



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

[Islamabad]

Before Abdul Rehman Qureshi, Commissioner (Company Law Division)

Order

In the matter of

Ahmed Hassan Textiles Limited

Present

Mr. Shams -ur-Rehman; Company Secretary,
Mr. Muhammad Aamar; CFO
Authorized Representatives

Date of hearing

October 20, 2004

This is a case of violation of the provisions of Sub Rule (iv) of Rule 5 of Companies (Issue of Capital) Rules, 1996 (the "Rules") read with Sections 86 and 476 of the Companies Ordinance, 1984 (the "Ordinance") by M/s Ahmed Hassan Textile Mills Ltd. (the "Company")

2. The facts leading to this case, briefly stated, are that under Rule 5 of the Rules, a Company can charge premium while issuing right shares to its members, up to the extent of its free reserves per shares as certified by its auditors and said certificate is required to be furnished to the Commission and the respective stock exchange along with intimation of the proposed right issue, provided that where a company proposes to charge premium on right issue above the free reserves per share it shall be required to fulfill the following requirements namely:

- (a) at least forty per cent of all the shareholders undertake to subscribe their portion of right issue; and
- (b) the remaining right issue shall be fully underwritten and the underwrites, not being associated companies, shall include at least two financial institutions including



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commercial banks and investment banks and the underwriters shall give full justification of the amount of premium in their independent due diligence reports.

3. The Company intimated this Commission about the directors' decision regarding issue of 10% right shares at 100% premium on April 15, 2004. Although the Company provided, copies of feasibility study/financial plan along with the certificate of Break up value as on March 31, 2004, vide its letter dated April 18, 2004, yet it did not provide the certificate of free reserves, duly certified by the auditors as required under Rule 5 of the Rules. The said certificate was subsequently provided on June 6, 2004.

4. Upon examination of the Certificate of free reserves, it was observed that the Company has not excluded contingencies and commitments from its un-appropriated profits, contrary to the following explanation of free reserves as provided in the Rule 5 of the Rules:

“Free reserves” includes any amount which, having been set aside out of revenue or other surpluses after adjustment of all intangible or fictitious assets, is free in that it is not retained to meet any diminution in value of assets, specific liability, contingency or commitment known to exist at the date of the balance sheet, but does not include----

- i. reserves created as a result of re-valuation of fixed assets;*
- ii. goodwill reserve;*
- iii. depreciation reserve to the extent of ordinary depreciation including allowance for extra shifts admissible under the Income Tax Ordinance, 1979 (XXXI of 1979);*
- iv. development allowance reserve created under the provisions of the Income Tax Ordinance, 1979 (XXXI of 1979);*
- v. workers welfare fund;*
- vi. provisions for taxation to the extent of the deferred or current liability of the company; and*
- vii. capital redemption reserve.”*

5. According to the certificate provided by the Company, the free reserves per share of the Company were Rs. 14.26. But after deduction of the amount of contingencies and commitments (Rs. 103.606 million as indicated in the accounts for the period ended March 31, 2004) from the un-appropriated profits, the said free reserves per share came to Rs. 4.97/- only which were below the requirement of Rule 5 of the Rules. The Company's management, was, therefore, called upon to explain about the irregularity. The requisite comments were received vide Company's letter dated June 28, 2004, wherein it was stated that the premium is still within the boundaries of free reserves as per the following revised calculation:



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<i>As on March 31, 2004</i>	<i>Rs. In Millions</i>
<i>Un-Appropriated Profit</i>	162.396
<i>Workers Welfare Fund</i>	0.810
<i>Deferred Taxation</i>	29.515
<i>Provision For Taxation</i>	27.113
	219.834
<i>And if the effect of Rs. 103.606 million is considered, then:</i>	
<i>(Rs. 219.834 -103.606)</i>	116.228
<i>No. of Ordinary Shares</i>	11,389,920
<i>Free Reserves Per Share</i>	10.20

6. The revised calculations were again found against the requirements of Rule 5 of the Rules as the Company had added back the liability of workers welfare fund, deferred taxation and provision for taxation, in the figure of un-appropriated profits. The Company, however submitted that it has already issued letter of right to the shareholders, trading on letters of rights has already begun on stock exchanges, subscribers have continued to deposit the amount of right shares, directors have already subscribed their portion of right shares in cash, the market value of shares is ranging between Rs. 40 to 50 per share and the right shares will be fully subscribed.

7. The Company took the same plea in response to the show cause notice and at the time of hearing on October 20, 2004 and while admitting the default, requested for relaxation from this requirement under Rule 10 of the Rules.

8. The explanations of the Company have been considered and have not been found satisfactory. It was the Company's responsibility to comply with the requirements of Rules. As the free reserves were incorrectly calculated to give a false effect, the Company has committed a default under Sub Rule (iv) of Rule 5 of the Rules. However, since the shares have already been issued and the Company is showing good results besides declaring regular dividends, I, taking a lenient view of the default, impose a penalty of Rs. 2000/- only on the Chief Executive of the Company, under Rule 11 of the Rules read with Section 476 of the Ordinance.



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9. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challan to the Commission. It should also be noted that the said penalty is imposed on the Chief Executive in his personal capacity and he is required to pay the said amount from his personal resources.

Abdul Rehman Qureshi
Commissioner (CL)

Announced:
October 25, 2004
ISLAMABAD