



Securities and Exchange Commission of Pakistan
Company Law Division
(Enforcement Department)

[Islamabad]

Before Mr. Ali Azeem Ikram, Director (Enforcement)

Order

In the matter of

M/s HAMID TEXTILE MILLS LIMITED

Under Section 196 Read With Section 476 of the Companies Ordinance, 1984

Show Cause Notice No. and Date: EMD/233/255/2002-8014-20
Dated 10.02.2006

Date of final hearing: 24.05.2007

Present: Mr. Sardar Ahmad Ayaz Nakai, Managing Director and Mr. Zahid Lateef, General Manager on behalf of all the chief executive and directors of M/s Hamid Textile Mills Limited

Date of Order: 21.06.2007

This order shall dispose of the proceedings initiated against the chief executive and directors of M/s Hamid Textile Mills Limited (“the Company”) for selling a sizeable part of assets of the Company comprising plant and machinery in contravention of the provisions of Section 196 (3) (a) of the Companies Ordinance, 1984 (“the Ordinance”)

2. In order to decide this matter, a brief narration of the background facts leading to the issue of show cause notice (“scn”) is necessary. The Enforcement Department of the Securities and Exchange Commission of Pakistan (“the Commission”) had conducted an examination of the annual audited accounts of the Company for the year ended 30.09.2004 (“the Accounts”) received at the Commission under Section 233 (5) of the Ordinance and it was revealed that the Company during the said year had disposed off sizeable part of the plant and machinery of the Company having written down value (“WDV”) of Rs.55.636 million which constitutes 33% of the total WDV of plant and machinery (Rs.167.879 million) and 25% of the WDV of total operating fixed assets (Rs.225.268 million) of the Company. As per Note 12.2 to the Accounts the plant and



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machinery was sold through negotiation to two parties namely, All Bros. and Malik Arshad at a loss of Rs.27.766 million. Moreover on perusal of the notices of the general meetings of the Company available on record of the Commission, it transpired that the sale of machinery was never included as an agenda item in any general meeting of the Company held during last several years. The directors' report attached to the Accounts was also perused, however, nothing could be found there, in respect of sale of the said plant and machinery

3. As it was a sizeable part of the overall undertaking of the Company, its sale, therefore, required consent of the general meeting of the Company as required under of Section 196 (3) (a) of the Ordinance which states that:

*“(3) The directors of a public company or of a subsidiary of a public company **shall not except with the consent of the general meeting** either specifically or by way of an authorization, do any of the following things, namely:*

*(a) sell, lease or otherwise dispose of the undertaking or **a sizeable part thereof**, unless the main business of the company comprises of such selling or leasing;”*

4. It was in these circumstances that the Enforcement Department decided to take up this matter with the Company and consequently, a scn dated 10.02.2006 was issued to the chief executive and directors of the Company to show cause as to why action under Section 196 (4) of the Ordinance may not be taken for the violation of the mandatory requirements of the Ordinance.

5. In order to provide an adequate opportunity to defend this case, the case was fixed for hearing a number of times (i.e. 28.02.2006 and 5.10.2006), the final date being 24.05.2007 on which Mr. Sardar Ahmad Ayaz Nakai, Managing Director and Mr. Zahid Lateef, General Manager, represented the chief executive and directors of the Company. They also filed written reply to the scn and their main contentions in the submission and at the time of the hearing, after agreeing to the default, can be summarized as under:

- i. The spinning unit was closed from September 2002.
- ii. The machinery sold was obsolete, inefficient and it was not in workable condition.
- iii. Its sale value indicates that it did not constitute sizeable part of the entity, hence did not require consent of the shareholders but a board resolution only.
- iv. Comparison was provided between Rieter RU14 open end machines with Schlafhorst SE9 machines that were to replace the former ones.
- v. The directors alongwith their family members holds 50% of the shareholding are therefore major stake holders in the Company and they had approved the disposal of the said assets in the board meeting.



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- vi. Directors in addition to their stake of Rs.66.358 million in shareholding have also injected in the project Rs.227.689 million as interest free loan.
- vii. The long term financier of the project is the NBP, which had given approval for disposal of the assets by giving their NOC.
- viii. The following requests were made by the Company:
 - A sympathetic view of the situation.
 - Arrange post facto intimation / approval from the shareholders.
 - The three female directors namely, Mst. Shahida Talib, Mst. Abida Omar and Mrs. Bushra Khurram who are not active participants may kindly be exempted from the penal provisions of the Ordinance.

6. I have heard the Company's representatives at length and have also examined the record and the relevant provisions of law applicable to this case. Having set out the facts of the case, directors' contentions and after detailed examination of the information enclosed with the reply, I am of the view that:

- (i) The submissions given by the company with regard to the comparison of the old and the new machinery are irrelevant.
- (ii) NBP is no approving authority under the Ordinance to the aforesaid transaction as stated by the company.
- (iii) The plant and machinery disposed of by the Company had WDV of Rs.55.636 million against the total operating fixed assets' WDV of Rs.225.268 million as reported in the annual accounts for the year ended 30.09.2004. Thus the plant and machinery constituted 25% of the total WDV of the total operating fixed assets. It is therefore evident that the plant and machinery disposed of by the Company constitutes a sizeable part of the undertaking and its disposal required special resolution to be passed by the shareholders. The board of directors under the provisions of Section 196 (2) (j) of the Ordinance can dispose of the assets up to the limits prescribed by the Commission, however, where disposal of assets constitutes sizeable part of the undertaking, the board has to obtain consent of the general meeting under the provisions of Section 196 (3) (a) of the Ordinance.
- (iv) Even if the Company was forced by the circumstances, to sell off its assets in order to meet creditor's obligation, the requirement of complying with Section 196 of the Ordinance by passing a special resolution could not be done away with. The aforesaid provision of the Ordinance restrict the powers of the directors of a public company to sell, lease or otherwise dispose of the undertaking or a sizeable part thereof without consent of the general meeting. The objective of these provisions is that the directors must consult the shareholders when an undertaking or a sizeable part thereof is intended to be sold. The prior consent of the shareholders, therefore, is a condition precedent for selling or disposing the undertaking or a sizeable part thereof. This has been given special significance by providing that default of these provisions would attract penalties and the directors and officers shall also be jointly and severally liable for the losses and damages arising out of such action.

In view of the facts discussed in above para, I do not agree to the argument as contended by the directors of the Company in their written reply and at the time of hearing. The stance taken by the Company in response to Commission's proceedings violates the principles of good corporate culture and depicts carelessness on the



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part of the directors. The mandatory requirements are meant to ensure that the shareholders are consulted prior to sale of the undertaking or a sizeable part thereof; therefore, this breach cannot be ignored.

7. On the basis of the relevant facts, reply of the directors and acceptance of default during the course of hearing, I am of the view that the default is established and directors are liable for punishment under the provisions of Section 196 (4) of the Ordinance. However, considering the fact that the proceeds from the sale of assets were utilized to repay the liabilities of the Company and the fact that the management is making efforts for revival of the Company, I instead of imposing maximum fine of Rs.100,000 on each director for the violation of the provisions of Section 196 (3) (a) of the Ordinance, hereby impose a penalty of Rs.20,000 (Rupees Twenty thousand only) each on Mr. Sardar Mohammad Omar, Chief Executive and Sardar Khurram Omar, Sardar Ahmad Ayaz and Mr. Altaf Hassan Mann, the directors of the Company under the provisions of Section 196 (4) of the Ordinance. Taking a lenient view, based on the aforesaid submission made by the Company, the three female directors namely Mst. Shahida Talib, Mst. Abida Omar and Mrs. Bushra Khurram have been condoned. Further all the directors are hereby warned to be careful and vigilant in future and comply with the requirements of the law in letter and spirit.

8. The Chief Executive and Directors are directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive and Directors in their personal capacity; therefore, they are required to pay the said amount from his personal resources.

Ali Azeem Ikram
Director (Enforcement)

Announced
21.06.2007
Islamabad