



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Enforcement Department

Before Javed K. Siddiqui, Executive Director (CL)

in the matter of

Latif Jute Mills Limited

Number and date of notice	No. EMD/233/326/2002 dated December 15, 2004
Date of hearing	March 16, 2005
Present	<i>On Behalf of the Company:</i> Mr. M. Tariq Bawany, CEO

Order

Under Section 265 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated through Show Cause Notice No. EMD/233/326/2002- dated December 15, 2004 against Latif Jute Mills Limited (the "Company") under the provisions of Section 265 of the Companies Ordinance, 1984 (the "Ordinance").

2. The Company was incorporated as a public limited Company in July, 1977 for manufacture and sale of jute products and is listed on the Karachi Stock Exchange since 1979. The paid up capital of the Company as on September 30, 2004 was Rs. 35.574 million divided into 3.557 million ordinary shares of Rs.10 each. The Company has not paid any dividend to its shareholders for the last five years. It has closed down its manufacturing operations since August 26, 2003.



3. The background of the case in brief is that the notice of annual general meeting scheduled for October 22, 2004 reflected that the company intends to pass a special resolution authorizing the chief executive **to sell the present buildings and land and to organize a suitable project, if available**. However, the statement of material facts required under Clause (b) of Sub-section (1) of Section 160 of the Ordinance did not provide any of the following information to the shareholders:

- (i) Description and book-value of land and buildings to be sold;
- (ii) Fair value determined by an independent valuer;
- (iii) Mode of sale of these assets;
- (iv) Utilization of sale proceeds;
- (v) Impact of the sale of assets on the operations of the company; and
- (vi) Identification of suitable project;

4. The company vide letter dated September 28, 2004 was advised to provide the aforesaid necessary information to the Commission and that in the presence of material deficiencies in the notice of AGM, the proceedings of the meeting pertaining to the aforesaid special resolution would be contrary to the provisions of Clause (b) of Sub-section (1) of Section 160 of the Ordinance.

5. The Company in response vide its letter dated October 04, 2004 stated that the net proceeds from sale of assets after payment of liabilities will be distributed among the shareholders or otherwise as approved by the shareholders. On further inquiry vide letter dated October 13, 2004, the Company informed that the indicated market price of land & buildings is Rs. 55 million, however, it would be sold through advertisement against the highest offer received. It was also proposed that a reserve price may be set at the time of the approval for sale of assets. As regards the identification of suitable project, it was stated that sponsors have not identified any project to be set up in this location and net proceeds of sale of land & building, after adjusting liabilities shall be distributed as approved by the shareholders in the AGM. It was further stated that since the sponsors are the major shareholders, it is in their interest to get maximum price for land and building if sold, or utilising the building for



some other project at the soonest possible. These replies were found unsatisfactory as the management failed to explain the need of the transaction and utilization of the proceeds and had no clear vision regarding the future of the Company i.e., its revival or winding up. Therefore, keeping in view the provisions of the law and interest of the minority shareholders, the following instructions were given to the Company vide Commission's letter dated October 22, 2004:

"...I am directed to advise you to not sell the land, building and any other asset of the Company unless the Company get these assets valued from an independent valuer and the proceeds of which shall be used for revival of the Company's business. However, if the company intends to sell off these assets to pay off liabilities and to close it down the business, then the Company should desist from selling these assets and should follow procedure for winding up of the Company as provided in the Companies Ordinance, 1984."

6. Subsequently, the Company vide its letter dated October 30, 2004 submitted minutes of the annual general meeting held on October 22, 2004 reflecting that the special resolution for sale of assets had been approved in the said meeting contrary to the advice of the Commission. The Company vide letter dated November 24, 2004 was once again advised not to sell its assets unless a fresh valuation of the property is carried out by an independent valuer in the best interest of the shareholders so that they could get best possible fair price of the assets to be used for the revival of the Company's business. It was again emphasized that in case the Company intends to sell off these assets to pay off liabilities and to close down its business, then it should follow the legal course of winding up as provided in the Ordinance.

7. Thereafter past record of the Company was also scrutinized and it revealed that the Company's operations were halted on August 26, 2003 and since then it is in the process of selling off its assets. The Company had earlier sold its fixed assets for Rs. 54.69 million in the year 2004 and a major portion of the funds so generated was utilized to repay loans of directors and associated undertakings. It was also noted



that, prima facie, these assets were sold in contravention of the provisions of Section 160 and Section 196 of the Ordinance.

8. The auditors in their reports to the members on accounts of the Company for the years ended June 30, 2003 and June 30, 2004 have given an adverse opinion citing the reason that the accounts have been prepared on a going concern basis inspite of the fact that due to continuous losses and financial constraints the management has decided to close down the manufacturing activities and accordingly company has ceased production activities, disposed off plant and machinery and has relieved all the workers and that the Company is no more a going concern. The director's report did not provide any tangible comments on the auditor's opinion as required under Section 236 of the Ordinance.

9. In view of the above, it appeared that the sponsors were closing down the company and selling off the assets for paying off liabilities which primarily were payable to the directors and associated undertakings. As such it was apprehended that:

- a) The business of the Company is being conducted with intent to defraud its creditors, members in a manner oppressive of its members;
- b) The affairs of the Company are not being managed in accordance with sound business principles and prudent commercial practices;
- c) The affairs of the Company have been so conducted and managed as to deprive the members thereof of a reasonable return; and
- d) The members of the Company have not been given all the information with respect to its affairs, which they might reasonably expect.

10. Due to the aforementioned circumstances proceedings under Section 265 were initiated through show cause notice dated December 15, 2004. In reply to the said SCN, the Company, in its letter dated December 29, 2005 stated that the Commission may send its inspector to ascertain the value of land and building.



11. In order to provide an opportunity of hearing, the matter was fixed on March 25, 2005. However, on receipt of request for the pre-ponement of the hearing, it was held on March 16, 2005 which was attended by the Chief executive Mr. M. Tariq Bawany. At the time of hearing the Chief Executive stated that the sale of assets was being carried out in the best interest of the shareholders without adequate explanation as to how it was in the interest of the shareholders. He further stated that the sponsors and their relatives hold 80% of the issued share capital and, therefore, they can take a decision themselves. He further stated that the mill, by virtue of its capacity is not viable any more. He once again agreed to the appointment of inspector to determine the true state of affairs of the company.

12. I have considered all the relevant facts, position of law and have also perused the documents placed before me. It is viewed that selling of assets for repayment of loan liabilities leads one to believe that the affairs of the Company are not being conducted in accordance with sound business principles and prudent commercial practices. This belief is further strengthened by the fact that the organization is not a "going concern" as also highlighted by the adverse opinion in Auditors report on the accounts for two consecutive years i.e. 2003 and 2004. The basis of the auditors adverse opinion is the use of the going concern assumption when all apparent indications suggest to the contrary. Further the assets of the Company are being sold and its proceeds are being used to pay loans of the directors and associated undertakings in prejudice to the rights of the minority shares holders and in a manner oppressive to its members with intent to deprive them of the reasonable return on their investment. Mr. Tariq Bawany also failed to provide any revival plan for which assets were being sold. From the above it is apparent that the Company is being closed down without following the legal procedures as laid down in the Ordinance.

13. In view of the aforesaid discussion it is clear that the interest of the shareholders have been jeopardized as the assets are being sold to pay liabilities and there is no revival plan. In the circumstances, it is the responsibility of the Commission to ascertain factual position through a competent inspector whose report can bring to light as to whether the affairs of the Company are managed in conformity



with the generally accepted commercial principles, best business practices and good corporate governance. Further actions against the defaults of the Company will be taken on the basis of the findings of the inspector's report.

14. I, therefore, in exercise of the powers conferred on me appoint M/S Ijaz Tabussum & Company, Chartered Accountants, 4th Floor, 52-West Waheed Plaza, Jinnah Avenue, Blue Area, Islamabad, which is a practicing chartered accountant firm, to act as Inspector on a remuneration of Rs.120,000/- (Rupees one hundred twenty thousand only) /- which would be paid in terms of the provisions of Section 277 of the Ordinance.

15. Without limiting the scope of investigation, the inspector shall conduct investigation on all aspects of the operations of the Company and shall, after scrutiny of all the records and books of accounts, furnish a report, *inter alia*, on the following matters:-

- i). Whether the assets were sold by the Company in the last 3 years in a transparent manner and complying with the requirements of law.
- ii). Whether these were sold at fair value properly ascertained in a scientific manner and through evaluators;
- iii). What was the purpose and reasons of selling the above assets of the Company;
- iv). Utilization of the sale of above assets;
- v). Whether proceeds from the sale of assets were utilized for the benefits of the Company;
- vi). Whether sale proceeds were properly incorporated in the books of accounts;
- vii). Whether the book value of the existing fixed assets reflects their fair value;
- viii). Whether a valuer was appointed to determine the fair value of the current land and buildings; if yes, when was this exercise last done;
- ix). To report any lapse or any other violations of law relating to sale of fixed assets detected during the course of investigation;



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x). To suggest further course of action, in the circumstances, in the interest of the shareholders;

16. The inspector shall submit his report along with supporting documents to the Commission, highlighting violations of the relevant provisions of the Ordinance, within sixty days from the date of this order.

17. The inspector, for the purpose of his investigation, shall have the same powers as are vested in a Court under the Code of Civil procedure, 1908 while trying a suit in respect of the matters enumerated under Section 266 of the Ordinance and every proceeding before the inspector shall be deemed to be judicial proceeding within the meaning of Section 193 and 228 of the Pakistan Penal Code, 1860. Any contravention or non-compliance of the orders, direction or requirement of the inspectors shall entail the consequences under the Code of Civil Procedure, 1908 and Pakistan Penal Code, 1860.

18. It shall be the duty of all the officers, employees and agents and other persons having dealing with the Company to provide all assistance to the inspector in connection with the investigation, and any default whereof shall be punishable under Section 268 of the Ordinance.

Javed K. Siddiqui
Executive Director (CLD)

Announced
March 28, 2005
ISLAMABAD