



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department
Company Law Division

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Before Abid Hussain, Director (Enforcement)

In the matter of

D.M. Textile Mills Limited

Number & date of the notice: EMD/233/111/2002-1445-51 dated October 03, 2007
Date of hearing: November 15, 2007
Present: Mr. M. Javed Panni, Chief Executive
MJ Panni & Associate

Order

Under Section 196 read with Section 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against D.M. Textile Mills Limited (“the Company”) through show cause notice dated October 03, 2007 under the provisions of Section 196 read with Section 476 of the Companies Ordinance, 1984 (“the Ordinance”).

2. The Company is a public limited company and was incorporated in Pakistan under the Ordinance. Shares of the Company are quoted on the Karachi & Islamabad Stock Exchanges. The authorized share capital of the Company is Rs.50,000,000/- divided into 5,000,000 ordinary shares of Rs.10/- each and paid up capital of the Company is Rs.30,524,290/- divided into 3,052,429 ordinary shares of Rs.10/- each as per the latest annual audited accounts for the year ended June 30, 2007.

3. The brief facts of the case are that while examining the annual accounts, for the year ended June 30, 2006 (“the Accounts”), of the Company, it was observed that an amount of Rs.51.150 million had been disclosed as advance for purchase of property. The Company vide Commission’s letter dated July 13 & 25, 2007 was advised to provide details of the said transaction alongwith copy of the minutes of the meeting of the Board of Directors (“BOD”) of the Company in which such advance was approved. The Company in its replies dated July 21 & August 1, 2007 has stated that the said amount was advanced for purchase of house in Islamabad which will be used as guest house for the officials of the Company. Further, a copy of the minutes of the meeting of BOD held on September 27, 2006 was provided which reflected approval of BOD for aggregate addition of Rs.97.217 million to its fixed assets, however, no



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approval for the aforesaid advance was given by the BOD. Later on the Company has also provided a copy of resolution passed by its BOD through circulation on August 25, 2007 giving a post facto approval for payment of Rs.51.150 million as an advance to Mr. Naeem Ahmad on account of purchase of guest house for the Company.

4. In view of the foregoing, it was observed that the directors of the Company had violated the provisions of Section 196 of the Ordinance, therefore, a show cause notice under the aforesaid section of the Ordinance was issued to following directors in order to explain as to why penalty under Sub-section (4) of Section 196 of the Ordinance may not be imposed on them:

- (i) Mr. Habib Ullah, Chairman & Chief Executive;
- (ii) Mian Muhammad Saleem Omer, Director;
- (iii) Mian Naeem Omer, Director;
- (iv) Mr. Hussain Ahmad Qureshi, Director;
- (v) Mr. Irshad Hussain Shah, Director;
- (vi) Rao Khalid Pervaiz, Director;
- (vii) Mr. Shahid Anwar, Nominee Director of NIT.

5. In response to the show cause notice, the directors of the Company vide their letters dated October 12, 17, & 31, 2007 submitted as follows:

- Resolution by circulation has been passed on August 25, 2007 by the BOD under Article 67 of Article of Associations (AOA) of the Company which provides that a resolution in writing circulated to all the directors and signed by a majority of the total number of directors or affirmed by them through telex or telegram shall be as valid and effectual as it had been passed at a meeting of the directors duly convened and held, therefore the objection raised in para 7 of the show cause notice stands cancelled;
- Directors have ratified their earlier decision as per para 13 of the minutes which stated that resolution dated 25-08-2007 passed by the BOD by circulation under Article 67 of the association of the Company is hereby ratified / validated as if passed in the meeting of BOD for all ends of justification / law.

5. In order to provide an opportunity of personal hearing, the case was fixed on November 15, 2007 on which date Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates, (“the Counsel”) appeared before me as Counsel on behalf of all the directors of the Company. He reiterated the directors’ earlier stance as was given through written submissions in response to the show cause notice. However, he admitted that BOD should have observed the compliance of the provisions of Clause (j) of Sub-section



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(2) of Section 196 of the Ordinance at relevant time. Further, he made commitment that the latest status of transfer of guest house in the Company's name and all the relevant documentary evidence will be provided within seven days. A letter dated November 24, 2007 was received from the Counsel enclosing with a letter dated November 23, 2007 from Mr. Habib Ullah, Chief Executive of the Company stating that the Company had taken the possession of House # 8, Street 7, F-8/3, Islamabad on June 19, 2006. Further, it was stated that certain formalities need to be completed with regard to the formal transfer of the house in the name of the Company which will be arranged in the next three months.

6. I have analyzed the facts of the case, provisions of Section 196 of the Ordinance, arguments put forth by the directors and their Counsel and observed as follows:

- (i) The Company started transferring funds on account of payment as advance for purchase of guest house in Islamabad since December 29, 2005;
- (ii) On examination of Company's last three annual accounts for the year ended June 30, 2005, 2006, & 2007 and following has been observed;

Description	Amounts in million		
	2005	2006	2007
Profit / (Loss) after tax (BAT)	63.980	31.490	(40.799)
Short-term borrowings	55.269	144.642	Rs.150.872
Financial charges	11.121	32.938	54.294
Earning / (Loss) per share	Rs.20.96	Rs.10.32	(Rs.13.37)

During the last three years, the Company's profitability declined from profit of Rs.63.980 million to loss of Rs.40.799 million whereas its short-term borrowings from financial institutions increased from Rs.55.269 million to Rs.150.872 million resulting into increase in financial charges from Rs.11.121 million to Rs.54.294 million. Increase in financial charges contributed towards company's losses. Further, it has also been observed that the Company had failed to pay off its current portion of long-term loan amounting to Rs.7.083 million in year 2006 and Rs.17.708 million in year 2007 due to liquidity crunch as reported in the financial statements;

- (iii) Contrary to the above financial position, a huge amount of Rs.51.150 million remained stuck up since December 2005 on account of purchase of guest house;
- (iv) No documentary evidence to prove the genuineness of this transaction has not been provided by the Company;
- (v) The Company had started making payment for the aforesaid purpose from December 29, 2005 and last payment was made on July 19, 2006 whereas Company's BOD has given post facto



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approval of the transaction in their meeting held on August 25, 2007 after pointing out the default by the Commission;

- (vi) The Counsel vide letter dated November 24, 2007 stated that the property has been acquired and possession taken over however final price has not yet been determined. Further, the letter provided by the Counsel of the directors is not on any legal paper and cannot be deemed to be valid in the eyes of law. The Company still failed to provide any documentary evidence reflecting acquisition of the property;
- (vii) The above facts while clearly proving that the aforesaid transaction was not carried out prudently and complying with the legal formalities but also raise serious doubts on the validity of the transaction reported by the Company.

7. Before proceeding further, it is necessary to advert to the relevant provisions of law, reproduced below:

- Provisions of Clause (j) of Sub-section (2) of Section 196 of the Ordinance provides that the directors of the company shall exercise the power to incur capital expenditure on any single item or dispose off a fixed asset in accordance with limits as prescribed by the Commission from time to time on behalf of it and shall do so by means of resolution passed at their meeting;
- Rule 14A of the Companies (General Provisions and Forms) Rules, 1985 provides that the amount of capital expenditure to be incurred on any single item and the amount of book value for the disposal of a fixed asset, for the purpose of Clause (j) of Sub-section (2) of Section 196 of the Ordinance, shall be exceeding one million rupees, and one hundred thousand rupees respectively.
- Provisions of Sub-section (4) of Section 196 of the Ordinance provides that whosoever contravenes any provision of this section shall be punishable with a fine which may extend to one hundred thousand rupees and shall be individually and severally liable for losses or damages arising out of such action.

8. The aforesaid provisions of law are clear and explicit. The objective of these provisions of law is to ensure that the funds of the Company must be used prudently with the approval of BOD of the Company who while incurring capital expenditure valuing more than one million rupees should convene a meeting in order to deliberate on the benefits of the transaction for the Company and its shareholders. The law gives complete authority to the directors of the Company to use the Company's funds and does not impose any restriction of taking approval even from the shareholders or any regulatory authority. Therefore it is the responsibility of the BOD to use this authority with utmost care and decisions should be taken diligently. However, in the case in hand, I have observed that the directors used the funds of the Company in very casual manner without taking into account the financial position of the Company. The



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funds of the Company remained blocked for almost two years and on the other hand the Company went into liquidity crunch. The Company failed to meet its liabilities by making default in payment of loan which have caused damaged to its reputation as good customer for financial institutions. If these funds would have been invested prudently, the Company would have not only paid its liabilities in a timely manner but would have also earned good return for the shareholders.

9. Considering the circumstances of the case, I am of the view that the directors have failed to clarify their position with respect to compliance with the requirements of Clause (j) of Sub-section (2) of Section 196 of the Ordinance at the time of payment of advance to Mr. Naeem Ahmad S/o Muhammad Yousaf holding NIC # 37405-0554251-3 and have also caused loss to the Company and its shareholders. It is established that the directors had incurred capital expenditure without following the requirements of law. Accordingly, an action is necessary under Sub-section (4) of Section 196 of the Ordinance which not only provides a fine of one hundred thousand rupees for the responsible directors but also make them individually and severally liable for losses and damages arising out of such action. The fact of the case warrants no sympathy for the directors and requires a stern action against them. I, therefore, impose a fine of Rs.600,000/- (Six Hundred thousand only) in aggregate on the following directors including the Chief Executive of the Company for contravening the provisions of Clause (j) of Sub-section (2) of Section 196 of the Ordinance:

Mr. Habib Ullah, Chairman & Chief Executive	Rs.100,000/-
Mian Muhammad Saleem Omer, Director	Rs.100,000/
Mian Naeem Omer, Director	Rs.100,000/
Mr. Hussain Ahmad Qureshi, Director	Rs.100,000/
Mr. Irshad Hussain Shah, Director	Rs.100,000/
Rao Khalid Pervaiz, Director	Rs.100,000/

The Chief Executive and directors of the Company are hereby directed to deposit the fines in the designated bank account maintained in the name of the Commission with Habib Bank Limited within thirty days from the receipt of this order and furnished receipted bank vouchers to the Commission. In case of non deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fine as an arrear of land revenue. It may also be noted that the said penalties are imposed



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on the directors in their personal capacity accordingly they are required to pay the said amount from their personal resources.

Nominee director by NIT namely Mr. Shahid Anwar is hereby strictly warned to be vigilant in playing his role as independent non-executive director as I expect that the independent directors are the main element of transparency in the decisions of the BOD of a Company.

10. Further, in terms of the provisions of Section 473 of the Ordinance, I hereby direct the Chief Executive of the Company:

- i) To complete all the formalities in order to transfer the property in the name of the Company within thirty days from the date of this Order;
- ii) To submit a certificate from the statutory auditors of the Company confirming that the aforesaid property i.e. guest house has been transferred in the Company's name alongwith all the supporting documentary evidence i.e. transfer deed etc; and
- iii) Appoint the statutory auditors to conduct a special audit to calculate the amount of profit which could have been earned on the amount of Rs.51.150 million if invested with any scheduled bank, on daily product basis in the relevant period. This amount will be deposited proportionately, in the Company's account, by above named directors who are penalized under this order and a certificate in this regard will also be submitted to this office within thirty days of the date of this order.

11. In case of non-compliance of the above directions this office will initiate proceedings under the provisions of Section 495 of the Ordinance.

Abid Hussain
Director-Enforcement

Announced
November 29, 2007
Islamabad