



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Say no to corruption

No. CSD/ARN/222/2015- 252

December 2, 2021

The Chief Executive and Directors Through Company Secretary Hashimi Can Company Limited	B-24, S.I.T.E, Textile Avenue, P.O Box 3608, <u>Karachi</u>
	9/1/A, 18 th Street, Phase-V, Khayaban-e-Tauheed, D.H.A, <u>Karachi</u>

Subject: Order in the matter of Revision Application under Section 484 of the Companies Ordinance, 1984 against Order dated June 25, 2012 under clause (b) of Section 309 read with Section 305 of the Ordinance – Hashimi Can Company Limited

Dear All,

Please find enclosed herewith copy of order passed by Mr. Aamir Khan, Chairman, in the titled matter for your record and necessary action.

Regards,

Muhammad Anwar Hashmi
Additional Joint Director

Encl.: As above

Copy to:

Mrs. Naheed A. Shahid,
Azizuddin Shahid Law Associates,
Premises No. 35-B, Phase II,
Main Sunset Boulevard Road, D.H.A.
Karachi



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Before

Aamir Khan - Chairman

In the matter of

Hashimi Can Company Limited

Date of Revision Application: September 12, 2012

Date of hearing: October 15, 2015; March 7, 2016; May 9, 2016; August 31, 2016; November 17, 2016; November 21, 2016; December 12, 2017; March 28, 2018; August 6, 2018; June 10, 2021 and August 5, 2021.

Present: Ms. Naheed A. Shahid - Authorized Representative
(Azizuddin & Shahid Law Associates)

ORDER

Revision application under Section 484 of the Companies Ordinance, 1984 against Order dated June 25, 2012 passed under Section 309 of the Companies Ordinance, 1984 read with Section 305 thereof.

This Order shall dispose of the revision application dated September 12, 2012, filed by Hashimi Can Company Limited (**the Company**) under Section 484 of the Companies Ordinance, 1984 (**the Ordinance**) against Order dated June 25, 2012 (the Impugned Order) passed under Section 309 of the Ordinance read with Section 305 thereof. The Impugned Order was issued on the grounds that the Company failed to hold two consecutive Annual General Meetings (AGMs) for the years ended June 30, 2010 and June 30, 2011 and the operations of the Company were closed since November 2010.

2. The Company's application was submitted by Ms. Naheed A. Shahid (**the Authorized Representative**) of M/s Azizudin & Shahid Law Associates. Relevant extracts of the application and subsequent correspondence are as follows:

- (i) That the impugned judgement/order is contrary to the facts of the case and is contrary to the law. It ignores the relevant record and material considerations and is based on irrelevant and immaterial conditions.



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- (ii) That the Enforcement Department, SECP, did not adequately dwell into and/or consider the merits of the case and failed to appreciate that a cumulative appraisal of the pertinent aspects of the matter would have duly established that the Company has been facing un-counterable and threatening situation, which was beyond the control of the Company and its top management. The top officials, Directors, Chief Executive were personally targeted and had suffered criminal intimidation. The Labour Union have personal vendetta against the top management of the Company, and they always made efforts to create some Law and Order situation and defame the Company, which lead to the closure of the Company.
- (iii) That the Company and all the stake holders/ shareholders, have tried their best to resolve the issue of outstanding AGM and resume the normal operation and functions of the Company, however, the Labor Union is bent upon to create Law and Order situation and illegally occupied the Company's factory premises, and have created hurdles and barricade, in front of entrance of the factory.
- (iv) That the Company realized that if such situation persisted, it would eventually lead to losses to all the stakeholders, hence, the Company offered holders of its 30% share to enter into a Buy Back Arrangement with the sponsors holding 70% shares so as to save minority shareholders from losses. It is pertinent to mention here that 70% of the shareholding of the Company is owned by the sponsoring directors, having six directors on its board and only one director represents NIT (holding 20% shares) and remaining 10% share belong to minority shareholders.
- (v) That the Sponsors have already offered NIT that they are interested in buying the shares held by it in the Company. The remaining shares will be acquired through buy back procedure. It is worthwhile to mention that the sponsoring directors have also extended interest free loans of around Rs.30 million to the Company.
- (vi) That the Management of the Company has not closed down the factory, instead, it is the Labor Union who is trying to close down the Company. It is submitted that the sponsor directors have given their life, blood, peace and endeavorance to the Company. Nevertheless, proper application under Section 11-A has been filed in Labor Court, so that after the decision the Company could be reactivated as a Private Limited Company.
- (vii) That it is evident from the above submissions that management of the Company is facing unusual situation, however, despite all the odds, the operations of the Company and compliance thereof have not been stopped by the management and it can be verified that the Company used to adhere to all rules and regulations in the past without any default. But, now in the absence of staff and hardly any access to the Company's offices and records, the accounts and other formalities could not be completed.
- (viii) That the impugned order dated June 25, 2012 passed by the Hon'able Enforcement Department, SECP, at Islamabad has erred in not understanding that the Company is situated in Karachi, where, every day either there is target killing and/or bomb blasts, especially, the area where the Company is located i.e. "SITE" is under the



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dominance of extortionist, land grabbers, target killers, and also political activism at peak. Hence, in the event, the Company use forceful measure to enter the factory premises, it would not only result in acute law and order situation, but also there is a possibility of loss of life, property, and reputation, on either side.

- (ix) It is humbly submitted that the Company's operation should be resumed after successful hormonal negotiation between the Labor Union and the Company, where all the stakeholders should also be present, including the representative of SECP. The resumption of Company's proper function, operation and working shall mean that it should be resumed in such a way that the Company should achieve all its business goals, without any hindrance, which should make a pavement for all shareholders and stakeholders to earn profit/dividend, so far as the issue of Holding Annual General Meetings are concerned. It is the Company's humble request to assist the Company in holding the same, as whenever, the Company has ever attempted to gather the relevant record from its office the Labor Union either disallowed access to the factory premises, and/or created law and order situation, with the sole purpose to implicate and incriminate the sponsors directors into unnecessary criminal cases and litigation.

In view of the above it is humbly prayed to set aside the impugned order dated June 25, 2012 and assist the Company in its most crucial time in encountering all problems especially holding Annual General Meeting and consider our petition sympathetically.

3. In view of the aforesaid revision application by the Company; hearing opportunity was provided for October 15, 2015 which was adjourned and the next hearing was fixed for March 7, 2016. On the hearing date, the Authorized Representative appeared and submitted that the Company intended to go for the voluntary delisting and time was requested for revival of the Company. It was further submitted that the Company was in correspondence with NIT for purchase of its shareholding in the Company. Next hearings in the matter were fixed for May 9, 2016; and August 31, 2016. However, no one appeared on the date of these hearing. Subsequently, hearing was fixed for November 17, 2016; for which the Company sought adjournment. Thereafter, hearing in the matter was fixed for November 21, 2016.

The Authorized Representative appeared in the hearing fixed for November 21, 2016 and informed that the directors of the Company are interested in the purchase of shares from all the minority shareholders including NIT. All the issues of the Company will be resolved and thereafter efforts will be made to resume the operation of the Company. It was, however, noticed that voluntary delisting process will take at higher price of Rs. 100 per share, which make it impossible for the sponsors to go for voluntary buyback.

4. Thereafter, hearing opportunity was provided for December 12, 2017, however, adjournment was sought by the Company. Hearing was then re-fixed for March 28, 2018. The



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Authorized Representative appeared and informed about acquisition of shares from minority shareholders and NIT. Next hearing was fixed for August 6, 2018. The Authorized Representative informed about buy back of shares and informed that 9.8% minority shareholding were left. Upon request of the Authorized Representative, one-month time was allowed to the Company to rectify the default. In this regard, it was observed that after the lapse of the allowed time period, the Company did not furnish any update on its revival. Therefore, the Commission vide letter dated November 19, 2018 sought latest status from the Company within ten days' time. In response to the said letter of the Commission, the Company vide letters dated November 27, 2018, December 12, 2018, January 18, 2019 and June 21, 2019 provided the updated status of compliance and buyback of shares including holding of overdue AGMs for the years 2010 to 2018, filing of respective financial statements, payment of outstanding dues of PSX and joining PUCARS. Next hearing was fixed for June 10, 2021. The Authorized Representative sought adjournment due to COVID-19 pandemic. Hearing in the matter was again fixed for August 5, 2021. The Authorized Representative appeared and submitted, *inter alia*, the following:

- (i) The Company was not in operations at the time of the impugned order as labor union was strong and there were multiple litigation. The reason of non-holding of AGMs for the years 2010 and 2011 and non-operations of the Company were beyond control of the management. The Courts had decided cases in favor of the Company in the matter of various litigations. Necessary compliances of the law have now been made. AGMs up to June 30, 2020 are now held and financial statements have been filed with the Commission. Elections of directors are also conducted.
- (ii) The sponsors wanted to buy back shareholding of the minority shareholders and get the Company de-listed. NIT had objections that revision application against winding up order was pending and the same application was needed to be concluded first.
- (iii) Sponsors of the Company purchased shares of the Company held by the institutional investors including Faysal Bank, State Life, Bank of Punjab. These shares were purchased at the prices ranging from Rs. 5 to 6 per share.
- (iv) Now, sponsors hold approximately 85% shareholding in the Company. All shares of the Company have been purchased except 5.15% held by the general public and 9.85% held by NIT. It may be mentioned here that some of the general public shareholders are not locatable.
- (v) The sponsors/ BOD used personal resources to clear bank liabilities of the Company. The Company's Credit Information Bureau report is clean.
- (vi) The Company has made necessary legal compliances and is working on various projects. If our feasibility of revival is approved by the shareholders, the Company will revive its



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operations. The Company also rented its premises to earn revenue. The management intends to alter Articles and Memorandum of Association of the Company to generate revenue with other business options.

(vii) The Company sold land to pay off creditors and employees related liabilities.

(viii) The sponsors have intention to get the Company de-listed.

5. Subsequent to the latest hearing held on August 5, 2021; the Authorized Representative vide email dated August 09, 2021 submitted the following information:

- (i) The sponsor directors approached and purchased shares from several institutions and now only 15% shares are held by NIT and general public.
- (ii) The sponsor directors who were trying their level best to revive the Company, did not stop efforts to revive the Company and in 2017-2018 gained full access to the Company and cleared the defaults. Now, most of the non-compliances are rectified and proper books of accounts are being maintained. During all this time a litigation with Allied Bank Limited was settled in a compromise where principal amount of Rs. 18.20 million was paid in two and a half years by the sponsors directors out of their own resources. All these expenses including security, taxes, legal and other amounts were paid by directors and are reflected in director's loan in the financial statements. It must be mentioned here that the sponsor directors extended this interest free and unsecured loan since the acquisition of the Company in 2001 and were still paying of all Company related financial matters.
- (iii) Annual accounts of the Company for the year ended June 30, 2021 are in process and will be audited before presenting at the Annual General Meeting. Same will be submitted in due course to SECP.
- (iv) The Company has filed application for voluntary delisting but since the management was able to find a new line of business, same was revoked and defaults were cleared which included non-holding of AGMs, non-filing of accounts since 2010 to date, submission of statutory returns and payment of overdue fees etc.
- (v) Summary of the efforts done by the sponsors:
 - a. Vacation of premises from miscreants and political activists.
 - b. Submission of all annual and quarterly accounts from year 2010 till date.
 - c. Submission of all statutory returns/forms.
 - d. Payment of overdues and penalties.



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- e. Holding of consolidated AGM in the year 2018 and regular AGMs to date.
 - f. Purchase of shares from minority shareholders.
 - g. Payment of financial facility availed from ABL through sponsor's personal sources.
 - h. Payment of several liability/taxes and fees from 2010 to 2020 from sponsoring director's personal sources.
 - i. Payments to several creditors/suppliers of the Company while none filed recovery suit.
 - j. Few settlements with labors / Ex-workers, who had filed cases against the Company.
 - k. Efforts were made to dismiss labor cases pending in the labor Courts.
 - l. Appointed advocates who vigilantly pursuing labor cases in Labor Courts, and got desired results, in favor of the Company.
 - m. Working on the revival plans since tin can making business is now just a cottage industry in Pakistan due to mushroom growth of manufacturers.
 - n. A new, comprehensive business plan is being completed for submission to SECP and the Pakistan Stock Exchange. The project selected by the management is a growing market segment and involves opportunities for small businesses to grow as suppliers to the project. The Company has the resources to meet the financial requirements of the new project and option of a joint venture is also available. It can potentially make the Company a profitable venture in short period of time and the product life cycle is at the growth stage, promising a long-term business venture.
- (vi) Since last year efforts were made to start business activities but lockdowns due to Covid-19 pandemic didn't help much, but management did enter into few business contracts related to different types of machinery purchase and sale through contractors to generate some other income. This will be reflected in upcoming annual report for year 2020-2021.
- (vii) A copy of partnership agreement dated November 27, 2020 between the Company and 5 Star Enterprises, a partnership concern, was provided in terms whereof the Company has given Rs. 100 million for investment in Japan Power Generation Limited for carrying on business of plant and machinery purchase and sale.



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6. Thereafter, the Authorized Representative vide email dated August 30, 2021, provided a revival plan which *inter alia* states that:

- (i) *The management has decided to enter into dairy processing industry and hire experienced management to run the new project in professional manner. The Company will construct the sheds for housing of imported best available live stock for fresh milk and processed products to exceed the expectation of its customers.*
- (ii) *There would be a major revamping of property, plant and equipment. Plant and Machinery that is considered to be of no use shall be disposed-off. Additional Plant and Machinery required to augment dairy operations shall be acquired.*
- (iii) *Exploring the untapped sector of processed milk products. For this purpose, management has planned to initially sell the milk to Nestle Pakistan in addition to an aggressive development of its own brand. With the passage of time and adequate marketing, pouched milk will be introduced in the market followed by bottled milk and flavored milk.*
- (iv) *Cheese processing shall be introduced in the project. For this purpose, the management is planning to procure state of the art machinery to manufacture a wide range of value-added cheese products.*

7. I have examined the written as well as verbal submissions of the Authorized Representative. The whole edifice of the underlying proceedings is based on the grounds that the Company failed to hold its AGMs for the years 2010 and 2011 and its operations are closed since the year 2010. In this regard, I observe that:

- (i) The Authorized Representative submitted that the Company has convened the AGMs up till year 2020 and filed the respective financial statements with the Commission. By doing so the Company has made the regulatory compliance and rectified the cited defaults. I have also noted that the Company has circulated its annual audited financial statements for the year ended June 30, 2021 through Pakistan Stock Exchange. Hence, default in terms of Section 305(b) of the Ordinance has been rectified by the Company.
- (ii) The sponsors/majority shareholders were holding 70% shareholding as of the date of the Impugned Order dated June 25, 2012. Subsequently, pursuant to their commitment to buy back the shares of institutional and minority shareholders; the sponsors/majority shareholders have proceeded to acquire further 15% shares of the Company and now their shareholding in the Company has increased to 85%. This fact is also evident from the pattern of shareholding of the Company as of June 30, 2021. Hence, this augments the stance taken by the Authorized Representative that on acquisition of minority shareholding by the sponsors/majority shareholders, the Company would be de-listed from the Pakistan Stock Exchange.



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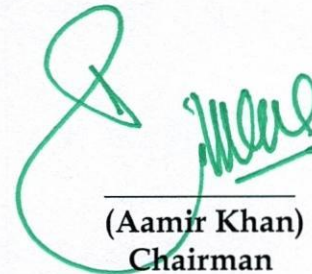
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- (iii) The management has taken appropriate steps to resolve the issues with the labours. It is reported in Directors' Report for the year ended June 30, 2021 that *"the management has successfully repossessed the premises and started restoring all the records and documents in order to restart its business activity"*. It is also disclosed in Note 15 to the financial statement for the year ended June 30, 2021 that the directors have extended loan up to Rs. 45 million to the Company.

8. Keeping in view the management's efforts towards rectification of the non-compliances in terms of Section 305(b) of the Ordinance by holding of AGMs for the years 2010 and 2011 and steps taken to revive the Company to rectify the default in terms of Section 305(c) of the Ordinance, I, am of the view that the grounds of winding up of the Company do not exist anymore, and therefore, hereby set aside the Impugned Order dated June 25, 2012. The directors of the Company are, however, advised to expedite revival of the Company and also place, in separate escrow account maintained with an independent commercial bank, an amount which is sufficient for buy back of the shares held by the members other than the sponsors at a price which is higher of (i) at least 15% over and above the price at which the sponsors have purchased shares from the institutional investors; and (ii) the price to be determined by the Pakistan Stock Exchange for voluntary de-listing of the company.

9. This Order is issued without prejudice to any proceedings initiated against the Company under any applicable provisions of law.



(Aamir Khan)
Chairman

Announced: December 01, 2021
Islamabad