

Before Tahir Mehmood, Executive Director (CL)

In the matter of

Hira Textile Mills Limited

Under Section 492 read with Section 476 of the Companies Ordinance, 1984

Number and date of notice	No. EMD/CO.233/687/2002 dated May28, 2007
Date of hearing	July 30, 2007
Present	Ms. Nasira Taskeen (Consultant)
Date	September 10, 2007

ORDER

This order shall dispose of the show cause proceedings initiated vide Show Cause Notice No. EMD/233/73/2002-48-54 dated May 28, 2007 (Notice) issued to the directors of Hira Textile Mills Ltd. (HTML) namely, Mr. Muhammad Umar Virk, Mr. Nadeem Aslam Butt, Ms. Shahnaz Umar, Mr. Umair Umar, Ms. Umair Umar, Ms. Sadiya Umair and Mr. Saeed Ahmad Khan for misstatement in the prospectus dated December 29, 2006 issued for initial public subscription (IPO).

2. HTML was incorporated on January 31, 1991 as a private limited company. Its principal business is manufacturing and sale of yarn. The registered office of HTML is situated at 44 – E/1, Gulberg III, Lahore and its manufacturing facilities are located at Manga Raiwind Road, Tehsil and District Kasur in the Province of Punjab. It was converted into a public limited company and its shares were offered for public subscription through prospectus dated December 29, 2006. The principal purpose of IPO as stated in HTML prospectus was installation of additional 7,200 spindles. The prospective investors were informed vide the prospectus that the expanded production facilities would commence commercial production by September 2007 as per the following timeframe:

Activity	Status
Building & Civil Works	Already started (Boundary wall & ground leveling has been completed & civil work will commence upon the opening L/Cs)
Establishment of LCs	Feb/Mar 2007
Purchase of Machinery from Local Market	By June 2007
Arrival of Machinery at Site	By July 2007
Start of Trial Production	By August 2007
Start of Commercial Production	By September 2007

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3. However, in the post IPO scenario HTML informed Commission about the delay in expansion plan which raised concerns regarding the utilization of the public funds for its stated purposes. Further probe in the matter resulted in the inference that the timeline provided in the prospectus for the proposed installation of additional 7,200 spindles was, *prima facie*, misstated since the basic documents i.e. the performa invoices for import of machinery had either expired or were due to expire by January 31, 2007. Hence HTML's representation in the prospectus to start commercial production of its expanded production facilities by September 2007 appeared totally baseless and altogether misleading abinitio, as confirmed from the details of the performa invoices submitted before me:

Supplier Name	Date	Delivery time	Expiry date
Reiter	April 04, 2006	5-6 months	Oct 31, 2006
Toyota Tsushu Corporation	Nov 08, 2006	6-7 months	Jan 31, 2007

4. Moreover, the aforesaid concern when corroborated with the request made by the HTML, prior to the issue of prospectus, for relaxation of Rule 3(II) (iii) (b) of the Rules raise alert that the situation was not firm and clear since early stages. The aforesaid Rule provides that a company which owns an equity based project and proposes to raise capital through public offer for the first time shall ensure that:

“The land for the project has been acquired, letters of credit have been established and shipment schedule of plant and machinery has been finalized by the suppliers.”

5. HTML postponing of the expansion plan on the pretext of delay in opening of Letters of credit and hike in foreign currency exchange was *prima facie* incorrect and raised concerns regarding malafide on part of the directors of HTML. Therefore a Show Cause Notice (the “Notice”) was issued to the Chief Executive and directors of HTML on May 28, 2007 asking them to explain why penalty as provided under Section 492 of the Ordinance may not be imposed on them.

6. The directors of HTML replied to the notice through the consultant vide letter dated June 16, 2007, and made the following submissions:

- The delay in the expansion plans was attributed to the following:

- Under-subscription of IPO resulting in delay in collection of IPO funds. The subscription money from underwriters and public was received by February 21, 2007.
- Expiration of Performa invoices which were valid for three months period.
- Hike in Foreign Currency resulting increase in cost of machinery and disturbed the exchange rate at which calculations were made at the time of IPO. Since no margin was kept for exchange rate fluctuation at the planning stage of the proposed expansion.
- Increase in lead time for delivery of machinery.
- HTML was of the view that Rule 3(II)(iii)(b) of the Rules is not applicable to companies having history of successful operation over the period of its life. However, at that time to avoid undue debate and delay request for relaxation from the said rule was made.
- The whole process of public issue is very lengthy and requires fulfilling a number of formalities. The management of HTML along with its advisors and consultants to the issue, Arif Habib Securities and UBL, continuously worked for the completion of the formalities and documents which was started in early 2006. It was expected that the company would go for public issue latest by June 2006; however, the same was delayed.
- The management wanted to get the prospectus approved before December 31, 2006 otherwise requirements of fresh audit arose. Due changes in the prospectus were made as advised by the Commission; however, unfortunately the expiry dates of performa invoices were overlooked.
- The IPO was badly undersubscribed. By the time of completion all post IPO formalities crisis had set in textile industry. Suppliers were requiring greater lead time for supply of machinery and the cost of the expansion had escalated due to increase in rate of foreign currencies.
- The time schedule appears misleading due to change in lead time which has risen from six months to twelve months.

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- The civil works are near completion and HTML has opened Letters of credit for import of machinery. This shows the seriousness of the management to complete the expansion plan as early as possible.

7. In conclusion of the written submission request for personal hearing was made. Therefore, hearing of the case was fixed for July 10, 2007 which was adjourned twice on the request of the consultant appointed by the directors and finally fixed on July 30, 2007. The directors in the hearing notice were also required to provide a due diligence report on the receipt and application of IPO proceeds at the time of hearing.

8. On the date of hearing Ms Nasira Taskeen of Vision Consulting Ltd. appeared on behalf of the Chief Executive and directors of HTML. During the hearing, submissions made in the written reply were reiterated. In addition the following arguments were made both verbally and in writing:

- Letters of credit amounting to Rs. 233.948 million as against the projected amount of Rs. 224.121 million have been opened for import of plant and machinery.
- Due to hike in prices of machinery and rapid increase in exchange rates the amount estimated for purchase of 7,200 spindles is now sufficient only for purchase and installation of 6,000 spindles. Hence the aforesaid letters of credit represent payment commitment of 6,000 spindles.
- The management has opened L/Cs up to amount of proceeds from IPO.
- The revised implementation schedule of the expansion plan is as follows:

Activity	Status
Shipment of Machinery	March 2008
Arrival of Machinery at Site	April 2008
Errection	April/May 2008
Start of Trial Production	May/June 2008
Start of Commercial Production	July 2008

9. The consultant was again questioned about the disbursement of funds generated by the IPO since quarterly account for the period ended March 31, 2007 reflect cash and bank balance amounting to Rs. 23.352 million whereas the IPO amounted to Rs. 312.500 million Being unaware of the utilization of IPO funds by HTML the consultant undertook to provide the requisite information through a written reply latest by August 03, 2007.

10. The reply was received vide letter dated August 2, 2007 and it was submitted that as there was delay in opening of letters of credit the management optimized the utilization of funds without using them but by way of saving of financial charges. There was no disbursement from the proceeds of IPO just fund management. The amount of IPO proceeds was part of short term borrowings. Proceeds of IPO will ultimately be used for expansion purposes it is matter of time only. The reconciliation statement attached with the aforesaid reply shows payment against various short term facilities, expense of public issue capital work in progress. As a new development, it was later informed that, the funds have been taken out of the working capital and used for repayment of TFC's.

11. I have thoroughly considered the facts of the case and written and verbal representations made before me. The main contention raised by the consultant for providing misleading timeframe for proposed installation of 7,200 spindles is that the same was overlooked. The document in question i.e. the prospectus is a fundamental tool that gives an insight into the level of commitment of the management and its future outlook toward the business planning and thereby optimum utilization of the public money. I am of the view that the management, in order to conduct the business of the company in a prudent transparent manner, should among others ensure authenticity of the information being disseminated to the general public and be aware of factors which may affect it in any manner whatsoever. The Code of Corporate governance aims at promoting such a management attitude. The management of listed company should be conscious of the fact that the investment decisions of ordinary investors are effected by the information disseminated by them in the statutory document. It is further viewed that representations given in any public document are in effect management's undertaking. It is the responsibility of the management to ensure these undertakings are based on realistic estimates and achievable targets and timelines. The information contained in it, forms the basis of investment decisions of general public, its preparation and submission to the stakeholders is therefore a sensitive issue and not merely a formality. For the forgoing, any misleading statement provided in prospectus cannot be ignored on the pretext that such vital information was overlooked at the time of preparation of the prospectus. I am therefore of the considered view the directors of HTML failed to exercise due care and presented misleading facts in the prospectus and hence made them liable for penal action under Section 492 of the Ordinance. In my considered view HTML has to endure an increased cost in term of the lead time and capital expenditure as a result of increase in exchange rate due to the fact that the terms and conditions of the previously expired performa invoices do not apply. This slackness on the part of

the management has resulted in under expansion of the project by 1200 spindles and has resulted in loss of future revenues of HTML. This has, hence, adversely affected the anticipated dividend payouts. Had the project been implemented as presented at the time of IPO the intrinsic worth of the shareholders wealth in HTML would have been increased.

12. It is pertinent to point out that the Securities and Exchange Commission of Pakistan has been established for the beneficial regulation of capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto. In view of the above, it is evident that HTML gave incorrect and misleading information in prospectus of HTML. However, though delayed, opening of letters of credit for import 6,000 spindles shows the managements' intent to honour their commitment made in the prospectus. Considering the directors' commitment to go ahead with the planned expansion I am inclined to take a lenient view impose a fine of Rs. 50,000 on each of the following Directors and Chief Executive instead of imposing maximum penalty of Rs.100,000 as prescribed by Section 492 of the Ordinance:

1. Mr. Muhammad Umar Virk
2. Mr. Nadeem Aslam Butt
3. Ms. Shahnaz Umar
4. Mr. Umair Umar
5. Ms. Umaira Umar
6. Ms. Sadiya Umair
7. Mr. Saeed Ahmad Khan

13. The matter for expansion remains partially unresolved since for the time being HTML has opened letters of credit for import of 6,000 spindles instead of envisaged 7,200 spindles. In this regard the directors shall provide an undertaking to the commission that the remaining 1,200 spindles shall be acquired and installed and for this purpose a complete plan with relevant timelines and sources of funding shall be provided to the Commission within 30 days of this order.

14. In addition the Directors shall be liable for the completion of the current phase of expansion as per the revised time schedule submitted with written reply at the time of hearing. They shall provide quarterly updates to the Commission in this regards till such time that it stands completed. Moreover, since the funds from IPO have been utilized for repayment of TFC's the payment against these letters of credit shall be arranged by HTML and its directors and no further capital shall be raised for the current phase of expansion i.e. addition of 7,200 spindles.

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15. The Directors are further advised that the delay in expansion may be communicated to the shareholders of HTML and revised time schedule be presented to the shareholders in the forthcoming annual general meeting of HTML for their information.

16. The Chief Executive and Directors of HTML are hereby directed to deposit the aforesaid fine totaling to Rs.350,000 (Rupees Three hundred fifty thousands only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act,1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other Directors in their personal capacity who are required to pay the said amount from their personal resources.

Tahir Mahmood
Executive Director (Enforcement)

Announced:
September 12, 2007
ISLAMABAD