



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Company Law Division
(Enforcement Department)

Before Abdul Rehman Qureshi, Commissioner (CL)

in the matter of

Dawood Fibre Mills Limited

Number and date of notice	No. EMD/233/76/2002-2198 dated October 14, 2004
Date of final hearing	December 29, 2004
Present	On Behalf of the Company: Mr. M. Farooq Akhtar, Advocate

ORDER

Under Section 265 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against M/s. Dawood Fibre Mills Limited (the "Company") under the provisions of Section 265 of the Companies Ordinance, 1984 (the "Ordinance").

2. The Company has been incorporated as a public limited Company in July, 1988 and is listed on the Karachi and Lahore Stock Exchanges since 1992. Its paid up capital as on September 30, 2003 is Rs.119,430,000 divided into 11,943,000 ordinary shares of Rs.10 each.

3. The background of the case is that while examining the financial statements of the Company for the year ended September 30, 2003 it was observed that:

- i. Accumulated losses of the Company stood at Rs.614.107 million against paid up capital of Rs.119.43 million resulting into negative equity of Rs.494.677 million
- ii. The Company is highly indebted as long term loans stood at Rs.674.253 million.
- iii. The auditor's report was qualified on certain serious issues like drastic reduction in the sale of company, which may create a negative impact on its

ability to be a going concern, the stock in trade which stood as high as Rs. 175 million was taken, valued and certified by Chief Executive of the Company and that the Company has failed to pay installment of restructured loan which is a violation of the rescheduling agreement and may leads to the termination of the rescheduling agreement.

- iv. The auditors also emphasized that the Company has failed to pay withholding tax deducted from the parties against payment of purchases/suppliers.
- v. The record of the Company maintained with the Commission also revealed that the Company has not shown any signs of improvement in its working results during the previous years.
- vi. The management of the Company intended to sale some of its assets for which complete information was not made available to the shareholders through statement of material facts under 160(1)(b) of the Ordinance.

4. It was further observed that the Company has not paid any dividend to its shareholders since its listing in the year 1992. The record also showed that proceedings under Section 265 of the Ordinance were earlier initiated in August, 2000 for appointment of inspectors as there were circumstances, which *prima facie* indicated that the affairs of the Company were not being managed in accordance with sound business principles or prudent commercial practices, however, these proceedings were deferred on the assurance of the management that they will improve the financial results of the Company and will pay dividend in the year 2001. The Company announced 5% dividend on the basis of its annual accounts ended on September 30, 2001 subject to approval of HBL, which did not agree to the payment of dividend and consequently, the company could not pay the said dividend to its shareholders. The accounts of the Company for the year ended September 30, 2003 were reviewed in the above referred background, which indicated that there is drastic decrease in the sales of the Company, the Company again suffered from loss of Rs. 15.406 million and its accumulated losses increased to Rs. 614.107 million. The auditors report was again highly qualified. The stock of furnished goods appeared at Rs. 153.708 million as compared of Rs. 11.260 million last year indicating an increase of 1365% which was not certified by the auditors of the Company raising doubts about its existence and *prima facie* indicating that

books of accounts do not reflect true and fair view of the state of affairs of the Company. Accordingly, a show cause notice was served on the Chief Executive of the Company to explain as to why an Inspector may not be appointed to investigate the affairs of the Company.

5. Mr. M. Farooq Akhtar, the Counsel of the Company, submitted his reply on November 23, 2004 stating that the management and associated undertakings has advanced Rs.466.88 million as loan to the Company in the last few years in order to save it from insolvency. Further, loans from banks have also been secured against the guarantees of the directors, which nullify the allegation that management has lost their interest in running the affairs of the Company. The main reasons of losses are that the project namely "Ghafoor Textiles Mills Limited" which was purchased by the present management in May 1988 through Sindh High Court was a dead project. With huge expenses, the old machinery was replaced with new machinery under BMR scheme and 16,320 new spindles with all requisite facilities were installed for good quality yarn. The Company carried out exports of yarn from 1993 to 1995 and from 1997 to 1998 but due to increased cotton prices management was forced to leave export market and also to change the product from cotton yarn to polyester yarn in the year 1998. These factors resulted into immense enhancement of liabilities of the Company thereby entailing substantial financial charges. The observation of the auditors regarding decrease in sales was due to adverse market forces and international conditions resulting in diminishing demand for which management cannot be held liable and that the management is doing its best to turn around the unpleasant financial portrait of the Company. That the stock in trade is verified by the Chief Executive of the Company and auditors have relied on his verification. Moreover the installment for overdue loan has been paid and the restructuring agreement is still intact. That an amount of Rs.850,000 has already been deposited as withholding tax. As regards non-compliance of the mentioned provisions of the Ordinance and disclosure requirement of IAS and Code of Corporate Governance it was stated that these will be taken care in future accounts. Regarding non-payment of dividend it was stated that the Company announced dividend @5 subject to approval of HBL in the year 2001 however approval was not granted by the Bank.

6. In order to furnish an opportunity of hearing the matter was fixed on December 23, 2004 which, however was adjourned on the request of the counsel of the Company and was re-fixed on December 29, 2004. On the date of hearing the Counsel of the Company appeared before me and presented the same arguments as were earlier submitted in his written reply. He also informed that the Company has sold the surplus land with the approval of the shareholders and has repaid the loan of HBL. He requested that the matter regarding appointment of Inspector may be deferred till the financial results of the year ending on September 30, 2005 are published and in case the management fails to produce positive results it will apply for delisting by purchasing the shares from the minority shareholders.

7. I have considered all the relevant facts, position of law and have also perused the documents placed before me. The written submissions of the Company were examined and discussed in the hearings at length. The continuous decline in the performance of the Company despite huge capital expenditure for BMR, tendency of selling assets in repayment of loan liabilities and the qualification of auditors regarding their inability to verify huge stocks of finished goods amounting to Rs.153.703 million as compared to Rs. 11.260 million only last year (Note 12 to the accounts) raise serious doubts that the affairs of the Company are not being conducted in accordance with sound business principles and prudent commercial practices and are being conducted in a manner oppressive to its members and with an intent to deprive them of the reasonable return on their investment and may lead to ultimate closure of the project.

8. In view of the aforesaid discussion it is clear that the interest of the shareholders have been jeopardized. In the circumstances, it is the responsibility of the Commission to ascertain factual position through competent inspector(s) whose report can bring to light as to whether the affairs of the Company are managed in conformity with the accepted principles and standards of good and efficient management. The Commission can protect the interest of the investors by initiating fact finding exercise and it is obvious that further action against the defaults is dependent on the basis of the finding of the inspector's report.

9. I, therefore, in exercise of the powers conferred on me appoint M/S Ijaz Tabussum & Company, Chartered Accountants, AZ Rahat Jodaro, 147-L, Block 2, Main Tariq Road, P.E.C.H.S., Karachi, which is a practicing chartered accountant firm, to act as Inspector on a

remuneration of Rs.100,000/- (Rupees one hundred thousand only) /- to be paid by the Company.

10. Without limiting the scope of investigation, the inspector shall conduct investigation on all aspects of the operations of the Company and shall, after scrutiny of all the records and books of accounts, furnish a report, *inter alia*, on the following matters:-

- i). Reasons of heavy losses sustained by the Company during the last few years. Whether losses suffered by the Company were due to mismanagement/imprudent policies or some other reasons, particularly when the textile sector has shown considerable improvement in the last few years.
- ii). Whether or not the Company has kept proper records as required by Section 230 of the Ordinance.
- iii). Sales/revenues of the Company with particular reference to drastic decrease in sales as qualified by the auditors.
- iv). Whether the sale of assets made during the year and in the preceding years was in the interest of the Company and as to whether these assets were sold in a transparent manner at the best possible price.
- v). Verification of the stock in trade as mentioned in the books of accounts and qualified by the auditors.
- vi). The transactions with the associated undertakings as to whether the same were at arms length.
- vii). To report any lapse or any other delinquency detected during the course of investigation

11. The inspector shall submit his report along with supporting documents to the Commission, highlighting violations of the relevant provisions of the Ordinance, within sixty days from the date of this order.

12. The inspector, for the purpose of his investigation, shall have the same powers as are vested in a Court under the Code of Civil procedure, 1908 while trying a suit in respect of the matters enumerated under Section 266 of the Ordinance and every proceeding before the inspector shall be deemed to be judicial proceeding within the meaning of Section 193 and

228 of the Pakistan Penal Code, 1860. Any contravention or non-compliance of the orders, direction or requirement of the inspectors shall entail the consequences under the Code of Civil Procedure, 1908 and Pakistan Penal Code, 1860.

13. It shall be the duty of all the officers, employees and agents and other persons having dealing with the Company to provide all assistance to the inspector in connection with the investigation, and any default whereof shall be punishable under Section 268 of the Ordinance.

Abdul Rehman Qureshi
Commissioner (CLD)

Announced
December 30, 2004
ISLAMABAD