



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Through courier

No.EMD/233/78/02 - 1143-49

February 01, 2012

S.#	Name of Directors	Address
1	Mr. Nadeem Ellahi Shaikh, Chief Executive	Ali Asghar Textile Mills Limited 306-308, Uni Tower, I. I. Chundrigar Road, Karachi.
2	Mr. Naveed Ellahi Shaikh, Director	
3	Mst. Marium Humayun , Director	
4	Mr. Muhammad Suleman, Director	
5	Mr. Raja Ghazanfar Ali, Director	
6	Mr. Sultan Mehmood, Director	
7	Mr. Muhammad Azad Khan, Director	

SUBJECT: ORDER UNDER SUB-SECTION 3 (a) OF SECTION 196 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984.

Enclosed herewith is an Order dated February 01, 2012 passed by Mr. Ali Azeem Ikram, Head of Enforcement Department (Company Law Division), Securities & Exchange Commission of Pakistan, Islamabad, for your information and further compliance.



Muhammad Akram Farooka
Assistant Director (Enforcement)



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

[Islamabad]

Before Ali Azeem Ikrara, Head of Enforcement Department

In the matter of

M/s. ALI ASGHAR TEXTILE MILLS LIMITED

(Under Sub-section 3 (a) of Section 196 read with Section 476 of the Companies Ordinance, 1984)

Number and date of notice	EMD/233/78/02-983-89 dated: January 12, 2012
Date of hearing	January 27, 2012
Present	Mr. Mansoor Usman Awan, Advocate High Court
Date of Order	February 01, 2012

ORDER

This order shall dispose of the proceedings initiated against the directors of M/s. Ali Asghar Textile Mills Ltd (“the Company”) for violation of following provisions of clause (a) of sub-Section (3) of Section 196 read with Section 476 of the Companies Ordinance, 1984 (“the Ordinance”) while disposing of a sizeable part of the Company:

“the directors of a public limited 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 undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing.”

In addition to above the Company was also in violation of requirements of SRO 1227/2005 dated December 12, 2005 that lays down the applicable notice requirements while calling a general meeting for discussion of disposal transaction of a sizeable part of an undertaking, and requires that:

1. *In case of sale, lease or disposal of sizeable part of undertaking:*

(i) Detail of assets to be disposed of i.e. its description, cost, revalued amount (if available), book value and approximate current market price/fair value. In case of disposal of land location and area proposed to be sold shall be disclosed.

(ii) The proposed manner of disposal of the said assets.



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(iii) *Reasons for the sale, lease or disposal of assets and the benefits expected to accrue to the shareholders therefrom.*

2. As per annual audited accounts of the Company for the year ended June 30, 2011 the Company was incorporated in Pakistan on February 9, 1967 as a public limited company having its registered office at Uni Towers, I. I. Chundrigar Road, Karachi in the province of Sindh. Its shares are quoted on Karachi Stock Exchange (Guarantee) Limited (KSE). The principal activity of the Company is to manufacture and sale of yarn. The manufacturing facilities of the Company are located at Korangi Industrial Area, Karachi in the province of Sindh.

3. In order to dispose of the matter, it is necessary to have a glance at the background facts leading to the issue of the Show Cause Notice ("SCN"). A Shareholder of the Company and the KSE while taking note of a public notice, for disposal of Company property, published in daily Dawn sought explanation of facts from the Company. Copies of both the letters were also endorsed to this office. The Company in its letters dated December 23, 2011 and December 26, 2011, through which explanation for not following provisions of Section 196 (3) was given to the complainant and the KSE respectively, categorically stated that the land sale is being carried out by legitimate Board Resolution passed in accordance with Clause (j) of Sub-section (2) of Section 196 of the Companies Ordinance, 1984 read with Rule 14 A of the Companies Rule 1985. It was also contended therein that the land being disposed of is not sizeable part with respect to total assets of the Company hence its disposal does not come in the ambit of provisions of Section 196 (3).

4. The Enforcement Department of this Commission, in the above scenario, through its letter dated December 30, 2011 sought explanation from the Company with reference to its compliance with the provisions of Section 196 (3) of the Ordinance. In addition, a copy of sale agreement was sought alongwith following information on the matter:

- a) Whether or not the assets to be disposed of form sizeable part of fixed assets;
- b) What was the total area of land in the possession of the Company? and
- c) Impact of the proposed sale on the company business and its production capacity

5. The Company, in response to the query submitted vide its letter dated January 09, 2012 that:



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- a) Referred assets are not sizeable. Proceeds of sales amounting to Rs. 400 million is wholly used for payment to secured creditors;
- b) Total area of land is 60,694 square yards out of which 30,347 Sq yards has been resolved to be sold alongwith all construction thereon with permanent fittings and fixtures etc.;
- c) Minimal Impact, as no machinery has been sold;

It was further submitted that buyer's name is Artistic Milliners (Pvt) Ltd. and that there is neither any relationship with the directors of the company nor was there any past business relationship with the company. Moreover, preliminarily asset revaluation was carried out by PBA approved valuator, M/s. Asif Associates. After inviting bids through open tender the best bid of Rs. 400 million was accepted.

Further, minutes of BOD meeting held on July 19, 2011 submitted with the aforesaid reply revealed that it was decided in the meeting that " *since the property resolved to be disposed is not sizeable part of the company nevertheless consent of share holders will be obtained once any deal is materialized.*"

Minutes of Annual General Meeting (AGM) of the Company held on October 29, 2011, evidencing that the matter was placed before the shareholders for their approval, were also annexed with the aforesaid reply which showed that the Company audit engagement partner, Mr. Shahbuddin A Siddiqui was also present in the meeting.

Copy of sale agreement submitted with the reply revealed that the completion date for the transaction was December 30, 2011.

6. In view of above, and since perusal of the AGM notice did not reveal any special business to be conducted therein a Show Cause Notice ("SCN") dated January 12, 2012 was issued to the directors of the Company calling upon them to show cause as to why penal action may not be taken against them as provided in Section 196 of the Ordinance for violating the statutory requirements of law. A period of 14 days was given to respond to the aforesaid notice.

7. The aforesaid notice was responded by Mr. Nadeem Ellahi Shaikh, Chief Executive of the Company, on behalf of all directors through letter dated January 13, 2012 wherein it was submitted that:



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- *We have not sold all assets of the company. Assets disposed were just 30% of the total assets, directors of the company construed that these do not constitute sizable part of the undertaking. Keeping in view that the decision of the directors has been taken in the best interest of the company and the shareholders, the transaction may please not be considered inconsistent with provisions of the Law.*
- *The view of the SECP that the assets were disposed of without shareholders consent is based on non-consideration of the approval taken by 95% of the Shareholders of the Company. Shareholder's consent was obtained in the AGM of the Shareholders held on October 29, 2011. Minutes of AGM were annexed to our reply dated January 9, 2012 (copy enclosed).*
- *Assets were disposed with the consent of Shareholders in the best interest of the Company and proceeds were utilized for settlement of secured liabilities with significant relief to the Company.*

8. In view of the Chief Executive's request for a hearing opportunity the case was fixed for hearing on January 27, 2012, on which date Mr. Mansoor Usman Awan (Advocate High Court) appeared before me as a Counsel on behalf of all the directors of the Company. The Counsel admitted the violation of aforesaid provision of the Ordinance as disposal of the said property was sizeable part of the company and he also acknowledged the fact that the Company was not in compliance of S.R.O. 1227/2005 dated December 12, 2005.

9. I have carefully considered the facts of the case and I would like to point out that the provisions contained in Section 196 of the Ordinance are clear and unambiguous. This section draws a dividing line between powers of directors of a company and that of its shareholders. Moreover, the procedure and manner of seeking shareholders' approval has been further elaborated through the SRO 1227/2005 dated December 12, 2005. In the case in hand, there can be no difference of opinion on the very fact that the assets disposed of which comprised 30% of total assets and 48% of total Company land, were sizeable part of the Company both in terms of value and size. Hence the disposal transaction was required to be taken to a duly convened shareholders' meeting, for approval as a special business, in accordance with the above referred provisions. Finally, if it is accepted that the transaction was approved by 95% of the Company's shareholders in the AGM dated 29 October, 2011 called and convened after the publishing of notice for invitation of bids, even then this approval did not in any way undo the default of express

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provisions of Section 196 of the Ordinance read with SRO 1227/2005 dated December 12, 2005 as approval was not obtained in accordance with the requirements of the law.

10. In view of above, I am of the considered view that the provisions of Clause (a) of sub-Section (3) of Section 196 of the Ordinance have been violated and the default has been admitted before me. Therefore, directors are liable for the penalties as defined in sub-Section (4) of the aforesaid provisions of the Ordinance. Considering the recorded minutes produced before me evidencing that 95% shareholders approved the transaction and also taking account of admittance of the violation I, instead of imposing maximum penalty provided in the law hereby impose a penalty aggregating to Rs.350,000/- (Rupees Three Hundred Fifty Thousand only) on the Chief Executive and the directors of the Company. The detail of the penalties imposed is as follows:-

S. No.	Name	Penalty (Rupees)
1	Mr. Nadeem Ellahi Shaikh, Chief Executive	50,000
2	Mr. Naveed Ellahi Shaikh, Director	50,000
3	Mst. Marium Humayun, Director	50,000
4	Mr. Muhammad Suleman, Director	50,000
5	Mr. Raja Ghazanfar Ali, Director	50,000
6	Mr. Sultan Mehmood, Director	50,000
7	Mr. Muhammad Azad Khan, Director	50,000
	Total	350,000

11. The Chief Executive and aforesaid directors of M/s. Ali Asghar Textile Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.350,000/- (Rupees Three Hundred Fifty Thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity who are required to pay the said amount from their personal resources.

Ali Azeem Ikram
Head of Enforcement Department