



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan – Director/
Head of Department

In the Matter of

Hajra Textile Mills Limited

Number and Date of SCN: CSD/ARN/31/2015-354 dated December 7, 2023

Dates of Hearing: April 1, 2024

Present: Mr. Qasim Khan Advocate

ORDER

Under Section 132 of the Companies Act, 2017 and Section 479 thereof

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/31/2015-354 dated December 7, 2023 (**the SCN**) issued under Section 132 of the Companies Act, 2017 (**the Act**) and Sections 479 thereof against the Board of Directors, the Company Secretary and Hajra Textile Mills Limited (**the Company**) through its Chief Executive, hereinafter referred to as **the Respondents**.

2. The brief facts of the case are that the Company has failed to hold its Annual General Meeting (**the AGM**) for the financial year ended June 30, 2023 within the stipulated time i.e. latest by October 28, 2023, a period of one hundred and twenty (120) days following the closure of its financial year, *prima facie*, contrary to the requirements of Section 132(1) of the Act. Hence, taking cognizance of the alleged non-compliance, the proceedings were initiated against the Respondents through the SCN requiring to show cause in writing within fourteen (14) days, as to why penalty in terms of Section 132(5)(a) of the Act, may not be imposed on the Respondents.

3. In this regard, however, no reply was received within the allotted time. In order to afford the Respondents an opportunity of personal representation, hearings in the matter was fixed for January 3, 2024 and January 17, 2024, February 1, 2024, however, no one appeared. Subsequently, the matter was fixed for February 13, 2024. On the date of hearing, Mr. Qasim Khan Advocate, being Authorized Representative, appeared and sought adjournment for 15 days. He also assured to submit a reply to the SCN latest by February 28, 2024. Thereafter, the matter was fixed for March 6, 2024 and March 11, 2024, however, adjournment was sought by the Authorized Representative. A hearing in the matter was again fixed for April 1, 2024. On the date of hearing, Mr. Qasim Khan appeared and, inter alia, submitted that:



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- (i) The Commission has initiated winding up proceedings against the Company on the same ground of non-holding of AGMs and on the grounds that assets are less than the liabilities. Hence, it is double jeopardy to initiate action under Section 132 of the Act for non-holding of AGM. High Court where the matter of winding-up is pending can take cognizance.
- (ii) There is no fraudulent act on the part of the Respondents. He cited case law of 2011CLD4 (Investec Mutual Fund judgement).

4. I have considered the facts of the case in light of the relevant provisions of the Act, submissions made, and the information available on record and state that:

(i) **Whether holding of AGM is necessary to disseminate relevant information:**

the holding of AGM is a vital statutory requirement as it provides opportunity to the members to participate in the discussion and vote on agenda items of the general meeting which includes consideration and approval of the company's financial statements. Moreover, the Company being a listed company, and in case of a listed company essence of timely holding of AGM is essential for the informed decision making of the shareholders.

(ii) **Whether the requirements of Section 132 of the Act applicable if winding up proceedings are in progress before superior court:**

The stance of the Respondents that initiation of the instant proceedings for non-holding of AGM under Section 132 of the Act is the double jeopardy as the petition was filed before the Lahore High Court for winding-up of the Company on the grounds inclusive of non-holding of AGM. In this regard, I am of the view that the winding-up petition against the Company is not based on the non-holding of AGM for the year ended June 30, 2023. Moreover, in terms of Section 387 of the Act, a company is required to comply with the provisions of the Act till final dissolution of the company, as relevant provision states that:

387. Status of companies being wound up. — A company being wound up shall continue to be a company for all purposes till its final dissolution in accordance with the provisions of this Act and, unless otherwise specified, all provisions and requirements of this Act relating to companies shall continue to apply mutatis mutandis in the case of companies being wound up:

Provided that, from the date of commencement of the winding up of a company, the official liquidator or the liquidator shall be deemed to have taken the place of the board and chief executive of the company, as the case may be.



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The aforesaid provisions are very clear and explicit, which requires every company, including the companies being wound up, to comply with all the applicable provisions of the Act till its final dissolution. I am, therefore, of the view that Section 132 of the Act were applicable on the Company and the Respondents were under statutory obligation to comply with the same in litter and spirit.

(iii) Whether non-holding of AGM deprives shareholders to know the affairs:

Non-holding of AGM deprives the shareholders of their statutory right, to know about the affairs of the company and to participate in decision making. In case of the Company its AGM for the year 2023 is overdue till date. In order to ensure transparency and protect the shareholders' rights, the Company must meticulously adhere to the law by following the procedure prescribed under the Act for holding of AGM;

(iv) Whether the Respondent Company can absolve on the cited grounds:

The Respondents cannot absolve itself from its statutory duties pertaining to holding of AGMs, as specified under the law as the Company failed to hold its AGM for FY ended June 30, 2023 till the date of this Order.

(v) Whether existing winding up proceedings are based on the ground of non-holding of AGMs:

The Company through its notice dated June 29, 2018, *inter alia*, intimated to the Pakistan Stock Exchange as stated below:

However, the Security Exchange Commission of Pakistan (SECP) has passed order under section 309 read with section 305 of the Company Ordinance, 1984 (Repealed) by the Executive Director enforcement SECP on April 11, 2017 by authorizing the registrar of the Companies Registration Office, Lahore to present a winding up petition for winding up of the company. However, we have filed appeal before the Commission against the impugned order of Executive Director but the same is pending adjudication. However, meanwhile the registrar has filed winding up petition before the Lahore High Court and the hearing date is fixed for September 17, 2018.

As per the available information, the proceedings under Section 309 of the Companies Ordinance, 1984 (the Ordinance) and Section 305 thereof were initiated by the Commission through SCN dated September 9, 2013 on the



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grounds that (a) the Company suspended its business since 2012 (b) the Company failed to hold AGM since the year 2012 and the Company failed to submit its quarterly financial statements with the Commission. However, consequent to the proceedings, the Company informed that overdue AGMs for the years 2013 to 2015 were duly held. Thereafter, order dated April 11, 2017 was passed under Section 309 of the Ordinance and Section 305 thereof wherein it was stated that:

"10. From the above discussion and after careful consideration of all the facts and circumstances of the case, I am of the view that the Company is liable to be wound up as its business has been suspended since 2012. It is a settled principle of law that a company is liable to be wound up under clause (c) of Section 305 of the Ordinance if it has suspended its business for a whole year furthermore there is no reasonable plan or grounds for its revival."

The aforesaid facts clearly transpire that the winding proceedings are based on the grounds that the Company suspended its business. Hence, the argument of the Authorized Representative that winding up proceedings pending before Court is on the ground that the AGMs of the Company were not held is not cogent.

(vi) **Whether the cited case law is relevant in the instant matter:**

the reliance placed by the Respondents on the referred case law of 2011 CLD 4 (Investec Mutual Fund) is not relevant as in the stated case the proceedings of winding-up were initiated against the Non-Banking Finance Company based on investigation report that, *inter alia*, highlighted fraud, mismanagement and oppression along with defaults of non-holding of Annual General Meetings. I am of the view that the instant proceedings are not for winding-up of the Company, rather the same pertain to the default under Section 132 of the Act for non-holding of AGM for the year 2023 and for which the compliance is mandatorily required.

5. In view of the preceding facts, I am of the considered view that by failing to hold its AGM for the year ended June 30, 2023 within the stipulated time i.e. latest by October 28, 2023, the Company is in contravention of Section 132 of the Act, which renders the Respondents liable to penal action under sub-section (5)(a) of Section 132 thereof. Therefore, in exercise of the powers conferred under sub-section (5)(a) of Section 132 of the Act, I hereby impose a penalty of **Rs. 200,000/- (Rupees Two Hundred Thousand only) on the Company i.e. Hajra Textile Mills Limited**. I also warn remaining Respondents to be careful and to ensure compliance of the provisions of Act in letter and spirit.



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6. The aforementioned penalty must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the **Securities and Exchange Commission of Pakistan within thirty (30) days from the receipt of this Order**, and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

7. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondent in respect of any default, omission or violation thereof.

Shahzad Afzal Khan
Director/Head of Department
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Announced: April 19, 2024
Islamabad

