



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of D.S Industries Limited

Dates of Hearing

May 20, 2020, September 8, 2020, November 20, 2020

Order-Redacted Version

Order dated December 02, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of D.S Industries Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated April 27, 2020
2. Name of Company	D.S Industries Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. D.S Industries Limited
4. Nature of Offence	Violations of Section 183 of the Companies Act, 2017
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have analyzed the facts of the case, relevant provisions of the Act, arguments put forth by the Authorized Representative and replies submitted in writing. Following facts are relevant to the instant case:</p> <p>(i) As per available information, during the financial year 2019, the Company sold PPE having cost of Rs. 267 million and net book value of Rs. 191 million for Rs. 81.2 million. The PPE disposed of during the year was 40% of the total PPE, and in terms of class of assets sold, plant and machinery sold during the year 2019 was 77% on cost basis, when compared with 2018. The Company, having engaged in textile business, during the financial year 2019 sold sizable part, without seeking prior authorization or consent of the general meeting. The fact was duly admitted and never denied.</p> <p>(ii) The Company in its reply dated November 23, 2020 has informed that the board of directors in its meeting held on January 7, 2019 decided the sale of machinery. The annual accounts of the Company reflects that disposals and settlements of MCB Bank Limited related loans were recorded in fourth quarter of financial year 2019. Relevant note 2.2 to the annual audited financial statements for the year ended June 30, 2018 has revealed the following related to repayment of loans of MCB Bank Limited: <i>The Company is making efforts to repay its long term finances in accordance with the repayment schedules to avail the interest/markup waiver offered by the lending banks. During the year, mark-up amounting to Rs. 12.35 million was waived by Askari Bank Limited. MCB Bank Limited has agreed to waive off an amount of Rs. 85.043 million subject to.</i> Moreover, the Company's annual general meeting for the year ended June 30, 2018 was scheduled to be held on October 27, 2018. I, am of the view that the Respondents, based on directors decision</p>



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	<p>dated January 7, 2019, proceeded to sell sizable part of the Company for the purpose of settlement of loans related to MCB Bank Limited without seeking prior authorization or consent of general meeting, despite the facts that (i) directors, associates and beneficial owners were holding significant shareholding i.e. 48% shares of the Company (ii) the terms of settlement with MCB Bank Limited were disclosed and Respondents, being directors were aware of the said terms at the time of annual general meeting of 2018, however, prior authorization or consent of general meeting was not obtained (iii) and sale of PPE was executed during last six months periods of financial year 2019 and waiver of mark-up and settlement of MCB Bank Limited related loans was disclosed in annual audited financial statements for the year ended June 30, 2019. In view of the above, the argument that sale of sizeable part of the Company was due to urgency faced is not substantive, rather, the Respondents proceeded in non-compliance of the requirements of the section 183(3) of the Act i.e. without seeking prior authorization or consent of the general meeting of the Company.</p> <p>(iii) As per available information, the Company incurred a loss of Rs. 81.2 million on disposal of sizeable part of the Company i.e. PPE. The Company's stance that: <i>"Although it is stated in the annual accounts of the Company for the year ended June 30, 2019 that the Company has suffered a loss of Rs. 81.2 million on the sale of machinery which infact, is not the actual picture"</i>. I, am of the view that the justification for disposal of assets at a loss of Rs. 81.2 million to settle MCB Bank Limited related loans without seeking prior authorization or consent of the general meeting is not admissible.</p> <p>(iv) Section 183(3) of the Act necessitates prior authorization of members as it provides that the directors of a public company or of a subsidiary of a public company shall not except with consent of the general meeting either specifically or by way of an authorization, sell, lease or otherwise dispose of the undertakings or sizable part thereof unless the main business of the company comprises of such selling or leasing. The Respondents hence violated the requirements of section 183(3) of the Act and that the EX-post facto consent of the members was also not sought.</p> <p>(v) I am of the view that aforesaid sale of sizeable part of the Company was made in violation of the requirements of section 183(3) of the Act, i.e. without taking shareholders' approval and shareholders were deprived from key and relevant information.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.</p>
6. Penalty Imposed	Penalty of Rs. 350,000/- was imposed on the Respondents.
7. Current Status of Order	Penalty was deposited. No Appeal has been filed by the respondents.