

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

KOHINOOR LOOMS LIMITED

Number and date of show cause notice	19 (706) CF/ISS/85-2001 dated November 19, 2001
Date of hearing	June 03, 2002
Present	Mr. Zia-ul-Hassan Qureshi, Director

ORDER

This order will dispose of the proceedings initiated against M/S Kohinoor Looms Limited (hereinafter called the “Company”), its directors and Chief Executive for non-compliance with the mandatory provisions of the Companies Ordinance, 1984 (the “Ordinance”) pertaining to holding of Annual General Meetings, presentation of balance sheet and profit and loss account before the Company in Annual General Meetings and preparation, transmission and filing of half yearly accounts.

2. The relevant facts of this case, briefly stated, are that the Company was required to hold its Annual General Meetings for the calendar years 2000 and 2001 and to lay therein its balance sheets and profit and loss accounts for the years ended September 30, 1999 and September 30,

2000 on or before March 31, 2000 and March 31, 2001 respectively as required under Sub-section (1) of Section 158 and Sub-section (1) of Section 233 of the Ordinance. The Company was also required to prepare and transmit to its members and the relevant stock exchanges, a profit and loss account and the balance sheet (the “half yearly accounts”) as at March 31, 2000 and 2001 under clause (a) of Sub-Section (1) of Section 245 of the Ordinance. The Company was also required to file with the Registrar and the Commission three copies of such half yearly accounts simultaneously with the transmission to its members.

3. The Company failed to hold its Annual General Meetings for the calendar years 2000 and 2001 and to lay therein its balance sheet and profit and loss account for the years ended September 30, 1999 and 2000 respectively. The Company also failed to prepare, transmit and file its half yearly accounts for the periods ended March 31, 2000 and March 31, 2001 within the prescribed time provided in the Ordinance. The aforesaid non-compliance of the mandatory provisions of the Ordinance called for action against the Company, its directors and Chief Executive.

4. Consequently, a notice No. 19(706) CF/ISS/85-2001 dated November 19, 2001 was issued to the Company, its directors and Chief Executive calling upon them to show cause in writing within fourteen days as to why penalties as provided under Clause (a) of Sub-section (4) of Section 158 and Sub-section (3) of Section 245 read with Section 476 of the Ordinance may not be imposed and prosecution proceedings may not be initiated under Sub-section (6) of Section 233 read with Sub-section (7) of Section 230 of the Ordinance.

5. The show cause notices addressed to the Company, its Chief Executive Mian Javaid Saigol and Directors namely Mrs. Tarfa Saigol, Mrs.Mehreen Saigol, Mrs.Kathleen Megan Saigol and Ms. Lina Saigol were returned undelivered with remarks “ *addressees have refused to receive and, therefore, returned*”. Subsequently, a special messenger was deputed to deliver these show cause notices to these directors. According to the report of special messenger, the said directors were stated to be out of the country whereas the Company was not maintaining its registered office at the address registered with the Commission. The matter was also taken up with the auditors of the Company, namely M/S S.M. Masood & Co. Chartered Accountants, who informed that the Company was lying closed and was not maintaining its registered office. The notices were, however, received by Mr. Muhammad Kalim and Mr. Zia-ul-Hassan Qureshi who did not respond the same. In the circumstances, it was considered necessary to call the directors for personal hearing on June 03, 2002. The hearing notices addressed to Mian Javaid Saigol, Mrs. Tarfa Saigol, Mrs.Mehreen Saigol, Mrs.Kathleen Megan Saigol and Ms. Lina Saigol were returned undelivered with the remarks of the postman “ *refused to receive and, therefore, returned.*” On the date of hearing, Mr. Zia-ul-Hassan Qureshi, director appeared and presented a letter of Mrs. Tehreem Saigol on behalf of Mian Javaid Saigol. He also informed that the factory was lying closed for quite some time and all the employees had been laid off. In response to the question as to why other directors had refused to receive the notices, he stated that Mian Javaid Iqbal has been receiving several notices from banks who were in litigation with the Company for recovery of their dues. He, therefore, instructed his security guard not to receive any notice. He, however, could not explain the reasons for the aforesaid violations. Mrs. Tehreem Saigol in her letter stated that Mian Javaid Saigol, Chief Executive of the Company was seriously ill and was, therefore, unable to comply with the instructions contained in the show cause notice. A copy of letter of Ministry of Finance addressed to Mian Javaid Iqbal was also placed on record, which

indicated that the name of Mian Javaid Iqbal was on Exit Control List. This also suggested that the Chief Executive was keeping out of the way for the purpose of avoiding service show cause and hearing notices to him and other directors who mostly are his family members.

6. Before proceeding to decide this case, I consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions by the Companies. The protection of the investors is one of the primary objectives of the Ordinance. It is the investors who provide seed for capital formation. If the interest of the investors is protected they will save and invest more. Their interest is protected by transmission of timely and adequate information to them. It is the annual and half yearly accounts, which provide information to the investors about the affairs of the companies. This is necessary for making sound investment decisions by the investors. Annual General Meeting is a forum where the investors can freely discuss, speak and vote on important matters concerning approval of accounts, appointment of auditors, election of directors etc. It has unfortunately been noted that some companies are not observing these compulsory requirements of law. It is the duty of the Commission, which is the regulator to ensure the enforcement of the law to adequately safeguard their interests.

7. Reverting to the case in hand, I deem it necessary to refer to the relevant provisions of law, which have been contravened by the Company. These provisions of law are, to the extent relevant, reproduced hereunder:

“Section 158 (1) Every company shall hold, in addition to any other meeting, as its annual general meeting, within eighteen months from the date of incorporation and thereafter once at least in every calendar year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting.”

Section 233(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in annual general meeting a balance sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of first account for the period since the incorporation of the company and in any other case since the preceding account, made up to a date not later than the date of meeting by more than six months .

Section 233 (3) The balance sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company, and auditor's report shall be attached thereto.

Section 233 (4) Every company shall send a copy of balance sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditor's report and the director's report to the registered address of every member of the company at least twenty one days before the meeting at which it is to be laid before the members of the company and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least twenty one days before that meeting.

Section 233 (5) A listed company shall, simultaneously with the despatch of the balance sheet and profit and loss account together with the reports referred in Sub-section (4), send five copies each of such balance sheet and profit and loss account and other documents to the Commission, the stock exchange and registrar.

Section 245(1) Every listed company shall:

- (a) within two months of the close of the first half of its year of account, prepare and transmit to the members and stock exchange in which the shares of the company are listed a profit and loss account for, and balance sheet as at the end of that half year, whether audited or otherwise; and
- (b) simultaneously with the transmission of the half yearly profit and loss account and balance sheet to the members and the stock exchange, file with the registrar and the Commission such number of copies thereof, not being less than [three] as may be prescribed."

8. The aforesaid provisions of law have been enacted to provide adequate and timely information to the shareholders about the affairs of a company and to provide a forum where the members of a company can freely discuss the affairs of a company with its management once a year. The Company has violated these mandatory provisions of the Ordinance. In the

circumstances, it can be legitimately inferred that the Company, its Chief Executive and directors have failed to protect the interest of its investors.

9. I have noted with concern that the two directors who have received notices have not responded to the show cause notice. The reply on behalf of the Chief Executive is also highly unsatisfactory and does not give sufficient reasons for the breach of the statutory duty imposed on him by the Ordinance. I sympathize with the ailing Chief Executive who appears to be the main sponsor of the Company. His personal appearance was never required and he could have appointed a counsel to represent him and the Company in these proceedings. This unfortunately has not been done. The shareholders of the Company are not aware of the affairs of the Company for the last three years due to non-holding of Annual General Meetings, non-presentation of accounts therein and non-circulation of half yearly accounts. It is disappointing that the Company has kept its shareholders in the dark by not providing them reasonable information about affairs of the Company. The Chief Executive has also deliberately avoided receiving notices issued by the Commission. The Company has also committed other irregularities like non-holding of elections of directors and filing of statutory returns under the provisions of the Ordinance and non-maintenance of registered office of the Company. In the circumstances, I am of the view that the Company and its directors and Chief Executive have completely disregarded the provisions of law and this neglect could not be condoned. These irregularities are of serious nature, which could lead to winding up of the Company in terms of Section 305 of the Ordinance.

10. From the aforesaid discussion, it is quite obvious that the Chief Executive and directors of the Company have failed to take necessary steps to carry their statutory obligations. As Mr.

Muhammad Kaleem has not responded, Mr. Zia-ul-Hassan Qureshi did not give justifiable reasons in this regard and other directors have deliberately avoided appearance before me and also have not responded to the Show Cause Notice and subsequent correspondence, therefore, I consider that the default was committed willfully and deliberately.

11. In view of the foregoing, the default under Sub-section (1) of Section 158 and Clause (a) of Sub-section 245 of the Ordinance is established and the Company, its directors and Chief Executive have made themselves liable under Clause (a) of Sub-section (4) of Section 158 and Sub-section (3) of Section 245 of the Ordinance. Punishment has been prescribed with the intention that the law should be observed. I, therefore, taking a lenient view, impose a fine of Rs. 40,000/- (Rupees forty thousand) on the Company and every director including its Chief Executive for default in complying with the provisions of Sub-section (1) of Section 158 of the Ordinance for the years ended September 30, 1999 and September 30, 2000 and for the continuous default, no further fine is imposed on the Company, its Chief Executive and directors, which is prescribed @ Rs. 2,000/- per day. I give an opportunity to the Company, its Chief Executive and directors to rectify the irregularity by holding overdue Annual General Meetings immediately and hope that they would react honestly and reasonably. For the default under Sub-section (3) of Section 245 of the Ordinance for period ended March 31, 2000 and March 31, 2001, I also take a lenient view and instead of imposing a maximum fine of Rs. 100,000 for each period on each of the directors and Chief Executive, impose a fine of Rs. 30,000 (Rupees thirty thousand only) on each of the director including Chief Executive of the Company. In case the Company, its Chief Executive and directors do not respond positively to the aforesaid leniency and failed to observe the requirements of law, they will find themselves in difficulty in getting any lenient view in future.

12. The Company, its directors including Chief Executive of the Company are hereby directed to deposit the below stated fine amounting in aggregate to Rs. 530,000 within 30 days of the receipt of this order:

Sr. No.	NAME	AMOUNT OF FINE		
		U/S 158 Rupees	U/S 245 Rupees	TOTAL Rupees
1.	M/S Kohinoor Looms Limited	40,000	-	40,000
2.	Mian Javaid Saigol	40,000	30,000	70,000
3.	Mrs. Tarfa Saigol	40,000	30,000	70,000
4.	Mrs.Mehreen Saigol	40,000	30,000	70,000
5.	Mrs.Kathleen Megan Saigol	40,000	30,000	70,000
6.	Ms. Lina Saigol	40,000	30,000	70,000
7.	Mr. Muhammad Kalim	40,000	30,000	70,000
8.	Mr. Zia-ul- Hassan Qureshi	40,000	30,000	70,000
	TOTAL	320,000	210,000	530,000

13. The above stated fine shall be deposited in the following head of account:

Account N0. 10464-6
Habib Bank Limited
Habib Bank Plaza, Shahrach-e-Quaid-e-Azam
LAHORE.

RASHID SADIQ
Executive Director (Enforcement and Monitoring)

Announced
June 12, 2002
ISLAMABAD