaced the 18,700 spindles as asserted by the Learned Counsel and as approved by the Board and in the purported resolution passed by the shareholders. Furthermore, the machinery acquired in lieu of the complete spinning unit sold by the company does not appear to have enhanced the capacity of the company as no additional spindles were added to the machinery. It is also pertinent to add here that increase in profitability could be due to a combination of factors like decrease in raw material prices, better cash flows etc. and cannot be attributed to selling of the machinery by the Company.

15. As regard to the argument of closure of the Spinning unit No.1, it has been noted that the Company has never informed its shareholders that the Spinning Unit No.1 has been closed. The Company has always given the shortage of capital as the main reason for the under utilization of the capacity and it was never stated in the accounts or the directors reports that the Company has closed the Spinning Unit No.1. The relevant notes from the annual audited accounts for the year ended September 30, 1998 to 2001 are reproduced hereunder:



***Reasons for underutilization of capacity***

Year ended September 30, 2001

*“The reason for the under utilization of capacity is mainly the shortage of working capital.”*

Year ended September 30, 2000

*“The reason for the under utilization of capacity is mainly the shortage of working capital.”*

Year ended September 30, 1999

*“The reason for the under utilization of capacity is mainly the shortage of working capital.”*

Year ended September 30, 1998

*“The reason for the under utilization of capacity is mainly the shortage of working capital.”*

This again demonstrates the suppression of information and concealment of material facts from the shareholders of the Company. Moreover, the issue that the Company has not received any cash whereas the same was stated to have been received as per cash flow statement for the year ended September 30, 2000 requires further examination. The Company has also not been able to place on record copies of any offer received from the dealers and brokers and that the sale was made to the party which offered the highest price. In this respect, it has regretfully noticed that the Company has taken the position that the decision to sell the Spinning Unit No.1 to



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M/S A J Saya & Company was made on verbal enquiries and there is no other evidence of the said sale. The directors are the trustees of the funds entrusted by the shareholders for utilization in their interest and any improper utilization of those funds amounts to breach of trust.

16. In my view, where the sale of sizeable asset/undertaking is to intended, the following minimum information needs to be sent to the shareholders in relation to material facts:

- a) The need for the sale
- b) How the sale is in the interest of the Company?
- c) The mode of disposal; the procedure to be followed; to whom the sale is intended to be made, if known at the date of notice?
- d) The expected proceeds of the sale
- e) How the company would benefit from the sale of undertaking or its sizeable part?

It is the commercial consideration of the management to sell the undertaking or its sizeable part. What, however, is required in this respect is that the transactions should be transparent and in the best interest of the Company and its shareholders.

17. In view of the above discussion, there appears to be doubt about the transparency of the sale of the Spinning Unit No.1 because of the following reasons:

- i) the material facts and vital information about sale of Spinning Unit No.1 were concealed from the shareholders and the



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- resolution was passed without fulfilling the requirements of the Clause (b) of Sub-section (1) of Section 160 of the Ordinance;
- ii) Even the resolution was moved to the shareholders after executing the machinery sale agreement and in the manner contrary to the provisions of law;
  - iii) The annual accounts indicates cash receipts regarding sale of machinery whereas the Company has taken the position that there was no involvement of cash in this transaction and the machinery was “replaced.”
  - iv) There has not been any replacement of machinery as no spindles and allied machinery were added to keep the production capacity intact as decided by the Board of Directors;
  - v) No documents / material could be produced regarding the sale of Spinning Unit No.1 including valuation of assets and negotiation with the parties;
  - vi) No discussion or deliberation could be found in the minutes of the Board Meeting regarding sale of spinning Unit No.1;
  - vii) The Learned Counsel has not been able to justify the loss suffered by the company on sale of Spinning Unit No.1.

18. As regard to the relief under Section 488, it has been contended that in view of the element of honesty, which are very much visible, the directors and the secretary of the Company may be relieved for any *bona fide* mistake in the performance of their duties. Before going into further discussion, it would be appropriate to first examine the applicability of Section 488 of the Ordinance to the present proceedings. This issue was examined by the Learned Appellate Bench of the Commission in a recent case titled Gharibal Cement Limited and others Vs. Executive Director



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(Enforcement & Monitoring). The relevant part of the said Order is reproduced hereunder:

*“In our view, Section 488 would be attracted only to such proceedings where criminal proceedings have to be initiated by the Commission in a Court of “Session and the Commission has been empowered to grant relief under Section 488 with the objective to provide protection against undue hardship in deserving cases and give relief from liability to a person who though technically guilty of defaults, negligence and breach of duty or breach of trust is able to convince that it has acted honestly and reasonably, and having regard to the circumstances of the case, ought fairly be excused from the charge, and that no criminal proceedings or complaint be initiated before the Court. In the present case there is no penalty for imprisonment for which complaint has to be filed or proceedings to be initiated before the Court, therefore, in our view Section 488 cannot be invoked for the purpose of Section 208 of the Ordinance.”*

In view of the aforesaid interpretation of the Learned Appellate Bench of the Commission, the provisions of Section 488 of the Ordinance cannot be invoked in this case because no penalty for imprisonment has been stipulated in the provisions, which has been violated by the directors / Chief Executive and Secretary of the Company. The Learned Counsel has also referred a number of cases to claim relief from the liability for non-compliance with the statutory provisions. However, in this view of the matter as discussed above, the cases referred to by the Learned Counsel are not relevant.



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19. In conclusion, I Order as follows:

- a) For the violation of Clause a) of Sub-section (3) of Section 196 of the Ordinance, I hereby impose a penalty of Rs. 5,000 each on the directors including the Chief Executive of the Company under Sub-section (4) of Section 196 of the Ordinance.
- b) For the violation of the provisions of Clause (b) of Section 160 of the Ordinance, 1984, I hereby impose a penalty of Rs.20,000/- on each of the directors including the Chief Executive under Clause (a) of Sub-section (8) of Section 160 of the Ordinance.
- c) In view of the circumstances of this case and after examining the record by myself, I have come to the conclusion that an investigation into the sale transaction of the Spinning Unit No.1 by some expert is desirable to determine the transparency of sale and reasons for huge loss suffered by the Company in consequence of the said sale. I, therefore, direct the office to examine the issue and take appropriate action required under the relevant provisions of the Ordinance in order to fix the responsibility for the losses arising out of action taken in violation of clause (a) of Sub-Section (3) of Section 196 and Clause (b) of Sub-section (1) of section 160 of the Ordinance.

20. The following directors / Chief Executive of the Company are hereby directed to deposit the fine amounting to Rs. 25,000 (Rupees Twenty Five Thousand) each in the bank account of the Commission within



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30 days of the receipt of this Order and submit a copy of the receipted challan to the Commission:

	<i><b>AMOUNT</b></i>
	<i>Rupees</i>
<i>i. Mr. Mohammad Hameed</i>	<i>25,000</i>
<i>ii. Mr. Ijaz Hameed</i>	<i>25,000</i>
<i>iii. Mr. Farooq Hameed</i>	<i>25,000</i>
<i>iv. Mr. Amer Hameed</i>	<i>25,000</i>
<i>v. Mr. Tariq Hameed</i>	<i>25,000</i>
<i>vi. Mr. Abid Hussain</i>	<i>25,000</i>
<i>vii. Ms Mariam Hameed</i>	<i>25,000</i>

21. As Mr. Mustafa Ramday, advocate has not represented Mr. Shahid Anwar, Mr. Farooq Hassan, directors and Mr. Ralph Naizirullah, who is the Secretary of the Company, therefore, another opportunity is being provided to them to appear before the undersigned on the date to be fixed by the office.

***Rashid Sadiq***

Executive Director (Enforcement & Monitoring)

*Announced*  
*January 21, 2003*  
**Islamabad.**