



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Mr. Amir M. Khan Afridi - Director/ Head of Department

In the matter of

Kohinoor Spinning Mills Limited

Number and date of Show Cause Notice: No. CSD/ARN/286/2016-2608-2615 dated January 31, 2019
Date of hearing: April 8, 2019; September 16, 2020; November 25, 2020; March 15, 2021; April 26, 2021
Present: Mr. Mumtaz Chaudhry (Authorized Representative)

ORDER

Under Sections 134 and 140 of the Companies Act, 2017 read with Section 479 thereof.

This order shall dispose of the proceedings initiated against the directors (the Respondents) of Kohinoor Spinning Mills Limited (the Company) through Show Cause Notice dated January 31, 2019 (the SCN) issued under Sections 134 and 140 of the Companies Act 2017 (the Act) read with Section 479 thereof. The respondent directors to the SCN are listed below:

S. No.	Respondents
1	Mr. Khawaja Mohammad Jawed
2	Mr. Khawaja Mohammad Jahangir
3	Mr. Khawaja Mohammad Tanveer
4	Mr. Khawaja Mohammad Kaleem
5	Mr. Khawaja Mohammad Nadeem
6	Mr. Mohammad Naveed
7	Mr. Mohammad Hamza Yousaf
8	Mr. Mohammad Tariq Sufi

2. Brief facts of the case are that upon examination of audited financial statements of the Company for the year ended June 30, 2017 (the 2017 Accounts) it was transpired that the

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Company, under note 36 to the 2017 Accounts, disclosed transaction with was related parties' transaction. Further, the Company vide letter dated April 24, 2018 provided minutes of the Annual General Meeting (AGM) of the Company held on November 27, 2017. While reviewing the said minutes, it was observed that one of the agenda items of the said AGM was seeking approval of shareholders for related party transactions with its associated companies as a special business and specific approval of the same was granted by the shareholders in the said AGM. On comparison of the said minutes with the notice of AGM dated November 05, 2017, submitted to the Commission by the Company on same date, it was noted that the agenda items did not include special business of the aforementioned transactions with related parties.

3. Moreover, minutes of the AGM included a special business to obtain consent of shareholders to circulate 2017 Accounts together with directors and auditors reports thereon to the members through CD/DVD/USB at their registered address. Specific approval of the same was also accorded by the members in the aforesaid AGM. It was, however, noted that the aforesaid notice of AGM, submitted to the Commission and annexed to the 2017 Accounts, did not include the special business of circulating the 2017 Accounts to the members through CD/DVD/USB at their registered address as an agenda item for the said AGM. It was also observed that statement of material facts was also not annexed to the notice of the AGM with regard to the special business stated above.

4. In view of above, SCN dated January 31, 2018 (the figure 2018, which was a type error, may please be read as 2019) was issued wherein the Respondents were called upon to show cause in writing as to why penal action may not be taken against them for violating Sections 134 and 140 of the Act by failing to include draft resolution for the aforesaid special businesses as one of the agenda item and to annex a statement of material facts to the notice of the AGM.

5. In response to SCN, Mr. Hasan Ahmed, Company Secretary, vide email dated February 11, 2019 requested for additional time to submit response of the SCN. Subsequently, an opportunity of hearing was provided to Respondents on April 08, 2019. The Company vide letter dated April 04, 2019 requested additional time for hearing on the pretext of health issues



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of the authorized person namely Mr. Mumtaz Chaudhry. Thereafter, the Company vide letter dated February 18, 2019 responded the SCN as under:

"This is with reference to your Show cause Notice No. CSD/ARN/277/2016-2608-2615 dated January 31st 2018 on the subject cited above. In this respect, we submit our reply as under: The approval of related party transactions with Associated Companies undertaken during the financial year ended 30th June, 2017 was part of Agenda item "Approval of audited annual accounts" which is an ordinance business by all means as mention in Section 134 (2) (a) of the Companies Act, 2017 and inadvertently it was titled as special business in the minutes of AGM and this inadvertent mistake went un-noticed, However, the resolution was passed by the shareholders as Ordinary Resolution and this fact is evident from the minutes of AGM already submitted vide our letter dated 24th April, 2018. Now this inadvertent mistake will be rectified in the next AGM.

Likewise, obtaining consent of shareholders for circulation of annual accounts through CD/DVD/USB as allowed by the regulatory body itself vide SRO 470 (I)/2016 dated 31st May, 2016 was also not a special business because this was relating to annual accounts. Every Special Resolution is to be filed with CRO within specified period of time. Since this was an ordinary business, hence not filed with CRO by any listed company. The resolution in this behalf was passed by the shareholders as "Ordinary Resolution" and again this fact may be verified from the minutes of AGM already submitted to your good-self/ vide our above referred letter.

In the light of above stated facts, provisions of Section 134 (12) and Section 140 (3) of the Companies Act, 2017 do not attract in both the cases.

You are, therefore, requested to withdraw the titled show cause notice and oblige."

6. Opportunity of hearing was provided to the Respondents on September 16, 2020, however, no one appeared in the said hearing. The Company vide letter dated September 11, 2020 requested for adjournment of the hearing for another 10 days. Subsequently, another hearing opportunity was provided on November 25, 2020 wherein Mr. Mumtaz Chaudhry appeared as Authorized Representative on behalf of the Respondents and stated that related party transaction was not a special business, however, inadvertently the said business was mentioned as special business in minutes of the AGM. The related party transactions are part of the financial statements and are presented and approved along with financial statements





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in general meeting. In relation to transmission of financial statement to members through CD/DVD/USD it was stated that it is also part of approval of the financial statements. It was stated that written response shall be provided. Subsequently, the Company vide letter dated March 12, 2021 submitted the following response to the SCN:

"This is with reference to your hearing Notice No. CSD/ARN/277/2016-162 dated March 08th 2021 on the subject cited above. Though, our authorized person, Mr. Mumtaz H Chaudhry, would attend the hearing, we wish to submit our reply in writing as well as under:

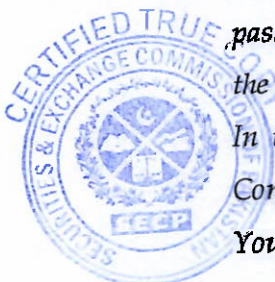
i) The approval of related party transactions with Associated Companies undertaken during the financial year ended 30th June, 2017 was part of Agenda item "Approval of audited annual accounts" which is an ordinary business by all means as mention in Section 134 (2) (a) of the Companies Act, 2017 and inadvertently it was titled as special business in the minutes of AGM and this inadvertent mistake went un-noticed, However, the resolution was passed by the shareholders as Ordinary Resolution and this fact is evident from the minutes of AGM already submitted.

Likewise, obtaining consent of shareholders for circulation of annual accounts through CD/DVD/USB as allowed by the regulatory body itself vide SRO 470 (I)/2016 dated 31st May, 2016 was also not a special business because this was relating to annual accounts. Every Special Resolution is to be filed with CRO within specified period of time. Since this was an ordinary business, hence not filed with CRO by any listed company. The resolution in this behalf was passed by the shareholders as "Ordinary Resolution" and again this fact may be verified from the minutes of AGM already submitted to SECP.

In the light of above stated facts, provisions of Section 134 (12) and Section 140 (3) of the Companies Act, 2017 do not attract in both the cases.

You are, therefore, requested to withdraw the titled show cause notice and oblige."

7. Opportunity of hearing was provided on March 15, 2021 wherein Mr. Mumtaz Chaudhry stated that written response to SCN has been submitted on March 12, 2021. Another opportunity was provided on April 26, 2021, Mr. Mumtaz Chaudhry appeared on the said date of hearing and reiterated the submissions made previously in the hearing held on November 25, 2020 and that written submissions made vide letter dated March 12, 2021. The





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omission on behalf of the Company by writing special business in the minutes was rectified and lenient view may be taken.

8. Relevant provisions of the law are reproduced as under:

Section 134 of the Act provided that:

"(2) For the purposes of sub-section (1), in the case of an annual general meeting, all the businesses to be transacted shall be deemed special, other than –

- (a) the consideration of financial statements and the reports of the board and auditors;*
- (b) the declaration of any dividend;*
- (c) the election and appointment of directors in place of those retiring; and*
- (d) the appointment of the auditors and fixation of their remuneration.*

(3) Where any special business 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 extent 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.

(12) Any contravention or default in complying with requirement of this section shall be an offence liable –

- (a) in case of a listed company, to a penalty of level 3 on the standard scale"*

Section 140 of the Act provides that:

"140. Notice of resolution. – (1) The notice of a general meeting of a company shall state the general nature of each business proposed to be considered and dealt with at a meeting, and in case of special resolution, accompanied by the draft resolution.

(3) Any contravention or default in complying with requirement of this section shall be an offence liable

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— (a) in case of a listed company, to a penalty of level 2 on the standard scale;”

9. In terms of the Commission's notification SRO 1545 (I)/ 2019 dated December 06, 2019, the powers to adjudicate cases under Sections 134 and 140 of the Act have been delegated to the undersigned as Head of Department (Adjudication Department-I).

10. I have gone through the fact of the case and observed the following:

a) with respect to the matter of agenda items not stated in the notice of AGM as special business, the minutes of the AGM provided by the Company reflects the following:

(i) To ratify and approve transactions carried out with related parties in the normal course of business

“Mr. Imran Butt sought Chairman's approval to being forward a business not included in meeting agenda. The Chairman graciously accorded the approval. The member stated: “The transactions carried out in normal course of business with related parties are being approved by the Board as recommended by the Audit Committee on quarterly basis pursuant to clause 5.19.6 (b) of the Code of Corporate Governance, 2012, However, as the majority of Company Directors were interested in these transactions due to their common directorship and holding of shares in the related parties, the quorum of directors could not be formed for approval of these transactions. In view of the above, the normal business transactions conducted during the financial year ended June 30, 2017 with related parties as shown in relevant notes to the audited Financial statements should be placed before the shareholders for their consideration and approval/ ratification. Also it is expected that the Company would be conducting such transactions with related parties in the normal course of business in the upcoming financial year. The majority of directors are expected to be interested in these transactions due to their common directorship and shareholding in the related parties. Therefore such transactions with related parties would be required to be approved by the shareholders. In view of the above and in order to comply with the provisions of clause 5.19.6 (b) of the Code of Corporate Governance, 2012, the shareholders are required to authorize the Chief Executive Officer to approve transactions to be carried out in normal course of business with related parties during the ensuing year ending June 30, 2018. The Directors





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are interested in the resolution to the extent of their common directorships and their respective shareholding."

Mr. Imran Butt (Folio No.: 10629/30950/C) proposed the following ordinary resolution:

"Resolved that the transactions carried out in normal course of business with related parties as disclosed in respective notes to the audited financial statements for the year ended June 30, 2017 be and are hereby ratified and approved."

"FURTHER RESOLVED that the Chief Executive Officer of the Company be and is hereby authorized to approve all the transactions to be carried out in normal course of business with related parties during the ensuing year ending June 30, 2018 and in this connection the Chief Executive Officer be and is hereby also authorized to take any and all necessary actions and sign/execute any and all such documents/indentures as may be required in this regard on behalf of the Company."

The resolution was passed unanimously.

With regard to the aforesaid business, the above minutes of AGM clearly state that the approval of Chairman was sought for bringing forward business of approval/ ratification of transactions carried out with related parties not included in meeting agenda. It was also stated that the purpose of seeking approval/ ratification from shareholders in AGM was owing to majority directors being interested in the subject transactions with related parties due to common directorship and shareholding; therefore, quorum of meeting of board of directors approving the said transactions was rendered incomplete, in terms of Section 178 of the Act. The Company, therefore, placed the said transactions before the shareholders, being the appropriate forum, in the AGM for their approval/ ratification.

In terms of Section 134 of the Act, any business except the consideration of financial statements and the reports of the board and auditors, the declaration of any dividend, the election of directors and the appointment of the auditors, is considered special business. Therefore, the business of placing related party transactions before shareholders, in view of the majority directors being interested, is special business and cannot be considered part of agenda of approval of annual audited financial statements. It may be noted the same is also stated in the minutes. Therefore, the assertion of Respondent that the aforesaid business was part of agenda item "approval of audited annual accounts" being an ordinary business under Section 134 (2)



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of the Act, factually and legally, does not hold merit.

(ii) To obtain consent of the shareholders to circulate Annual Audited Accounts together with the Directors' and Auditors' Reports thereon to the shareholders through CD/DVD/USB at their Registered Addresses:

"Another member, Mr. Rizwan Hameed (Folio No.: 12005/1434/C) sought Chairman's approval to bring forward another business not included in meeting agenda. The Chairman once again graciously accorded the approval. The member stated:

"The Securities and Exchange Commission of Pakistan has vide S.R.O 470(I)/2016 dated May 31, 2016 allowed the companies to circulate the annual reports including annual audited accounts, notices of annual general meetings and other information contained therein of the Company to its members through CD/DVD/USB subject to consent of the shareholders in the general meeting. This will save time and expenses incurred on printing of the annual report. The Company shall supply the hard copies of the aforesaid document to the shareholders on demand, free of cost, within one week of such demand. After approval of the shareholders, the Company will place a "standard request" form on its website to enable the members to communicate their need of hard copies of the documents along with postal and email address of the Company Secretary/ Share Registrar to whom such requests shall be made. The Directors are interested in the resolution to the extent of their common directorships and their respective shareholding."

Accordingly, this matter was placed before the shareholders for their approval and to pass the following ordinary resolution:

"RESOLVED that the consent & approval of the members of the Company be and is hereby accorded and the Company is authorized to circulate its annual audited financial statements of the Company together with the Directors' and Auditors' Report thereon to the shareholders through CD/DVD/USB at their registered addresses, instead of transmitting the said accounts in hard copy."

"FURTHER RESOLVED that the Chief Executive and Company Secretary be and are hereby authorized singly to give effect to this resolution and to do or cause to do all acts, deeds and things that may be necessary, ancillary or incidental to implementing the aforesaid resolution."

The above resolution was passed unanimously.

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In terms of Section 134 of the Act, any business except those as mentioned in para 10(a)(i) above are special business including circulation of annual audited accounts together with the Directors' and Auditors' Reports thereon to the shareholders through CD/DVD/USB at their Registered Addresses in terms of S.R.O 470(I)/2016 dated May 31, 2016. Hence, the Company was required to include the said agenda in the notice of the AGM as special business, however, the Company failed to do so. Moreover, the minutes of the aforesaid AGM also state the aforesaid agenda was not included in the notice of AGM. This implies that the assertion of the Respondents that the aforesaid agenda was part of agenda item, "approval of audited annual accounts", an ordinary business under subsection (2) of Section 134 Act, factually and legally, does not hold merit.

b) As per requirements of subsection (3) of Section 134 of the Act, where any special business 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 extent of the interest. Considering the aforesaid agenda (of transaction with related parties and circulation of 2017 Accounts through CD/DVD/USB) was special business, statement of material facts was required to be annexed with the notice of AGM dated November 05, 2017. The Company failed to attach the statement of material facts with notice of meeting which is violation of subsection (3) of Section 134 of the Act.

c) In terms of Section 140 of the Act, in case of any special business, the notice of general meeting is required to be accompanied by the draft resolution. Considering the aforesaid agenda, of transaction with related parties and circulation of 2017 Accounts through CD/DVD/USB) was special business, therefore the notice of AGM dated November 05, 2017 was required to be accompanied by the draft resolution. The notice of AGM dated November 05, 2017 was not accompanied by the draft resolution which is violation of Section 140 of the Act.

d) It has been asserted by the Respondents in their submission that both the agenda items placed before the members were passed through ordinary resolution by the member in the AGM. In this regard, it is stated that proceedings under the SCN were not invoked on matter



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of passing ordinary resolution rather it was special business and all the requirements with respect to disclosures including "Statement of Material Facts" and draft Resolution were required to be made part of the Notice. Nonetheless, in the matter of the subject proceedings, passing ordinary resolution does not exonerate the Respondents of their responsibilities under Sections 134 and 140 of the Act.

11. From the above discussion and after careful consideration of all the facts of this case, it is evident that the Respondents have failed to include aforementioned two agenda items, i.e., "transaction with related parties" and "circulation of annual audited financial statements through CD/DVD/USB", in the notice of AGM as Special Business; thereby failed to attach statement of material facts and draft resolution with the notice of the AGM w.r.t both the aforesaid Special Businesses. Therefore, I am of the view that the provisions of Sections 134 and 140 of the Act have been contravened and the Respondents are liable to be penalized under subsection (12) of Section 134 and subsection (3) of Section 140 of the Act. Taking cognizance of the submissions of the Respondents and in exercise of the powers conferred under the aforesaid provisions of the Act, I hereby impose aggregate penalty of Rs 250,000/- (Rupees two hundred fifty thousand only) on the respondents in the following manner:

S. No.	Respondents	Penalty (Rupees)
1	Mr. Khawaja Mohammad Jawed - Chairman	50,000
2	Mr. Khawaja Mohammad Jahangir - Director	25,000
3	Mr. Khawaja Mohammad Tanveer - Director	25,000
4	Mr. Khawaja Mohammad Kaleem - Director	25,000
5	Mr. Khawaja Mohammad Nadeem - Director	25,000
6	Mr. Mohammad Naveed - Chief Executive/Director	50,000
7	Mr. Mohammad Hamza Yousaf - Director	25,000
8	Mr. Mohammad Tariq Sufi - Director	25,000
Total		250,000

The aforesaid fines 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 days from the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the fine, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue. It may also be noted that the



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said fines are imposed on respondents in their personal capacity, therefore, they are required to pay the said amount from their personal resources.

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.



(Amir M. Khan Afridi)
HOD - Adj. Department-I

Announced:
Dated June 30, 2021
Islamabad