

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

In the matter of Show Cause Notice issued to Khyber Textile Mills Limited

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Date of Hearing

January 06, 2020

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**Order-Redacted Version**

Order dated January 16, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Khyber Textile Mills Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated July 25, 2019
2. Name of Company	Khyber Textile Mills Limited
3. Name of Individual*	The proceedings were initiated against the board of directors of the Company i.e. Khyber Textile Mills Limited
4. Nature of Offence	In view of alleged violations of section 134 and 140 of the Companies Act, 2017.
5. Action Taken	Key findings of default of Act were reported in the following manner:  I have examined the written response as well as during hearing proceeding submitted that the aforesaid violations were procedural error on part of management of the Company and maybe condoned as an unintentional default. This submission of the Respondents is not justified and acceptable. It is hereby pointed out that the Company has itself stated that it is in an effort to revive the Company, by initiating alternative business activity through livestock farming and fodder cultivation on the vacant land. Furthermore, this alternate line of business was the basis for withdrawing proceedings initiated for winding up of the



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Company through order of the Commission dated January 26, 2018 and that the directors had proposed change of name of the Company. Needless to mention that this required that relevant clauses in MOA and AOA be amended thereby adding the separate line of business, change in name of the company etc. Therefore disclosure of material facts pertaining to such special business to only the participating shareholders in the general meeting neither meets the purpose nor explicit requirements of dissemination of such information to all the shareholders. Without prejudice to the above, the Company has raised the question of purpose of the requirements of Section 134 and Section 140 of the Act and that intent of respondents in compliance with law to preclude liability under the law. In this regard, I am of the view that the object of the aforesaid requirement of the Act is to ensure that all material and relevant facts, which have a bearing on the issue on which the shareholders have to form their judgement, are brought to the notice of the shareholders at the stipulated time under the law so that the shareholders can make informed decision. Superior courts have held a stringent view on failure to appropriately disclose material facts to shareholders to the extent of barring the company to deal in such business to be transacted and declaring such matter as void. In matter *Centron Industrial Alliance Ltd. v. Pravin Kantilal Vakil*, (1985) 57 Com Cases 12 (Bom) it was held that *where the explanatory statement is vague and tricky, or insufficient and misleading, the related resolution is bad in law.*

2. It is pertinent to mention that a company, though a legal entity, can act only through its directors. Therein, the directors, both individually and as a board, must act within the strict terms of their mandate, exercise due care and skill in carrying out their functions, use their discretionary powers in good faith & for proper purposes and to act loyally in advancing interest of their company. The board of directors are also responsible to ensure



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	<p>that proper systems are in place that do not restrain shareholders from exercising their right to all material information or hampering their decision making powers entrusted under the law. In establishing intent, it is imperative to note that it has been held by superior courts that breach of fiduciary duty is considered willful. <i>In case of City Equitable Fire Insurance Co. Ltd, Re, 1925 Ch 407</i>, it was held that a default, in case of breach of duty, will be considered 'willful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent. The Company has been negligent in complying with relevant requirements of the Act, has accepted contravention of the requirements of Section 134 and Section 140 of the Act and failed to provide cogent reasons for such default.</p> <p>Penalty order dated January 16, 2020 was passed by Executive Director (Adjudication-I).</p>
2. Penalty Imposed	A penalty of Rs.50,000/- (Fifty thousand) was imposed on the chief executive officer of the Company.
3. Current Status of Order	No Appeal has been filed by the respondents

Redacted version issued on September 01, 2020 for placement of website of the Commission.