



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Company Law Division
(Enforcement Department)

Before Abdul Rehman Oureshi, Commissioner

IN THE MATTER OF

M/s Amin Spinning Mills Limited

Number and date of notice	No.19(593)CF/ISS/90 dated September 20, 2000
Date of final hearing	January 13, 2004
Present	<i>On Behalf of the Company:</i> Syed Shafqat Altaf, G.M. Admin & Finance

ORDER

Under Section 265 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against M/S Amin Spinning Mills Limited (the "Company") under the provisions of Section 265 of the Companies Ordinance, 1984 (the "Ordinance") through a show cause notice dated September 20, 2000.

2. The Company was incorporated as a public limited Company in Azad Kashmir and subsequently it was listed on the Karachi and Lahore Stock Exchanges in May 1990. Its paid up capital is Rs.51,750,000 divided into 5,175,000 ordinary shares of Rs.10 each.

3. The background of the case is that while examining the financial statements of the Company for the year ended September 30, 1999, it was observed that the accumulated losses of the Company stood at Rs.415.875 million resulting into negative equity of Rs.359.625 million and its current liabilities exceed its current assets by 4.95 times, hence the financial position of the Company was such as to endanger its solvency. Besides, comparison of the financial statements revealed inconsistencies in the operating results of the Company. Further the Company did not declare any dividend for the last several years. Accordingly a show cause notice under section 265 of the Ordinance was issued on September 20, 2000.

4. In response to the show cause notice, the Chief Executive vide his letter dated October 05, 2000 stated that the whole textile industry is fighting for survival and the case of the Company must not be considered in isolation. That the main reasons for recession in the industry

are over capacity in the spinning industry, high cotton prices due to successive failure of cotton crop, worldwide recession in the textile industry and imposition of innovative taxes. That the Company has been suffering from dearth of working capital and owing to increase in cotton prices, the available working capital limits were insufficient to meet the requirements of cotton. Besides the National Bank of Pakistan, due to adverse financial position of the Company withdrew the entire working capital facilities. As the availability of cotton is seasonal, therefore the Company, due to shortage of working capital, could not procure cotton in advance. That as the Company is suffering from losses, declaration of any dividend was not possible as per the provisions of Section 249 of the Ordinance. That the management is conscious of the problem and is striving hard to meet the challenges by gradually changing the product mix and keeping the cost under control.

5. Various hearings in the matter were fixed, but adjourned on the request of the Company. Finally a hearing in the matter was held on March 22, 2001 in which Mr. Imtiaz Siddiqui, advocate, of Imtiaz Siddiqui & Associates, Lahore appeared on behalf of the Chief Executive of the Company and besides verbal arguments submitted written explanation to the show cause notice. It was noticed that almost the same arguments were submitted as were stated in the earlier reply except a legal issue, regarding the jurisdiction of the Commission over the Companies which had been incorporated in AJK by stating that exercise of jurisdiction by the Commission is not valid in the eyes of law inasmuch as the Company is not incorporated in Pakistan and thus it does not fall within the purview of the Companies Ordinance, 1984 and or the Securities & Exchange Commission of Pakistan Act, 1997. He further argued that even otherwise the exercise of powers of the Commission are subject to the aforesaid Act and the regulations notified under SRO.855(1)/2000 dated 29.11.2000 namely Securities & Exchange Commission of Pakistan (Conduct of Business Regulations) 2000. The matter was, therefore, pended to obtain legal opinion from the legal department of the Commission, on the objection raised by the Counsel.

6. The legal wing of the Commission gave its opinion in the light of the provisions of the Ordinance, Securities & Exchange Commission of Pakistan, Act, 1997 and other relevant laws and stated that the erstwhile Corporate Law Authority approved prospectus of the Company under the Ordinance and the repealed Capital issues (Continuance of Control) Act, 1947 in the year 1990 and consequently the Company was listed on the Karachi and Lahore Stock Exchanges. The Company had been maintaining its Corporate and Shares Department in Lahore

when the proceedings under Section 265 of the Ordinance were initiated against the Company. The Company was found in the amenable to the jurisdiction of the Ordinance, Part XIV Section 450 of the Ordinance in the capacity of a foreign company defined as “...companies incorporated or formed outside Pakistan which after the commencement of this Ordinance, *establish a place of business* in Pakistan

”, as the Company had been maintaining its Corporate and Shares Department in Lahore. The matter was also taken up with the Karachi Stock Exchange (Guarantee) Limited which stated that under the listing regulation No.7(2), the Companies registered in the AJK are eligible for listing and are treated at par with the Companies registered in Pakistan. Section 20(5)(b), (c) under the Part VI of the Securities and Exchange Commission of Pakistan Act, 1997, on “Powers and Functions” of the Commission; empowers the Commission to approve the listing of a body corporate incorporated outside Pakistan. Sub-para 6 of the Section 20 of the aforesaid Act further requires that the Commission shall strive “to maintain the confidence of investors in the securities markets by ensuring adequate protection for such investors...” Furthermore the preamble to the Act sets forth the importance and purpose thereof as beneficial regulation of capital markets, superintendence and control of corporate entities. Whereas Clause (g) of the aforesaid Section of the Act empowers the Commission to take whatever action it can take, and is necessary, in order to enforce and give effect to the Act, the Ordinance, the Law of Insurance or any other law. In view of the above it appears that as long as a Company is incorporated outside Pakistan and is listed somewhere in Pakistan, the Commission is authorized and is empowered to take necessary steps under the Act for and “adequate protection of investors.” Furthermore Section 29 of the Act under the heading of “Investigation and proceedings by the Commission” provides that the Commission may *suo motu* conduct investigations in respect of any matter that is an offence under this Act and the Commission may appoint such number of investigating officers to be known as investigating officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence or inspection under this Act, the Ordinance or any other law in respect of which it has been empowered to exercise the powers of the Authority and such investigating officer shall have all the powers given to a person for the purposes of carrying out investigation of any offence under this Act, the Ordinance and any other law. The SRO.855(1)/2000 dated 29.11.2000 referred by the Counsel, has also been examined however no relevance of it was found with the instant case in hand.

7. The performance of the company was continuously observed since the issuance of the show cause notice under Section 265 in the year 2000 and it was noted that the financial position of the Company was continuously deteriorating and there has been no signs of improvement in contrary to the assurances given by the management of the Company. The deteriorating financial position of the Company is evident from the following data obtained from the financial statements of the Company:

	Quarter ended on 30.6.03	Rupees in millions				
		Year Ended				
		2002	2001	2000	1999	1998
Paid up Capital	51.75	51.75	51.75	51.75	51.75	51.75
Accumulated P/(L)	(600.32)*	(587.91)	(536.49)	(462.26)	(415.88)	(352.40)
Shareholders Equity	(548.57)	(536.16)	(484.74)	(410.51)	(359.63)	(296.15)
Current Assets	29.19	17.92	17.26	16.25	58.82	25.73
Current Liabilities	544.62	478.27	410.05	334.69	291.19	227.08
Sales	140.87	194.16	199.49	194.31	134.48	142.50
Gross Profit (Loss)	(19.21)	(6.25)	(21.91)	(0.11)	(10.55)	(4.85)
Profit/(Loss) After Tax	(52.79)	(51.41)	(74.23)	(46.39)	(63.47)	(61.96)
EPS	(10.20)	(9.94)	(8.96)	(14.34)	(12.26)	(11.97)
Dividend	Nil	Nil	Nil	Nil	Nil	Nil
GP Ratio (%)	(13.64)	(3.22)	(10.98)	(0.06)	(7.84)	(3.40)
NP Ratio (%)	37.47	(26.47)	(37.21)	(23.87)	(47.20)	(43.48)
Current Ratio	0.05:1	0.04:1	0.04:1	0.05:1	0.20:1	0.11:1

* Surplus of revaluation of Rs. 39.036 adjusted

8. The latest available annual accounts for the year ended September 30, 2002 revealed that the management of the Company has been changed and a new management has taken over the Company from April 19, 2002. The aforesaid new management, previously, had four directors on the board of directors of the Company and there are still four directors on the board from the previous management. The auditors have expressed their disclaimer in their report, as they were not provided books of accounts and underlying records of the Company. The directors in their report to the members and notes to the accounts have clarified that the old management has not provided them the books of accounts for which they have filed an FIR against the previous management. The new management has also filed an application under Section 263 of the Ordinance with the Deputy Registrar of Joint Stock Companies, Mirpur AJK for investigation into the affairs of the Company.

9. From the position stated above, it is evident that the performance of the Company has been far from satisfactory; it is in danger of being declared insolvent. The Chief Executive of the

Company was, therefore, called upon in a hearing on January 13, 2004, to discuss the affairs of the Company. On the date of hearing Syed Shafqat Altaf, GM. Admin & Finance appeared on behalf of the Chief Executive and reiterated the facts which were explained in the Directors' Report for the year ended September 30, 2002. The Chief Executive of the Company vide his letter dated January 15, 2004 provided a copy of the FIR filed against the previous management at the police station city Mirpur and a copy of the application under Section 263 of the Ordinance filed with the Deputy Registrar of joint stock companies, Mirpur, Azad Kashmir. In the aforesaid application the present management has alleged that the previous management has illegally shifted the major parts of the plant and machinery by theft and all the raw material and finished goods were taken away without any lawful authority. Further the books of accounts of the Company have been taken away without complying with the requirements law. Moreover the employees of the Companies with the orders of the previous management taken away the property of the Company and now they are working in the other mills owned by the previous management. It has been alleged that directors' loan reported in the financial statements appears to be fake and fictitious and detailed investigation in this regard is required. The management has shown their willingness even to pay the cost of investigation.

10. I have considered all the relevant facts, position of law and have also perused the documents placed before me. The written submissions of the Company were examined and discussed in the hearings at length. The continuous decline in the performance of the Company and the apprehensions and the statements of the present management gave rise to apprehension that the affairs of the Company are not being conducted in accordance with sound business principles and prudent commercial practices and are being conducted in a manner oppressive to its members and to deprive them of the reasonable return on their investment. This state of affairs also reasonably suggest that the results of the Company might not be negative just because of the general recession in the industry but there exists some other reasons including deliberate attempts on the part of the management to siphon off funds of the Company.

11. In view of the aforesaid discussion it is clear that the interest of the shareholders have been seriously jeopardized. In the circumstances, it is the responsibility of the Commission to ascertain factual position through competent inspector(s) whose report can bring to light as to whether the affairs of the Company were managed in conformity with the accepted principles and standards of good and efficient management. If the inspector holds that the directors were

not responsible for the current state of affairs of the Company, the report will be helpful to them rather than detrimental to their interests. The Commission can protect the interest of the investors only through timely initiating of a fact-finding exercise.

12. I, therefore, in exercise of the powers conferred on me appoint Mr. Mazhar Ali Khan Sherwani, FCA, of Mazhar Ali Khan & Company, 65 T, Hajveri Complex, 2 – Mozang Road, Lahore, who is a qualified and practicing chartered accountant, to act as Inspector on a remuneration of Rs.100,000/- (Rupees one hundred thousand only) /- to be paid by the Company

13. 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:

1. Reasons of heavy losses sustained by the Company. Whether these losses were due to mismanagement imprudent policies or some other reasons, particularly when the comparable units as mentioned in the order have shown improvement.
2. Whether or not the Company has kept proper records as required by Section 230 of the Ordinance.
3. Compliance with the provisions of Section 234 relating to disclosure made in the financial statements.
4. Diversion of funds to unauthorized objects.
5. Sales / revenues of the Company with particular reference to prices of the comparable units.
6. Detailed investigation of the transactions with the associated undertakings as to whether the same were at arms length.
7. Whether loans and advances made to the associated undertakings were in compliance with the requirements of law.
8. Detailed investigation on the allegations raised by the present management in their application under section 263 of the Ordinance filed with the Deputy Register of joint stock Companies Azad Kashmir.
9. Whether or not adequate system of internal controls has existed as to prevent misappropriation and misapplication of Company's assets and resources.

10. Determination of any false and incorrect statement in directors' report.
11. Compliance with statutory requirements in the operation of the Company.
12. To report any lapses or other delinquency detected during the course of investigation.
13. In-out record of the Company particularly relating to sales and purchases.
14. Statutory books including particularly minutes books of the Board and general body meetings.
15. To suggest future course of action in the interest of the shareholders of the Company.

14. 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.

15. 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 with any orders, direction or requirement of the inspectors shall entail the consequences under the Code of Civil Procedure, 1908 and Pakistan Penal Code, 1860.

16. 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 thereof shall be punishable under Section 268 of the Ordinance.

Abdul Rehman Qureshi
Commissioner (CLD)

Announced
March 3, 2004
ISLAMABAD