

**Before Mr. Tariq Bakhtawar, Director Enforcement**

**In the matter of**

**M/s Din Textile Mills Limited**

**(Order Under Section 74 of the Companies Ordinance, 1984)**

No. and date of show cause notice	No. C-2103/EMD/166/2005 dated August 11, 2005
Date of final hearing	August 18, 2005
Present:	Mr. Ansar-ul-Hassan Feroz, Manager Corporate Affairs
Date of Order	June 30, 2006

**Order**

This Order shall dispose of the proceedings initiated against M/s Din Textile Mills Limited (hereinafter refer to as the “Company”) and its Directors including the Chief Executive of the Company for default made in complying with the provisions of Section 74 of the Companies Ordinance, 1984 (the “Ordinance”).

The Company was incorporated on June 13, 1988 under the Ordinance, as a public company limited by shares. The shares of the Company are listed on the Karachi, Lahore and Islamabad Stock Exchanges. The paid up shares capital of the Company is Rs.154.419 million divided into 15.442 million ordinary shares of Rs. 10 each. The Company is principally engaged in manufacturing and sale of yarn. The Company has 782 shareholders comprising individuals, joint stock companies, public sector institutions, financial institutions etc. as per pattern of shareholding annexed to the Directors’ Report on the accounts for the year September 30, 2004. Associated companies, directors and their spouses hold 78.69 % of the paid up capital. This indicates that there is a substantial public interest in the shares of this Company. The Board of Directors of the Company as per its latest annual report for the year ended September 30, 2004 comprises of as following:

1. Mr. S. M. Muneer, Chief Executive,
2. Mr. S. M .Naseer , Director,

3. Mr. S. M. Javed, Director
4. Mr. S. M. Pervez , Director,
5. Mr. S. M. Pervez , Director
6. Mr. S. M. Tanveer, Director,
7. Mr. Shahzad Naseer, Director,
8. Mr. S. M. Naveed , Director,
9. Mr. Irfan Muneer, Director,
10. Mr. Fawad Jawed , Director,

2. The facts leading to this case are that Mrs. Sajedah Sultana (hereinafter referred to as the “Complainant”) lodged a complaint with the Commission vide letter dated March 22, 2005 regarding non-receipt of shares after being held successful in the share balloting. According to the Complainant, she had submitted her application for subscription of 500 shares of Rs. 10 each (hereinafter referred to as the “Shares”) of the Company through Habib Bank Limited, Foreign Exchange Branch, Karachi wherein she was allotted serial No. 882 on May 29, 1991. She was out of country and therefore, could not contact the company at that time. However, after her return, on taking up the matter with the company she was informed that her shares had been transferred to another shareholder on May 27, 1993. The Complainant pleaded that she has been denied her right of allotment of shares and resultantly was deprived from any dividend / bonus shares issued by the company from time to time without any lapse on her part.

3. The aforesaid complaint was forwarded to the Company Secretary vide Commission’s letter dated March 30, 2005 inviting his attention towards the provisions of Sub-Section (1) of Section 74 of the Ordinance and to take appropriate action for the redressal of the grievance of the Complainant on priority basis. The Company Secretary submitted his reply through letter dated April 5, 2005 and informed that:

- The Company had allotted 500 shares under allotment Letter No. 21575-21579 dated May 29, 1991 against successful application No. HBL-07-882 in the name of Mrs. Sajedah Sultana w/o Mr. A.R. Patel.
- The above mentioned shares were transferred in the name of Mr. Muhammad Ihsan through TR No. 338 dated May 27, 1993.
- It was also mentioned that verified transfer deed along with allotment letter is attached with the correspondence.

4. The aforesaid reply along with the relevant documents were examined and it was observed that copy of transfer deed furnished by the Company was defective as it does not bear any folio number, or particulars of witness and the buyer. In view of the aforesaid, the Company Secretary was advised to furnish Original Transfer Deed of the subject shares through which shares were transferred to Mr. Muhammad Ihsan. The Company was also advised to furnish record of receipt or any documentary evidence of dispatch of shares to the Complainant. The Company instead of addressing the concern of the Commission sent the same application form but did not furnish the original transfer deed and also failed to provide any proof of dispatch of shares.

5. It appeared from the perusal of the reply that the Company has prima facie contravened the provisions of Section 74 of the Ordinance by not allotting/ dispatching the shares within ninety days as stipulated under proviso to the Sub-section (1) of Section 74 of the Ordinance. Consequently a show cause notice dated August 11, 2005 was served upon the Company under provisions of Sub-Section (2) Section 74 of the Ordinance read with Section 476 of the Ordinance. The Company and all its directors including the Chief Executive was called upon to show-cause and to explain as to why penalty may not be imposed on them for the contravention of the mandatory provision of Sub-section (1) of Section 74 of the Ordinance.

6. Simultaneously, the case was fixed for hearing on August 18, 2005, on which date, Mr. Ansar-ul-Hassan Feroz, Manager Corporate Affairs appeared on behalf of the Company and its directors. The learned counsel reiterated the facts mentioned in their earlier reply and argued that Shares were received by Mrs. Sajedah Sultana and subsequently sold for value at a later stage.

- The issue on hand is 14 years old and complainant never exercised due caution and diligence in its affairs in a prudent manner.
- The Commission would appreciate that even after a lapse of such a long period of 14 years the Company has maintained sufficient records to prove that the complainant was once the legal owner of the shares as per their register of shareholders and subsequently, shares were transferred to Mr. Muhammad Ihsan after due verification of signature and transfer deed on May 27, 1993.
- The Company also furnished photocopy of transfer deed along with copy of share certificate, receipt mentioning dispatch detail and address of Mr. Ihsan.

- He also submitted during the hearing that share certificate originally allotted to the complainant was lost/ misplaced along with number of share certificates for which FIR was lodged at a Police Station. This matter was also notified to the Karachi Stock Exchange and permission was sought from Karachi Stock Exchange to issue duplicate shares certificates which were printed and issued in the names of the shareholders/ members. Relevant documents were also provided subsequently.

7. The argument forwarded by the learned counsel was considered and was not found cogent. analysis of the reply reflects that:

- The Company has been asked repeatedly to furnish documentary evidence for allotment and subsequently dispatch of shares or any other authority letter / record of receipt obtained from Mrs. Sajedah Sultana showing her signature for receipt of shares duly signed by her. The Company never furnished Original Transfer Deed and any proof for dispatch of shares to the complainant.
- The argument of the Company that issue on hand is 14 years old cannot be taken as a valid reason for not settling grievances of the shareholder.
- It was observed that shares were transferred without diligently carrying out the verification of the transfer deed. A defective transfer deed was produced before the Commission, which did not contain Folio number, particulars of witness and name of buyer.
- It has also been observed that, as claimed by the company, the list of misplaced / lost share certificates did not contain the name of Mrs. Sajidah Sultana or Mr. Muhammad Ahsan or the subject Certificate Numbers 1525-1529 or Distinctive Numbers 0352, 1601-0352, 1900 originally allotted to Mrs. Sajedah Sultana. Thus question arises that why duplicate share certificate were printed and issued when the list of lost shares did not contain the subject shares certificates. Secondly, Share Certificates are printed once in life in the name of original / bona fide allottee who is Mrs. Sajidah Sultana and subsequent allottees or transferor's name is recorded at its back side under the head of Memorandum of Transfer. Whereas in this case duplicate / reprinted share certificates bear the name of Mr. Muhammad Ahsan instead of Mrs. Sajidah Sultana, the Original allottee.

8. Before proceeding to decide this case, I consider it necessary to advert to the provisions of the Ordinance, which have *prima facie* been violated by the Company. Sub-section (1) of Section 74 provides that

*“Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture stock, and within forty-five days after the application for the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, and unless sent by post or delivered to the person entitled thereto, within that period, shall give notice of this fact to the shareholders or debenture-holders, as the case may be, immediately thereafter in the manner prescribed, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.*

*Provided that the company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central depository, register such transfer in the name of the central depository.]*

***Explanation--*** *The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.”*

The provision of Sub-section (2) of Section 74 of the Ordinance provides per day fine in case of delay in transfer of shares by a company. The provisions of Section 77 of the Ordinance provides that the directors of a company shall not refuse to transfer any fully paid shares unless the transfer deed is, for any reason, defective or invalid.

9. In view of facts discussed above, I am of the view that the Company has not been able to present any cogent argument in support of its failure to transfer the shares in the name of the complainant, who was the lawful owner of those shares. Further, the evidence comprising defective transfer deed, copies of the duplicate share certificates not reflecting name of the original allottee and invalid representation regarding the lot of the lost shares, further corroborate the complainant’s stance. Moreover, the Company also failed to point out any defect or invalidity in the instruments of transfer lodged by the Complainant that apparently might have caused impediment in transfer of subject Shares in the name of Complainant. I therefore, conclude that *prima facie* the provisions of Sub-section (1) of Section 74 of the Ordinance have been contravened. The delay in transfer of Shares attracts the penal provisions contained in Sub-section

(2) of Section 74 of the Ordinance, which provides fine of Rs. 100 for every day during which default continues. The directors, including the Chief Executive are hereby held liable under the aforesaid penal provision for which I, instead of per day fine, impose a token fine of Rs. 5,000/- (Rupees five thousands only) on each of the Directors and the Chief Executive.

10. The Directors and Chief Executive are directed to deposit the fine amounting to Rs.5,000 each, aggregating to Rs. 50,000 (Rupees fifty ten thousands only) in the designated bank account of Securities and Exchange Commission of Pakistan, maintained with Habib Bank Limited within 30 days of the date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan. Further, the Chief Executive and all the directors are directed to compensate Mrs. Sajedah Sultana for the loss suffered and submit a compliance report to this effect to the Commission within 30 days of the receipt of this order. This direction is being given under Section 473 of the Ordinance non-compliance of which shall render the directors of the Company liable for punishment under Section 495 of the Ordinance.

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**TARIQ BAKHTAWAR**  
*Director Enforcement*