

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

In the matter of Show Cause Notice issued to Dewan Textile Mills Limited

Date of Hearing

February 20, 2020, March 09, 2020, July 20, 2020

Order-Redacted Version

Order dated October 27, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Dewan Textile Mills Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated December 13, 2019
2. Name of Company	Dewan Textile Mills Limited
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. Dewan Textile Mills Limited
4. Nature of Offence	In view of alleged violations under Section 499 read with Section 479 of the Companies Act, 2017
5. Action Taken	<p>Key findings of default were reported in the following manner:</p> <p>I have analyzed that the fact of case, relevant provisions of the law and the record placed before me. Based on the aforesaid, following is noted:</p> <p>(i) In cases of Suit Nos. 1251, 1252, 1253, 1254 & 1255 of 2017 (wherein suit No. 1252/2017 the plaintiff include Dewan Textile Mills Limited and Dewan Muhammad Yousaf while HBL, NBP, NIB BANK Limited, Summit Bank Limited & UBL are defendants) the Hon'ble High Court of Sindh passed the following order vide dated 12.5.2017:</p> <p><i>“Basically the plaintiffs have approached this court for the implementation of the consent letter dated 22.6.2016 (available at</i></p>



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page 293 of suit no. 1251/2017) and sought directions against the defendants to fulfill their obligation. Learned counsel submits that earlier some consent decrees were passed between the same parties by this court, thereafter, some novation was made in the earlier agreed terms. The consent letter dated 22.6.2016 was acknowledged on 15.7.2016 by the representative of HBL who is also Secretary, Steering Committee (available at page 333 of suit no. 1251/2017). Learned counsel argued that the defendants have committed breach of consent letter dated 22.6.2016 through which certain terms & conditions were restructured, but at the same time want to get execution of the consent decree passed in the year 2011. Issue notice to the defendants for 18.5.2017. Till next date no action shall be taken against the plaintiffs in violation of the terms and conditions of consent letter.”

Honorable Sindh High Court vide its Order dated May 12, 2017 has restrained to take action against the plaintiffs in violation of the terms and conditions of consent letter.

- (ii) Respondents in the directors’ report annexed with latest available annual audited financial statements for the year ended June 30, 2019 of the Company have disclosed following w.r.t the litigation with lenders:

“In financial year ended 2012, Company had settled with its lenders through Compromise Agreement against which consent decrees had been passed by the Honorable High Court of Sindh, Karachi. Company’s short term and long term loans had been rescheduled in the form of long term loans, however certain banks having suits of Rs. 419.065 million, did not accept the restructuring proposal at that time. Consequent to default in repayment of restructured liabilities as per compromise agreement, the lenders filed for execution of consent decrees. The Company filed suits in Honourable High Court of Sindh at Karachi wherein it has been strongly contested that filing of executions is unjust and against the law. Management of the Company expects favorable outcome therefrom.

Certain lenders did not become signatory of the compromise agreement and continued to pursue their suits filed in Honourable



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High Court of Sindh at Karachi for recovery of their liabilities through attachment and sale of Company's hypothecated / mortgaged properties. The aggregate suits amount in respect of these is Rs.419.065 million, out of total suits amount a bank having suit amount of Rs.193.266 million has also filed winding up petition u/s 305 of the repealed Companies Ordinance, 1984 (now 301 of the Companies Act, 2017). The Company strongly contested the cases as banks have filed wrong claims. The management of the Company expects favorable outcome.

As certain banks covering suits amounting to Rs 275.008 million has not yet accepted the restructuring proposal and also one of the banks had filed a winding up petition under section 305 of the Companies Ordinance, 1984. The Company strongly contested the cases as banks have filed wrong claims. The management of the Company expects favorable outcome. The management of the Company is quite hopeful that these banks will also accept restructuring proposal in near future. Accordingly, no provision of the said mark-up has been made in these financial statements."

- (iii) The Company under Note 12 to financial statements for year ended June 30, 2019 disclosed the following:

"12.1 In respect of liabilities towards banks / financial institutions disclosed in note 7 and 10 to the financial statements, during the year ended 2012, certain lenders have entered into a compromise agreement with the Company for outstanding debt sought by lenders in the suits filed by them and it was agreed that the Company would settle all the liabilities at principle amount of Rs.3,590.431 million and markup thereon of Rs.1,452.610 million (eligible for waiver if the Company repays the entire outstanding principal as per term of agreement), consequent to which consent decrees were granted by the Honorable High Court of Sindh, Karachi. Consequent to default in repayment of restructured liabilities as per compromise agreement, the lenders filed for execution of consent decrees. The Company filed suits against the said executions in the Honorable High Court of Sindh, at Karachi wherein it has been strongly contested that filing of executions is unjust and against the law. Management of the Company expects favorable outcome therefrom.

12.2 Out of the lenders as disclosed in note 9.1 and note 10 to the financial statements, some lenders did not become signatory of



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the compromise agreement and continued to pursue their suits filed in Honourable High Court of Sindh at Karachi for recovery of their liabilities through attachment and sale of Company's hypothecated / mortgaged properties. The aggregate suits amount in respect of these is Rs.419.065 million, out of total suits amount a bank having suit amount of Rs.193.266 million has also filed winding up petition u/s 305 of the repealed Companies Ordinance, 1984 (now 301 of the Companies Act, 2017). The Company strongly contested the cases as banks have filed wrong claims. The management of the Company expects favorable outcome."

- (iv) Respondents in the directors' report annexed with latest available annual audited financial statements for the year ended June 30, 2019 of the Company have disclosed following w.r.t non-provisioning of impaired debts:

"Auditors have also recommended for additional provision in respect of trade debtors whereas management of the company is confident and hopeful that these debtors would be recovered on the resumption of company's operations."

Moreover, the auditor in its report to members for half year ended December 31, 2018 and June 30, 2019 continued to give adverse opinion on non-provisioning of impaired debt.

The Respondents have not provided any justification with respect to non-provisioning against impaired debts, as highlighted by the external auditor, in its response to the subject SCN and subsequent hearings. The disclosure provided under the directors' report is not tenable rather is an implicit acknowledgement of failure to comply with the order under Section 474 (1) of the Act dated December 10, 2018 that required ratification of default by meticulously complying with all applicable requirements of the Act, Fourth Schedule and IFRS to the satisfaction of auditor in the half yearly financial statements for period ending December 31, 2018 and financial statements for all ensuing



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periods.

2. Considering the aforementioned facts, I am of the view that the grounds on the basis of which proceedings were initiated through the subject SCN w.r.t non-recognition of markup and classification of liabilities are subjudice before the Honorable Sindh High Court. The order of court dated May 12, 2017 has restrained to take action against the plaintiff in respect of Suit Nos. 1251, 1252, 1253, 1254 & 1255 of 2017 and the Company is plaintiff in Suit 1252/ 2017. Therefore, I conclude the proceedings w.r.t non-recognition of markup and liabilities of banks without adverse order and the Company is advised to disclose complete details of its cases in Court in its forthcoming quarterly and annual financial statements.

3. Moreover, considering the grounds of subject proceedings, submissions of Respondents and relevant facts with respect to non-provisioning against impaired debts, it is noted that the Company has failed to comply with the directions of order under Section 474 (1) of the Act dated December 10, 2018 that required ratification of default to the satisfaction of the Company's auditor in the half yearly financial statements for the six months ended December 31, 2018 and in all financial statements for ensuing periods. The Respondents have failed to provide any tenable justification for the aforesaid default. Therefore, Respondents are liable for penalty under Section 499 of the Act w.r.t non-provisioning of impaired trade debts in accordance with the Order under Section 474 (1) of the Act dated December 10, 2018. I, therefore, conclude these proceedings on the instant matter thereby imposing a penalty of Rs. 105,000 on Respondents as below:

S.N.	Name of Director	Penalty (amount in Rs.)
1.	Mr. Ishtiaq Ahmad, Director/CEO	15,000
2.	Mr. Aziz Ul Haque, Director	15,000
3.	Mr. Ghazanfar Baber Siddiqui, Director	15,000
4.	Mr. Imran Ahmed Javed, Director	15,000



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	5.	Syed Maqbool Ali, Director	15,000
	6.	Mr. Muhammad Baqar Jafferi, Director	15,000
	7.	Mr. Zafar Asim, Director	15,000
	Total		105,000
<p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties on the Respondents of the Company in respect of any default, omission, violation of the Act.</p> <p>Penalty order dated October, 2020 was passed by Executive Director (Adjudication-I).</p>			
2. Penalty Imposed	A penalty of Rs. 105,000/- (one hundred and five thousands) was imposed on Board of Director of the Company.		
3. Current Status of Order	No Appeal has been filed by the respondents		