



Securities and Exchange Commission of Pakistan  
*Enforcement Department*

Before Ashfaq Ahmed Khan, Director

**ORDER**

*In the matter of*

**M/s. Al-Jadeed Textile Mills Limited**

(under clause (b) of sub-section (1) of section 160 of the Companies Ordinance, 1984)

Number and date of notices	EMD/Enf-II/114/2003-4705-4711 Dated January 09, 2004
Date of hearing	April 13, 2004
Present	Mr. Asif Karim, Chief Executive
Date of Order	April 20, 2004

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This is a case of violation of Clause (b) of Sub-section (1) of Section 160 of the Companies Ordinance, 1984 (the “Ordinance”), which requires that a statement of material facts shall be annexed to the notice of general meeting where any special business is to be transacted.

2. The relevant facts for the disposal of this case are that M/s. Al-Jadeed Textile Mills Limited (the “Company”) issued a notice on August 23, 2003 for its Extra Ordinary General Meeting (the “EOGM”) which was held on September 15, 2003 for consideration and approval of a special resolution regarding “different options available for the settlement of outstanding liabilities towards bank loans”.

3. The matter was examined and it was noticed that the proposed business was a “Special Business” and not an ordinary one, in terms of Clause (b) of sub-section (1) of Section 160 of the Ordinance and hence a statement of material facts was required to be annexed to the aforesaid notice of EOGM. In order to examine the matter further, the Enforcement Department sought minutes of the said EOGM from the Company. In response, Mr. Asif Karim, Chief Executive, through his letter dated September 02, 2003 provided a copy of the minutes of the said EOGM which contained approval of the shareholders to sell all the machinery and the land owned by other group Company to pay off the bank debts and keep the Company alive with textile trading and commercial export



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activities. It was further resolved that the above proceeds so realized will only be utilized to pay off the outstanding balances of the bank on priority.

4. As the Company has not annexed an explanatory statement to the notice of AGM as required under Clause (b) of Sub-section (1) of Section 160 of the Ordinance, therefore, the notice of meeting, prima facie, was defective and suffered from legal infirmities. Moreover, the proposal was discussed and approved by the shareholders present in the said meeting yet the shareholders who were not present in the meeting were not aware of the special business as no information was sent to them prior to the meeting in terms of Section 160 of the Ordinance. In the circumstances, the Enforcement Department of the Commission decided to take up this matter with the Company and its directors/Chief Executive and consequently, a notice dated January 09, 2004 was issued to the Chief Executive and directors of the Company to show cause as to why fine may not be imposed on them as provided under Clause (a) of Sub-section (8) of Sub-section 160 of the Ordinance for the aforesaid contravention.

5. In response to the show cause notice, the Chief Executive of the Company replied through his letter dated February 19, 2004 and stated that he has already appeared before the Commissioner (CL) on October 15, 2003 to plead his case. The position was checked and it was observed from the records that he appeared before the Commissioner (CL) in cases under Sections 233 and 309 of the Ordinance and did not appear in this case. In order to provide an opportunity of hearing, the case was initially fixed for hearing on March 09, 2004 which was adjourned to March 25, 2004 on the request of the Chief Executive. In the meanwhile, the powers to adjudicate offence under Section 160 of the Ordinance were delegated to the undersigned vide Notification No.SRO.162(1)2004 dated March 17, 2004. As no one appeared on the said date, the case was finally fixed for hearing on April 13, 2004. On the date of hearing, Mr. Asif Karim, Chief Executive appeared on behalf of all the directors and while admitting the default, requested for a lenient view on the ground that the Company has been lying closed since long and at present, it has no employee. He averred that it was an inadvertent mistake and assured to be careful in future.



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6. It is relevant to have a look into the provisions of law which deal with the issue. This relevant provision of law is contained in Clause (b) of sub-section (1) of Section 160 of the Ordinance. The provision, to the extent relevant, is reproduced hereunder:

*Quote:*

*“Where any special business, that is to say business other than consideration of the accounts, balance sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of the remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting, a statement setting out all material facts concerning such business, including, in particular, the nature and the extend of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement” (Unquote).*

7. The aforesaid provision of law is quite clear and unambiguous and make it mandatory for every Company that if a special business is to be considered in a meeting, it has to annex to the notice of the meeting a statement of material fact setting out all material facts concerning such business. The objective of the annexation of statement of material facts is that the members of the Company must know as to what was the exact nature of the business to be transacted at the meeting so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively. Material facts are the facts, which have a bearing on the business to be transacted and which could influence the shareholders while making a decision of approving the business. In the case in hand, there was a proposal for sale of all machinery and land owned by other group Company to pay off the banks' debts whose material facts i.e. the nature of machinery, the size of land, their book values, expected proceeds and their utilization and the interest of directors in the disposal and how the disposal of property would be beneficial to the company and its shareholders etc. were required to be intimated to the shareholders through a statement to be attached with the notice of the meeting. These facts would have enabled the shareholders to take a decision to



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attend the meeting and to vote upon this business. The notice of meeting, therefore, did not comply with the provisions of Section 160 as it failed to give the aforesaid information to the members to enable them to take an informed decision to attend the meeting and to vote on the resolution tabled therein. The objective of this section is to secure that all facts that have a bearing in the matter on which the shareholders have to form their judgment are brought to the notice of the shareholders so that they can make a conscious decision.

8. In view of the foregoing, the default is established and admitted however taking in view of the fact that the Company is lying closed, has laid off all of its employees and assurance by the Chief Executive to comply with the requirements of law in future, I am inclined to take a lenient view of the default and instead of imposing a maximum penalty of Rs.50,000/- on all the directors of the Company, impose a fine of Rs. 20,000/- (Rupees twenty thousand only) on the Chief Executive of the Company with a warning to other directors to be careful in future.

9. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine of Rs.20,000/- in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challan to the Commission.

**(Ashfaq Ahmed Khan)**  
**Director (Enforcement)**

**Announced:**

April 20, 2004  
ISLAMABAD