

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

In the matter of Show Cause Notice issued to D.M. Industries Mills Limited (formerly D.M Textile Mills Limited)

Date of Hearing

August 26, 2019, September 18, 2020

**Order-Redacted Version**

Order dated September 25, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of D.M. Industries Mills Limited (formerly D.M Textile Mills Limited). Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated February 07, 2019
2. Name of Company	D.M. Industries Mills Limited (formerly D.M Textile Mills Limited).
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. D.M. Industries Mills Limited (formerly D.M Textile Mills Limited).
4. Nature of Offence	In view of alleged violations under Section 196 read with Section 476 of the Companies Ordinance, 1984 and SRO 1227/2005
5. Action Taken	<p>Key findings of default were reported in the following manner:</p> <p>2. I have analyzed that the facts of case, relevant provisions of the law and the record placed before me. Based on the aforesaid, following is observed:</p> <p>a. The Company obtained approval of the shareholders for sale of plant, machinery and equipment in the AGM held on November 03, 2012. The Company however, kept on selling the spindles as number of spindles reduced from 28,840(2012) to 21,960 (2013) and thereafter 16,200(2015) and 11,400(2016). As per the provisions of SRO 1227/2005 dated December 12, 2005, the Company was required to seek fresh approval of the shareholders for sale of spindles as the shareholders' approval dated November 03, 2012 was time bound i.e. valid for one year and stand lapsed if not implemented within one year. This shows that the Company was unable to sell remaining spindles</p>



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	<p>after one year of the approval of shareholders and thereby found non-compliant with the provision of SRO 1227/2005 dated December 12, 2005.</p> <p>b. The Company in its financial statements disclosed rental income as Rs 0.4 million in 2012, which increased to Rs. 10.89 million in 2016. In respect of rent/lease of assets, the Company failed to seek shareholders' approval in term of Section 196(3) of the Ordinance.</p> <p>c. The Company, subsequently in its AGM held on October 28, 2017, sought approval of shareholders w.r.t the following:</p> <ul style="list-style-type: none"><li>• revalidation of approval of sale of plant and machinery and other surplus assets passed in AGM held on November 03, 2012 up to June 30, 2017.</li><li>• Ex-post facto approval for renting out of surplus covered area measuring approx. 100,000 sqft comprising of old mill building and godown within the premises of Mill situated at Westridge Industrial Area Rawalpindi</li></ul> <p>The notice of aforesaid AGM was part of annual report of the Company for year ended June 30, 2017 whereby among other, aforesaid special business was proposed to be placed before the shareholders for passing ordinary resolution under Section 183 of the Act.</p> <p>d. The Respondents have acknowledged lapse in seeking approval of the shareholders for sale of assets subsequent to year 2013 in contravention with the requirements of SRO 1225/2005 dated December 12, 2005. The Authorized Representative however have reiterated his stance of seeking revalidation in AGM held on October 28, 2017 w.r.t approval of shareholders for sale of assets in 2012 upto 2017.</p> <p>e. Similarly, the Respondents have acknowledged default in complying with requirements of Section 196 of the Ordinance w.r.t lease of godowns after attention drawn by the Commission and subsequently seeking ex-post facto approval of lease of old building and godowns in its AGM held on</p>
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	<p>October 28, 2017.</p> <p>f. With regard to the Respondents' assertion on procedural default, it may be noted that while the Company sought post factor approval, so it does not obviate the Company from its responsibilities under the law in the prescribed manner at the appropriate time. Section 196 of the Ordinance, comparative Section 183 of the Companies Act, 2017, is clear that the board of directors of a public company or of a subsidiary of a public company are restricted to sell, lease or otherwise dispose of the undertakings or a sizeable part unless prior authorization/consent by shareholders in general meeting. Requirements of SRO1227/2005 dated December 12, 2005 are also clear w.r.t validity of any decision to sell assets under authority of a special resolution already passed if not implemented within one year the resolution would stand lapsed. Therefore, post facto approval is not provided as an exception under the Ordinance and does not satisfy the purpose of Section 196 of the Ordinance.</p> <p>From the above discussion and after careful consideration of all the facts of this case, I am of the view that the provisions of clause (a) to sub-section (3) of Section 196 of the Ordinance read with SRO 1227/2005 dated December 12, 2005 have been contravened and the Respondents are liable under the sub-section (4) of Section 196 of the Ordinance. Taking cognizance of the submissions of the Respondents and in exercise of the powers conferred under aforesaid provisions of the Ordinance, I hereby impose penalty of Rs 50,000 (Rs. Fifty thousand) on Mian Habib Ullah, CEO and Chairman of the Company. I also warn all the Respondents to be careful and ensure compliance of law in future as committed by the Respondents.</p> <p>Penalty order dated September, 2020 was passed by Executive Director (Adjudication-I).</p>
2. Penalty Imposed	A penalty of Rs. 50,000/- (Fifty thousands) was imposed on the Company.
3. Current Status of Order	No Appeal has been filed by the respondents