

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad

Before Rashid Sadiq, Executive Director

In the matter of
SAITEX SPINNING MILLS LIMITED

Date of hearing	August 29, 2001
Present	Mr. Salman Aslam Butt, advocate

ORDER UNDER SECTION 263 OF
THE COMPANIES ORDINANCE, 1984

M/S Saitex Spinning Mills Limited, a listed company (hereinafter called the “Company”) filed a writ petition before the honourable Lahore High Court, Lahore against Order dated April 08, 2000 passed by the then Commissioner (Enf) appointing M/S Muhammad Naeem & Co. Chartered Accountants as Inspector under Section 263 of the Companies Ordinance, 1984 (the “Ordinance”) to investigate into the affairs of the Company. The aforesaid Order was passed on the application of M/S Investment Corporation of Pakistan (the “ICP”), a shareholder of the Company holding 14.12% of the total paid up capital of the Company. The sole grievance of the Company was that the order was passed without providing personal hearing.

2. The honourable Lahore High Court vide Order dated April 26, 2000 remanded the case directing the Commission to decide the case in accordance with law. The Company was directed to appear before the Commission for rehearing of the case. I have heard the Company as well as ICP. Mr. Salman Aslam Butt, advocate appeared on behalf of the Company, whereas ICP was represented by its Senior Vice President, Rana Ahmed Khan.

3. At the time of hearing, the Learned Counsel for the Company raised the issue of maintainability of the application of ICP. It was specifically averred that there was no prescribed

complaint within the meaning of Section 263 of the Ordinance, on the basis whereof the Commission could initiate any proceedings against the Company. He argued that the application filed by ICP did not fulfill the mandatory requirements of Section 263 of the Ordinance and Rule 18 and Rule 30 of the Companies (General Provisions and Forms) Rules, 1985 (the “Rules”). He also argued that there was no plausible ground to initiate proceedings under Section 263 of the Ordinance.

4. It appears necessary to advert, in the first instance, to the relevant provisions of law applicable in this matter. Section 263 of the Ordinance deals with the appointment of inspectors on application by members or on receipt of report of the Registrar under Section 231 or Section 261 of the Ordinance. It is pertinent to note that the power to appoint inspectors vesting in the commission under Section 263 is subject to the following pre-conditions:

- i) *the members making application must hold one-tenth of the total voting power of the Company.*
- ii) *the application shall be supported by such evidence as the Commission may require for the purposes of showing applicant has good reasons for requiring investigation.*
- iii) *The Commission may, before appointing inspectors, require the applicant to give such security for payment of the costs of investigation as the Commission may specify.*

5. Rule 18 of the Rules prescribes the requirements for application under Section 263 of the Ordinance. Since the Learned Counsel for the Company has vehemently contested the issue of maintainability of the application on the ground that there was no prescribed complaint within the meaning of Section 263 of the Ordinance, therefore, the said Rule is, to the extent relevant, reproduced hereunder:

Rule 18: *Application under section 263. (1) Every application for investigation into the affairs of a company under clause (a) or clause (b) of section 263 shall specify---*

- a) *the name and address of the registered office of the company whose affairs are sought to be investigated;*
- b) *the names and addresses of the applicants, and, in the case of a company having a share capital; also the total number of shares of the company held by each of them together with the amount paid up thereon;*

- c) *if the company has a share capital, the issued and paid-up capital of the company and the nominal of face value of the shares or, if the company has no share capital, the total number of its members;*
- d) *the precise and specific reasons for requesting the investigation with particulars of alleged irregularities; and*
- e) *Whether the applicants agree to give security for payment of the costs of investigation and the ceiling of the amount up to which they so agree.*

2. *Every such application shall be accompanied by such documentary evidence in support of the reasons for requesting the investigation and the alleged irregularities as is reasonably open to the applicants.*

3. *Every such application shall be signed by the applicants and shall be verified by their affidavit stating inter alia, the paragraph of the application which contain statements true to their knowledge and the paragraphs of the application which contain statements true to the best of their information and belief.*

4. *The Commission may, before passing any order on the application, require the applicants or any one or more of them to produce such further documentary or other evidence as the Commission may consider necessary---*

- a) *for the purpose of satisfying itself as to the veracity of the allegations made in the application; or*
- b) *for ascertaining any information which, in the opinion of the Authority is necessary for enabling it to pass orders on the application; or*
- c) *for ascertaining the eligibility of applicants or any one or more of them to make the application.*

6. It would also be necessary to reproduce Rule 30, which prescribes the mode for submission of applications to the Commission:

Rule 30: *Mode of submission of applications, etc.* *Every application made to the Registrar, the Authority or the Federal Government shall, in addition to complying with any other requirement of the Ordinance or the rules, be---*

- i) *duly signed and verified by an affidavit by the person making it and, in the case of a company, signed and verified by an affidavit by a responsible officer of the company;*
- ii) *neatly and legibly written, typed or printed, setting out precisely the facts, grounds and claims or relief applied for in serially numbered paragraphs and specifying the relevant provisions of the Ordinance under which action of relief is applied for;*

- iii) *accompanied by documents referred to in the application or relied upon and, in the case of an appeal against any order or decision, by a certified copy of such order or decision;*
- iv) *accompanied by one spare copy, duly signed, dated and verified and accompanied by copies of the documents as aforesaid; and*
- v) *accompanied by the original receipt of the treasury or bank for the fee paid for the application.*

7. The aforesaid provisions of the Ordinance as well as Rules are unambiguous and clear with regard to making of applications for investigating into affairs of a Company by the members. Law requires that application under Section 263 shall specify, among others, the precise and specific reasons for requesting investigation with “particulars of alleged irregularities”. It is also one of the requirements that the application shall be accompanied by such documentary evidence in support of the reasons for requesting investigation and the alleged irregularities as is reasonably open to the applicants. It is also mandatory that the application shall be signed and verified by an affidavit by a responsible officer of the Company i.e., Chief Executive, a director or the Secretary of the Company.

8. In the case in hand, ICP filed an application dated September 29, 1999 under Clause (a) of Section 263 of the Ordinance for appointment of Inspectors. The grounds mentioned in the application *inter alia* are that the Company has been on the defaulters counter of Karachi Stock Exchange for the last two years and it has not declared any dividend since its listing in 1990. The management had not taken any action to remove the aforesaid defaults. It was also stated in the application that the Company qualifies for de-listing, which according to the company law would be followed by winding up. On the basis of the above information, the Commission was requested to appoint Inspectors to determine mis-management and oppression and to determine what the Company’s value would be in liquidation. The application was signed by Mr. Behram Hasan, Deputy Managing Director of the Company. The application was not accompanied by any other document. The Commission vide its letter dated October 07, 1999 advised the Company to make formal application under Section 263 of the Ordinance and to provide, among others, proof of holding more than 10% in the Company, assurance to bear the cost of investigation and documentary evidence in support of the allegation of mis-management and oppression. ICP through its letter dated February 03, 2000 provided the proof of holding of more than 10% in the Company and also undertaken to pay Rs 100,000/- towards cost of investigation. However, no documentary evidence in support of allegation of mis-management and oppression was provided. Instead, it was informed that the Company is on the defaulters counter of Karachi Stock

Exchange since August 06, 1997 and has not declared any dividend since its listing in 1990. The then Commissioner (Enf.) appointed Inspectors to investigate into affairs of the Company vide Order dated April 08, 2000. The said Order, as already stated, was challenged by the Company before the honorable Lahore High Court. The case was remanded to the Commission for taking a decision in accordance with law.

9. I have carefully examined the application, which suffers from several legal infirmities. The applicant has not fulfilled the requirements of Rule 18 & 30 of the Rules while making application for investigation into affairs of the Company; particularly, the documentary evidence of alleged irregularities were not provided. At this point, however, I do not consider it necessary to discuss in detail the deficiencies in the application because for the reasons discussed hereinafter, the application is being disposed of.

10. On the Company's commitment to improve its performance and to consider the payment a nominal dividend to its shareholders for the year ending September 30, 2000 subject to approval of lenders, ICP has agreed that there was no need to continue investigation. Accordingly, the amount deposited by ICP with the Commission towards cost of investigation into the affairs of the Company has been refunded. In consequence thereof, the application dated September 29, 1999 by ICP stands withdrawn. The case is accordingly disposed of.

RASHID SADIQ

Executive Director (Enforcement and Monitoring)

Announced
May 23, 2002
ISLAMABAD