



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Say No To Corruption

No. CSD/ARN/151/2015- 511.

June 30, 2021

Sr. No.	Names of the Respondents	Address
1	All the Directors	Nazir Cotton Mills Limited
2	Nazir Cotton Mills Limited through Chief Executive	Through Company Secretary, 61-K, Gulberg III, <u>Lahore</u>

Subject: In the matter of Show Cause Notice dated October 16, 2015 under clause (b) of Section 309 of the Companies Ordinance, 1984 read with clause (c) of Section 305 thereof – Nazir Cotton Mills Limited

Dear All,

Please find enclosed order passed by Mr. Amir M. Khan Afridi, Head of Department (Adjudication Department-I) for your record and necessary action.

Regards,


30.6.2021

Muhammad Anwar Hashmi
Additional Joint Director

Annexed: As above



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Adjudication Division

SAY NO TO CORRUPTION

Before

Amir M. Khan Afridi
Director/Head of Department

In the matter of

Nazir Cotton Mills Limited

Show Cause Notice No. & Date CSD/ARN/151/2015-1054-55 dated October 16, 2015

Dates of Hearings: October 26, 2015; December 15, 2015; December 28, 2015; January 8, 2016; January 18, 2016; February 4, 2016; November 30, 2017; February 22, 2018; October 29, 2018; November 26, 2018; February 11, 2019; March 21, 2019; June 26, 2019; August 1, 2019; August 19, 2019; September 2, 2019; January 13, 2020; June 2, 2020; May 6, 2021.

Hearing held on May 6, 2021 was attended by: Mr. Maqbool Husain Bhutta, director (Authorized Representative)

ORDER

Under clause (b) of Section 309 of the Companies Ordinance, 1984 read with clause (c) of Section 305 thereof.

This Order shall dispose of the proceedings initiated through Show Cause Notice No.CSD/ARN/151/2015-1054-55 dated October 16, 2015 (the SCN), under clause (b) of Section 309 of the Companies Ordinance, 1984 (the Ordinance) read with clause (c) of Section 305 thereof, issued to Nazir Cotton Mills Limited (the Company) and its Board of Directors (the Board), herein after collectively referred to as the Respondents.

2. Brief facts of the SCN are that the Company was incorporated on March 28, 1974 under the then Companies Act, 1913 (now the Companies Act 2017 "the Act"). The Company is listed at the Pakistan Stock Exchange (PSX). Principal business of the Company was manufacturing, selling, buying and dealing in all types of yarn. As per available information, the Company's business was suspended since 2009. In terms of clause (c) of Section 305 of the Ordinance, a company may be wound up by the Court, if the company's business remains suspended for a whole year. The Company Registration Office (CRO), had approached for grant of sanction in terms of clause (b) of Section 309 of the Ordinance read with clause (c) of Section 305 thereof to present a petition before the honorable High Court for winding up of the Company on the grounds that the Company had suspended its business for more than six years. Keeping in view, proceedings through the SCN were initiated against the Respondents and they were advised to appear before the authorized officer on October 26, 2015 to submit their stance. However, no one appeared on the said date of hearing.



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3. In this regard, written reply dated December 10, 2015 was submitted by the company secretary which is reproduced as under:

"Please refer to the Show Cause Notice No. CSD/ABN/151/2015-1055 dated October 16, 2015, in which it was asked to explain the reasons for not filing a Petition for Winding-up the Company by the Registrar of the Companies before a Competent Court under above said section on the followings grounds:-

1. The business of the company is closed since 2009 whereas the provisions of clause (c) of the section 305 of the Companies Ordinance, 1984, state that a company may be closed by the Court if the companies business is suspended for a whole year.

2. The Company Registration Office has approached for grant of sanction in terms clause (b) of Section 309 read with clause (c) of section 305 of the Ordinance to present a petition before the High court for winding-up company on the ground that the company had suspended its business for more than six years.

In this context, we would like to state that management of the company is willing to restart the commercial operation of the company. In this regard, the management is taking positive steps to reinitiate the production of the company.

For the above object, the company has entered in an agreement with Samba Bank Limited (the main Loan of the Company) to settle the Loan which was under litigation since 1999. In this regard, the management has paid Rs. 20 Million to the Bank. The funds were arranged by the Sponsors by their personal sources.

It is expected that the market conditions will be suitable for business in next cotton season and company will be able to restart its operation at that time.

After making Payment of all loans, by their own resources of the management, the Management is in the view that the Company will be in better position to run the business as there will be no financial cost of the Company.

In the light of the above facts your honor is requested to kindly consider that it is beneficial for the shareholders that the company runs its business instead of winding-up. So, it is requested to kindly withdraw the above show cause notice and give the chance to Management of the Company to restart its business. Your act of kindness in this context will be highly appreciated."

4. In order to give the Respondents an opportunity of personal representation, hearing in the matter was fixed for December 15, 2015, however, no one appeared. Thereafter, hearing in the matter was fixed for December 28, 2015. Mr. Maqbool Husain Bhutta, director of the Company, being Authorized Representative, appeared and informed that the Company was in the process to settle bank loans. He was advised to furnish Board's approved revival plan. Next hearings in the matter were fixed for January 8, 2016 and January 18, 2016. In this regard, letter dated January 16, 2016 was received from chief executive of the Company which is reproduced as under:

"Please refer to the Show Cause Notice No. CSD/ABN/151/2015-1055 dated October 16, 2015, and further to the discussion at last hearing on 28-12-2015, we are pleased to submit the followings documents/information:-



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1. *As we discussed during last hearing, that the company has entered in an agreement with Samba Bank Limited (the main Loan of the Company) to settle the Loan which was under litigation since 1999. In this regard, the management has paid Rs. 20 Million to the Bank. The funds were arranged by the Sponsors by their personal sources.*
2. *We would like to add further, the management has protected the rights of the shareholders by making the above agreement and payments. Otherwise M/s Samba Bank has filed a Suit of Recovery of Rs. 593 Million in the Honorable Lahore High Court. Copy of Auction Notice of Nazir Cotton Mills Ltd, previously Advertise by Bank is enclosed herewith.*
3. *The copy of settlement of loan with M/s Samba Bank Limited.*
4. *Copy of Cheque being payment of loan amounting to Rs. 10 Million to M/s Samba Bank Ltd dated 07-08-2015.*
5. *Copy of Cheque being payment of loan amounting to Rs. 10 Million to M/s Samba Bank Ltd dated 05-12-2015.*
6. *Copy of Payment of loan amounting to Rs. 3.5 Million to NBP.*
7. *The sponsor directors has given assurance that they will arrange the funds by their personal resources and will be able to honor the above said agreement within due date.*
8. *The management of the company is in view that the company, subject to favorable market condition, will be able to start its operation in next cotton season.*
9. *The Sponsor Directors of the company is willing to restart the commercial operation of the company. In this regard, they are assure that they will be enable to pool sufficient amount of investment which will meet the cost of primary repair and maintenance and working capital requirements.*

In the light of the above facts your honor is requested to kindly consider that it is beneficial for the shareholders that the company runs its business instead of winding-up. So, it is requested to kindly withdraw the above show cause notice and give the chance to Management of the Company to restart its business."

5. Later on hearing in the matter was fixed for February 4, 2016. On the said date of hearing, Authorized Representative appeared and explained about settlement of loans with the banking companies. He was of the view that the Respondents were committed to start the operations and to pay bank loans. The matter was deferred for 6 months. In this regard, the Securities and Exchange Commission of Pakistan (the Commission) vide letter dated October 26, 2016 sought update on monthly basis on the revival of the Company along with revival plan. The Company vide letter dated November 8, 2016 responded that:

"Please refer to your letter No. CSD/ARN/151/2015-1426 dated October 26, 2016, and further to the discussion at last hearing on 28-12-2015, we are pleased to submit the followings documents/information:

1. *As we discussed during the hearing, that the company has entered in an agreement with Samba Bank Limited (the main Loan of the Company) to settle the Loan which was under litigation since 1999. In this regard, the management has paid the entire Loan to the Bank.*
2. *We would like to add further, the management has protected the rights of the shareholders by making the above agreement and payments. Otherwise M/s Samba Bank has filed a Suit of Recovery of Rs. 593 Million in the Honorable Lahore High Court.*
3. *Moreover, the management is trying to settle the other Loan of Islamic Investment Bank, National Bank Limited and Habib Bank Limited which are also in litigation.*
4. *After the payment of above loan, the price of shares of the company has rise up rapidly from Rs. 2.80 to Rs. 10.80, it is further expected that the value of share of the company will increase further. The shareholders may recover their investment by selling their shares in market.*



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5. *The Sponsor Directors of the company is willing to restart the commercial operation of the company. In this regard, the company has approached toe Honorable High Court for the Re-Connection of Electricity of the Mill. (The court order is enclosed herewith)*
6. *The management of the company is in view that the company, subject to favorable market condition, will be able to start its operation in next cotton season.*
7. *We will provide you further progress to your honor by time to time."*

6. The Commission again vide letter dated December 21, 2016 sought revival plan and detail of settlements of loans of creditors. However, no reply was received. Hearings in the matter were then fixed for November 30, 2017. On the date of hearing, the Authorized Representative submitted that the Company restarted but market was tough and it was difficult to run the business. He submitted that owing to satisfaction of bank charges, the disposal of land would fetch good value for investors. In this regard, a letter dated January 10, 2018 was also submitted, subsequent to hearing, on behalf of the Respondents. The said letter is given as hereunder:

"3. In compliance with the said notice, the following facts are being brought to your notice for kind consideration:

(i) The principal business of the company is manufacturing, selling, buying and dealing in all types of yarn.

(ii) The company was conducting its business smoothly up to 2006. Because of inherent difficulties of the textile industry in Pakistan, the company was forced to close its business firstly in that year of 2006. But soon thereafter, the directors of the company by injecting personal funds managed to restart its business, in spite of all unfavorable circumstances, prevailing in the industry.

(iii) The conditions worsened and due to continuous losses the management had to close its business again in 2009. The textile industry problems apart, the financial resources of the company almost diminished mainly due to huge liabilities on account of outstanding loans of the banks for which the banks concerned had gone to the Court for recovery of their loans.

(iv) The major loan was of the Samba Bank which mounted to Rs. 593 million. The entire loan of the bank has since been settled through successful negotiations. We are hopeful that the loan of Islamic Investment Bank and other creditors will also be settled in favor of the company. The Lahore High Court to which the recovery suit had been filed had observed and remarked that the bank being engaged in Islamic banking, should share with the profits and losses of the company as per the relevant documentation and thus it was not entitled to build up the loan balance through interest. Subsequently the case was transferred to the Peshawar High Court on the issue of jurisdiction reportedly and is being, referred back to the Lahore High Court, with certain remarks of the honorable court. We are hopeful that the case will, inshaallah be decided in favor of our company. Serious efforts are also underway to settle the cases with other two banks i.e. the National Bank of Pakistan and the Habib Bank which appear to be willing to settle their dues and the management is also ready to pay the overdue liabilities particularly by disposing some properties and the remaining by the directors out of their own resources but latter on to recover the amount advanced to the company.

(v) A bulk of its burden will be released after release / settlement of the outstanding loans of the banks.

(vi) The sponsor directors have obtained orders of the Honorable High Court for re-connection of electricity of the Mill, by dint of their firm determination to restart the Commercial production.

(vii) The company plans to boost its financial resources through disposal of its surplus/idle assets in the form of certain plots owned by it and the old machinery.



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(viii) According to the information available through media, Government has strong feelings that some practical steps need to be taken to solve the textile industry problems. But final action is awaited from the Government. Any action in the matter of companies engaged in textile business which had best performance in the past may please be kept pending till a policy is announced to save the textile sector.

4. The facts as summarized in the preceding paragraph support the firm resolution of the management of the company to restart its operations and keep the company alive in the best interest of the shareholders.

5. It may be appreciated that winding up of companies is a sort of their burial and is never in the interest of shareholders and other stakeholders. According to the spirit of Company Law, the companies whose business is closed for reasons beyond their control and when the management was taking pains to restart their production, should be given chance and not be wound up till all the efforts for their revival have been exhausted. The main thing to be considered is whether there is any possibility of the business being carried on in future. The answer in the case of our company is 'yes'.

6. The efforts being made by the management, as outlined above, are evident that its sponsors determine to keep the company alive and to bring it back to the rack of Commercial production. Therefore, it is requested that having regard of the position explained, the management of the company may be given opportunity to restart its operations and let the company remain alive in the interest of industry, its shareholders and creditors."

7. Another hearing in the matter was fixed for February 22, 2018. During the hearing, the Authorized Representative submitted that efforts for revival were in progress and settlement with Samba Bank Limited were made. He was informed that revival plan was not submitted with the Commission. Hearing in the matter was again fixed for October 29, 2018. In this regard email dated October 30, 2018 seeking adjournment of aforesaid hearing was received. Hearing was fixed for November 26, 2018. Mr. Muhammad Hayat Jasra, being Authorized Representative, and Mr. Maqbool Husain Bhutta, being Authorized Representative, appeared and cited about response given vide letter dated January 10, 2018. He submitted that loans of the Company were settled and the Company was in process to get its connection with WAPDA restored. He was allowed 3 months' time to submit status of revival. Thereafter, hearing was fixed for February 11, 2019. In this regard, a letter dated February 9, 2019 was received informing that Mr. Muhammad Hayat Jasra, being Authorized Representative was out of the country and sought adjournment. Hearing was fixed for March 21, 2019. The Authorized Representative vide letter dated March 21, 2019, sought adjournment. Hearing was again fixed for June 26, 2019. In this regard, letter dated June 25, 2019 was received seeking adjournment. Hearings were fixed for August 1, 2019; August 19, 2019, and September 2, 2019, however, no one appeared. Hearing was then fixed for January 13, 2020. On the date of hearing, the Authorized Representative appeared and informed that through disposal of land and financial support from directors, the Company has paid its liabilities of around Rs. 600 million. He informed that as soon as WAPDA connection is restored the operations would be resumed. He also cited litigation against WAPDA in this connection. He informed about change in principal line of business from textile to dairy business sale for revival of operations of the Company. Subsequent to hearing, letter dated February 12, 2020 was received from the Company, which is reproduced as under:

"This is with reference to the hearing dated 13-01-2020 regarding above said show cause notice. In this regard it is stated that the management has decided to change the main object clause of the memorandum of association of the company along with change of the name of company and other necessary changes in the articles of association of the company. In this context, the company has started the necessary measures to achieve the task which may take near about 3 to 4 months. We will provide to your honor further updates in this regards time to time".



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8. The Commission thereafter, vide letter dated March 13, 2020, reminded the Respondents to provide: (i) details of settlements of loans; (ii) status of order of the Court; and (iii) Board's approved revival plan. The Company, vide letter dated May 29, 2020 intimated as under:

"Please refer to your letter No.CSD/ARN/151/310 dated May 28, 2020, and further to the discussion at last hearing dated 13 Jan 2020, we are pleased to submit the followings documents / information:

1. *As submitted and discussed during the last hearing, that the Company arranged an EOGM on 22-05-2019 through which it has been resolved by the shareholders of the Company that the Company will start business of Dairy Farm to test the market.*
2. *The dairy Farm was started in 2019 and a sale of Rs. 1.3 million has been declared in the financial statements of the Company for the year ended June 30, 2019.*
3. *Moreover, it was suggested by Executive Director/ Head of Department (Adjudication Department-I) Mr. Ali Azeem Ikram that the Company should change the main line of Business in the Object Clause of Memorandum of Association and also change its name.*
4. *In this regard an EOGM was held on May 16, 2020 wherein, it was discussed and resolved that the demand for hygienic and packaged business is increasing daily and it seems to have positive future prospects. The Company has significant covered area and land situated at Sheikupura where minimal revenue is being earned from dairy farming which is expected to grow significantly thus it was resolved that the main principal line of business of the Company shall be changed to Dairy Farm. It was also resolved that the Company will adopt the proposed name "Nazir Multiple Industries Limited.*
5. *It was further resolved the Memorandum of association and Articles of Associations will also be amended accordingly. We are enclosing herewith followings documents:*
 - *Proposed Name of the company*
 - *Submitted copy of Form 26 (Change of Name)*
 - *Submitted copy of form 8 (Change of Principal line of business)*
 - *Copy of minutes of the EOGM dated May 16, 2020."*

9. Hearing was, therefore, fixed for June 2, 2020. During the hearing, the Authorized Representative was advised to furnish: (i) copy of notice of general meeting where change of line of business was disclosed; and (ii) copy of minutes of such general meeting. In this regard, the Company vide letter dated June 8, 2020, intimated as under:

"Please refer to your letter No. CSD/ARN/151/310 dated May 28, 2020, and further to the discussion at last hearing dated 02 June 2020, we are pleased to submit the followings documents/ information:

- (i) *Copy of attendance sheet of EOGM dated May 16, 2020;*
- (ii) *Copy of invitation of EOGM advertised in newspapers; and*
- (iii) *Copy of notices send to shareholders regarding EOGM dated May 16, 2020.*

We hope, the above documents/information is sufficient to file the proceedings initiated by your honor through above said show cause notice dated October 16, 2015. However, we will provide to your honor any further document/information as and when required by your honor."

10. The concerned department i.e. CSD also shared a copy of letter dated March 27, 2021 of the Company, in terms of which it was *inter alia* stated: *"Regarding future utilization of assets of the company, it is stated that at present the textile industry is enjoying favorable market situation. Many sick textile units as been restart their commercial production. The company is also trying to obtain electricity connection for which the case is lying pending before the Honorable Lahore High Court. An application for early hearing was made which resulted in the shape of "Left Over". The management is trying its best to get electricity connection to restart its commercial production."*



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11. In order to conclude the aforesaid proceedings, hearing was again fixed for May 6, 2021. On the date of hearing, the Authorized Representative appeared and submitted, *inter alia*, in the following manner:

- (i) About legal formalities for change of name and change of principal line of business, CRO, had required No Objection Certificate (NOC) from Creditors, whereas two creditors did not give NOC and the matter of settlement of loans with Creditors was in Court. After settlement, no NOC would be required.
- (ii) The Lahore High Court has decided in favor of the Company for application of WAPDA connection. The Court has directed to seek relief from relevant Session Court and also directed WAPDA to provide connection to the Company. In this regard, court case before Session Court would be filed.
- (iii) For dairy business, the Company had 30 buffaloes and 150 calves. The dairy and meat business has resulted operational revenues for the Company and expected sales were Rs. 20 million.
- (iv) Textile sector has revived recently and management was considering both options (i) to revive its spinning business after we get connection from WAPDA (ii) to increase the volume of meat business (to increase calves) for slaughtering purpose. Exporters purchase meat from the Company. The management had full intention to revive the operations of the Company. The Company had made investments and funds available to be made in business which was profitable and to make the operations of the Company revived.

12. Subsequent to hearing, the Authorized Representative vide letter dated May 7, 2021, *inter alia*, submitted as under:

"Please refer to Electronic Hearing dated May 06, 2021, we are pleased to submit the following documents / information:

- (i) *Copy of half yearly accounts;*
- (ii) *Copy of quarterly accounts for the quarter ended March 31, 2021;*
- (iii) *It was suggested by Executive Director /Head of Department (Adjudication Department-I) Mr. Ali Azeem Ikram that the company should not only change the main line of Business in the Object Clause of Memorandum of Association but also change its name; and*
- (iv) *As it was discussed during hearing that the efforts to obtain electricity connection has been increased and most probably if we succeeded to secure it, we will continue with main line of business along with dairy business."*

13. In terms of notification S.R.O. 1545 (I)/2019 dated December 6, 2019, the power to adjudicate cases under Section 305 read with Section 309 of the Ordinance (corresponding Section 304 of the Companies Act, 2017) have been delegated to the undersigned as Head of Department (Adjudication Department-I).

14. It is pertinent to reproduce here the relevant provisions of the Ordinance:

Section 305(c):

A company may be wound up by the Court—

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.

Section 309(b):

An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors



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(including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately or by the registrar, or by the [Commission] or by a person authorised by the Commission in that behalf:

Provided that—

(b) the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the [Commission] has been obtained to the presentation of the petition: Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;

15. I have gone through facts of the case, replies furnished and submissions made during the hearing proceedings. The proceedings through the aforesaid SCN were initiated on the grounds that operations of the Company were suspended since 2009. In this regard, the matter was reviewed and various hearing opportunities were provided to the Respondents to seek updated status from the Company about revival of its operations. The Respondents have placed before me quarterly financial statements of the Company for the quarters ended December 31, 2020 and March 31, 2021. In terms of the aforesaid financial statements, the Company reported Sales of Rs. 8,587,185/- and Rs. 11,374,185/- respectively. The Company has also informed about change of principal line of business i.e. from textile to setup/operate the business of cattle rearers, sheep farmers, poultry etc. which was approved by the shareholders in Extra Ordinary General Meeting held on May 16, 2020 and the Company has also provided copy of the minutes of the said meeting.

16. I have also observed that the Respondents have taken necessary measures for revival of operations of the Company. Keeping in view the above facts, I am of the view that granting sanction to file winding up petition at this juncture, may not be in the interest of the members of the Company. Moreover, business of the Company has shown revival through dairy business sales, which have resulted in resumption of the operations by the Company.

17. In view of the foregoing; I have observed that the basic premise of the SCN i.e. suspension of business of the Company has been addressed. I, therefore, find no reason to continue the winding up proceedings initiated against the Company and hereby drop the said proceeding with no further action.

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

Amir M. Khan Afridi
Head of Department
Adjudication Department-I

Announced: June 30, 2021
Islamabad