

No.Co.263/1/EM/99
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Enforcement & Monitoring Division)
State Life Building, 7-Blue Area
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**ORDER UNDER SECTION 263 OF THE COMPANIES ORDINANCE, 1984 IN THE
MATTER OF M/S. SAITEX SPINNING MILLS LTD..**

An application dated 29th September, 1999 was received from the Deputy Managing Director of the Investment Corporation of Pakistan complaining that M/s. Saitex Spinning Mills Ltd. has been on the defaulters list of the Karachi Stock Exchange for the last two years and its management has not taken any measures to remove defaults. It was requested that SECP may appoint an "Inspector" to determine "mismanagement and oppression" by the management and company's value upon liquidation. The Commission vide its letter No. 263/1/EM/99 dated 7th October, 1999, in terms of requirements of the provision of section 263 ibid. asked the Investment Corporation of Pakistan to submit proof of holding not less than one-tenth of the total voting powers in the company and also to give an undertaking that ICP will bear the cost of investigation which may be around rupees one hundred thousand (Rs. 1,00,000/-) and to furnish documentary evidence in support of the allegations of mis-management and oppression, if any.

2. Investment Corporation of Pakistan (ICP) vide its letter dated 3rd February, 2000 furnished details of their holdings in the company which comes to 14.12% of the total shares capital. ICP also gave assurance to bear the cost of investigation as advised by the SECP. As regards furnishing of evidence in support of the alleged mis-management and oppression, ICP stated that the company is on defaulters list of the Karachi Stock Exchange since 06-08-1997 and the company has not paid any dividend since 1990, it qualifies for delisting and according to company law could be followed by winding up for which it is necessary to determine whether or not the company can be saved and if not what value will be realized upon its liquidation. It may be mentioned here that clause (c) of section 305 provides that a listed company which ceases to be a listed company may be wound-up. ICP accordingly prayed that it may be determined whether the company can be saved and if not what would be its realizable value upon its liquidation.

3. A perusal of the company's accounts for the period ended 30-9-1999, it appears that it carries accumulated losses of Rs. 379.305 million against equity of Rs. 77.000 million, its current liabilities are above seven times of its current assets and its manufacturing activities have been resulting into huge gross losses for the last two years.

4. The manufacturing and trading results of the company for the last three years were as follows:-

	<u>Rs. in million</u>		
	<u>1999</u>	<u>1998</u>	<u>1997</u>
Sales	117.415	2130.218	285.744
Cost of Sales including depreciation	<u>143.181</u>	<u>230.784</u>	<u>284.252</u>
Gross Profit (loss)	<u>25.766</u>	<u>17.566</u>	<u>1.492</u>
Depreciation charged to cost of sales	<u>8.928</u>	<u>14.817</u>	<u>17.707</u>
Gross profit (loss) before depreciation.	(16.838)	(2.749)	19.499

5. The above comparison would reveal that company suffered gross loss in the years 1998 and 1999 even before charging depreciation and in the year 1997, there was nominal gross profit of Rs. 19.497 million before charging depreciation. This is really very serious situation that the company is even not able to meet its manufacturing expenses and ICP appears to be rightly worried about workings of the company. The company is consistently suffering from operating losses for the last several years and has not paid any return to its shareholders for the last 10 years.

6. Section 263 of the Companies Ordinance, 1984 empowers the Commission to appoint an inspector to investigate the affairs of a company on the application of members holding not less than one tenth of the total voting powers. Unlike section 265 ibid. where before appointment of an inspector the Commission is required to give the company an opportunity to show-cause against the proposed appointment of inspector, section 263 ibid. does not require a show-cause notice to the company or opportunity of hearing before ordering an investigation. The intention of law appears to be that the members of a company holding more than 10% voting powers if not satisfied with workings of the company may get the affairs of the company investigated without any hindrance as and when they so desire. Investigation into affairs of a company is not a punitive action but a fact finding exercise and section 263 of the Companies Ordinance, 1984 provides for an easy mechanism for this promoted shareholders having more than 10% voting powers desire so. The applicant i.e. I.C.P. in this case has even deposited the amount of Rs. 100,000 being estimated cost of investigation and it holds 14.12% of the shares capital of the company, I am convinced that in this case where the company has been put on defaulters list and even its manufacturing and trading activities are resulting into gross loss, investigation into affairs of the company is necessary so as to

determine the followings:-

- (i) Mis-management and oppression if any.
- (ii) Reason for heavy losses suffered by the company in the previous years specially why the company was even unable to meet its manufacturing costs.
- (iii) Whether or not proper record was kept by the company as required by section 230 and 234 of the Companies Ordinance, 1984, and what has been the decision making levels/process.
- (iv) Whether or not an adequate system of internal controls exists so as to prevent mis-appropriation and mis-application of company's assets.
- (v) What would be the present approximate realizable value (estimated) of the company's assets upon liquidation and actual existing liabilities.
- (vi) Without in any way limiting the scope of investigation, the Inspector shall conduct investigation on all aspects of the operations of the company and shall after scrutiny of the entire records and books of accounts furnish his report indicating specifically whether it will be in the interest of the minority share-holders to take the company towards compulsory winding up.

7. I accordingly, in exercise of the powers conferred on me under section 263 of the Companies Ordinance, 1984 hereby appoint M/s. Muhammad Naeem & Co., Chartered Accountants, Lahore to act as Inspector to investigate into the affairs of M/s. Saitex Spinning Mills Limited who will also draw a statement of assets and liabilities as on 31st March, 2000 and also indicate approximate reliable value of assets and actual liabilities.

8. The Inspector shall submit a detailed report to the Commission (in quadruplicate) within 60 days from the date of this order. and will be paid fee of Rs. 100,000/- including out of pocket expenses on submission of the report.

(M. ZAFAR-UL-HAQ HIJAZI)
Commissioner (Enf.)

Place: Islamabad

Dated: 8th April, 2000