



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (CSD)

In the matter of

Pak Leather Crafts Limited

Review sought for: Order dated November 24, 2015 of Executive Director (CSD) under Sections 160, 196 and 246 read with Section 476 of the Companies Ordinance, 1984

Date of Hearing: February 4, 2016

Present: Mr. Talat Aftab, Advocate, Authorized Representative

ORDER

Review Application under Section 484 of the Companies Ordinance, 1984

This Order shall dispose of the application dated December 23, 2015 filed by the directors (the "respondents") of Pak Leather Crafts Limited (the "Company") under section 484 of the Companies Ordinance, 1984 (the "Ordinance") for review of the order dated November 24, 2015 passed by the Executive Director (Corporate Supervisions Department) under sections 160, 196 and 246 read with section 476 of the Ordinance. In terms of the order, after carrying out proceedings and providing opportunity of hearing, the order was passed and the respondents were held liable for violating the following provisions of the Ordinance:

A. Clause (a) of sub-section (3) of section 196 of the Ordinance:

- i. During the year ended June 30, 2011 the Company, without obtaining prior authorization or approval of its shareholders in a general meeting, disposed of its fixed assets comprising land & building located at Plot No. 15, 7A, Korangi Industrial Area, Karachi, for a sale consideration of Rs.42.500 million through sale deed dated February 24, 2011. The aforesaid land and building disposed of by the Company formed sizable part of its undertaking as it had written down value of Rs.12.098 million (cost: Rs.29.981 million) that constituted 28.79% of the total written down value of Rs.42.028 million of the 'Property, Plant and Equipment' of the Company.
- ii. During the year ended June 30, 2012, the Company, without prior authorization or approval of its shareholders in the general meeting, disposed of its fixed assets comprising total of 313 machines that included 285 stitching machines, 11 snap button machines, 3 over lock machines, 2 grinding machines and 10 other machines for a sale consideration of



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Rs.2.965 million. The aforesaid machinery disposed of by the Company having written down value of Rs.1.853 million (Cost: Rs.5.345 million) constituted sizeable part of its undertaking, because after its disposal the stitching capacity of the Company was reduced from 120,000 jacket per annum to nil resulting in abandonment of a business line.

B. Clause (a) of sub-section (1) of section 160 of the Ordinance

In respect of aforesaid disposals of 'land & building' and 'machinery', the Company obtained *post facto* approvals from its shareholders as 'any other business' in the annual general meetings ("AGMs") held on October 31, 2011 and October 31, 2012, respectively. However, the business of disposal of assets was not included in the notices of respective AGMs under the statement of business to be transacted at the AGMs. Therefore, prima facie, the directors have violated provisions of section 160(1) (a) of the Ordinance.

C. SRO 1227/2005 dated December 12, 2005 issued under section 246 of the Ordinance:

The Commission's notification SRO 1227/2005 dated December 12, 2005 issued in exercise of the powers conferred by section 246(1) of the Ordinance, inter alia, requires that listed companies, while issuing notice of its general meeting where a special business relating to sale, lease or disposal of the undertaking or sizeable part thereof, is to be transacted under Section 196(3)(a) of the said Ordinance, shall annex a statement, pursuant to section 160(1)(b) of the Ordinance, containing minimum disclosures as prescribed in the said notification. However, the directors failed to disclose such information in the notices of the respective AGMs held in 2011 and 2012.

Resultantly, an aggregate fine of Rs.385,000 (Rupees three hundred eighty five thousand only) was imposed on the respondents, as per following details:

Name of Respondents	Section 160	Section 196	Total
1. Mr. Muhammad Saleem Ahmed	5,000	50,000	55,000
2. Dr. Muhammad Shoaib Ahmed	5,000	50,000	55,000
3. Mr. Nayyer Ahmed Jalali	5,000	50,000	55,000
4. Mr. Azeem Ahmed	5,000	50,000	55,000
5. Mr. Bilal Ahmed	5,000	50,000	55,000
6. Mr. Umer Ahmed	5,000	50,000	55,000
7. Syed Fawad Hussain Rizvi	5,000	50,000	55,000
TOTAL			385,000



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2. The application for review has been filed by the respondents through Mr. Talat Aftab, Advocate, Authorized Representative, citing somewhat similar reasons as were stated during the proceedings under sections 160, 196 and 246 of the Ordinance, which resulted in the aforesaid order. A brief of submission with reference to the violations of provisions of the Ordinance is summarized below:

- i. The Company got into crisis due to overall deteriorating situation of leather industry in Pakistan. The land and building were disposed of under immense pressure from Habib Bank Limited and Al-Baraka Bank Limited to settle the loans.
- ii. The assets were disposed of after obtaining consent of major shareholders.
- iii. The Company has been incurring losses for many years and repayment of banks' loans was not possible from revenues of the Company.
- iv. It is accepted that proper mechanism was not adopted by the Company while obtaining shareholders' approval in the extraordinary general meeting ("EOGM") for disposal of assets, but all acts were done in good faith and there was not any intention to bring any harm to shareholders.
- v. The Company has spent Rs.4 million in last few months to restructure property, plant and equipment to continue as a going concern and is looking for improvement.
- vi. It is requested to review the application sympathetically and assurance is given that such mistakes will not be repeated in future.

3. Relevant provisions of section 484 of the Ordinance are quoted below:

Sub-section (2): The Commission or the registrar may, upon an application being made to it within sixty days from the date of any order passed by it otherwise than in revision under sub-section (1), or if its own motion, review such order; and such order in review shall be final.

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the Executive Director (CSD) has the power to review the order originally passed by him in pursuance of the delegated powers.

4. Before proceeding further it is necessary to elaborate upon the scope of a review in the light of judgments of higher courts. The honorable Supreme Court of Pakistan in the case of Haji Muhammad Boota and Others Versus Member (Revenue) BOR and Others (2010 SCMR 1049),



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referring to numerous previous judgments of the apex court, has held as under:

"The principles upon which a review can be granted are well-settled, i.e. there must be some new point based upon discovery of new evidence which could not with diligence, have been found out on the previous occasion. A review petition is not competent where neither any new and important matter or evidence has been discovered nor is any mistake or error apparent on the face of the record. Such error may be an error of fact or of law but it must be self-evident and floating on surface and not requiring any elaborate discussion or process of ratiocination. Orders based on erroneous assumption of material facts, or without adverting to a provision of law, or a departure from undisputed construction of law and Constitution, may, amount to error apparent on face of the record. Error, on the other hand, must not only be apparent but must also have a material bearing on fate of case and be not of inconsequential import. If judgment or finding, although suffering from an erroneous assumption of facts, is sustainable on other grounds available on record, review is not justifiable notwithstanding error being apparent on the face of the record. Where order under review did not appear to have been vitiated by any error on face of the record nor any other good and sufficient reason was given for review of order. Petition for review was dismissed."

5. I have examined the subject application considering the scope of review in the light of judgments of the apex court and the submissions made by the respondents as mentioned hereinabove which appear to be devoid of merit. The respondents have repeated somewhat similar submissions that were made by them during the original proceedings that resulted in the order whereof fines have been imposed on them. I have observed that the respondent in their application for review have neither brought up any new and important matter or evidence nor have they been able to highlight any mistake or error of facts or law apparent on the face of the record. Therefore, in the light of the facts on record, the limited scope of review and failure of the respondents to highlight any material error or mistake in record of the case, the review application is hereby dismissed.

Abid Hussain
Executive Director (CSD)

Announced:

February 15, 2016

Islamabad