



Corporate Supervision Department
Company Law Division

Before Mr. Tahir Mahmood – Commissioner (Company Law Division)

In the matter of

Service Industries Textiles Limited

Number and date of SCN: No. EMD/233/90/2002-2825-2831 dated July 1, 2014
Date of hearing: February 18, 2015
Present: Mr. Usman Khalid, Company Secretary

ORDER

**UNDER SECTIONS 193, 199 AND 204 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against directors including chief executive (together referred to as "respondents") of **Service Industries Textiles Limited** (the "Company"). The proceedings against the respondents were initiated through show cause notice (the "SCN") dated July 1, 2014, issued under the provisions of sections 193, 199 and 204 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that in response to the information sought by the Commission, the Company vide letters dated February 24, 2014 and March 27, 2014, provided information including copies of minutes of various meetings of the directors wherein resolutions were passed for approval of remuneration of directors and related transactions. Perusal of minutes of directors' meetings held on November 1, 2009, November 1, 2010 and November 1, 2011, revealed that following three directors out of total of seven attended those meetings: (i) Mr. Aamer Hameed; (ii) Mr. Murtaza Hameed; and (iii) Mr. Abid Hussain. In the meeting held on November 1, 2010, the chief executive was appointed and his remuneration was approved. Further, remuneration of other three directors was also approved. Therefore, remaining four directors of the Company including the chief executive were interested and did not attend the said meeting. Moreover, the directors in their meetings held on November 1, 2009 and November 1, 2011, approved remuneration of chief executive and three other directors. Again, the four directors being interested directors did not attend those meetings. It appeared that the directors' meetings of November 1, 2009, November 1, 2010 and November 1, 2011, were, prima facie, held in the absence of quorum stipulated by section 193 of the Ordinance for listed companies. It also appeared that the appointment of chief executive was, prima facie, not in accordance with the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

requirements of section 199 of the Ordinance as the quorum of directors was not constituted for the meeting held on November 1, 2010 wherein chief executive's appointment was made. Therefore, the chief executive's appointment was, prima facie, not as per the law.

3. Consequently, the SCN was issued to the respondents for alleged violations of sections 193, and 199 of the Ordinance. In response to the SCN the respondents vide letter dated July 14, 2014 submitted that they would prefer to explain the matter in person and requested to fix a date for hearing. The case was fixed for hearing on August 28, 2014 which was adjourned based on request of the respondents and was finally held on February 18, 2015. In the hearing Mr. Usman Khalid, the Company Secretary appeared before Mr. Ali Azeem Ikram, the Head of Department, who was the authorized adjudicating officer at that time, and made verbal submissions on behalf of the respondents. In respect of meeting of directors held on November 1, 2009, he admitted the default. Regarding the directors' meeting held on November 1, 2010, he stated that the minutes of the meeting were not properly recorded. He further stated that since there was no change proposed in the terms of compensation of directors and chief executive, the directors while approving those in the meeting held on November 1, 2011 did not consider the quorum requirements. He gave no answer to the query regarding noticing of the aforementioned violations by the respondents. Subsequently, due to revision in delegation of powers of the Commission, the respondents were provided another opportunity of hearing; however, the respondents did not avail the opportunity for rehearing and their authorized representative vide letter dated June 9, 2015 submitted that they were satisfied with the proceedings of hearing held before Mr. Ali Azeem Ikram on February 18, 2015.

4. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance.

Sub-section (1) of section 193 of the Ordinance states as under:

The quorum for a meeting of directors of a listed company shall not be less than one third of their number or four, whichever is greater.

Sub-section (1) of section 199 of the Ordinance states as under:

Within fourteen days from the date of election of directors under section 178 or the office of the chief executive falling vacant, as the case may be, the directors of a company shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

Sub-section (3) of section 193 of the Ordinance provides as under:

If a meeting of directors is conducted in the absence of a quorum specified in sub-section (1), or a meeting of directors is not held as required by sub section (2), the chairman of the directors and the directors shall be liable—

- (a) *to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding one hundred rupees for every day after the first during which the default continues, if the contravention relates to a listed company.*

Section 204 of the Ordinance provides as under:

Whoever contravenes or fails to comply with any of the provisions of sections 198 to 203 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming a director or chief executive of a company for a period not exceeding three years.

5. I have reviewed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents and my observations are as under:

- (i) Perusal of minutes of directors' meetings held on November 1, 2009, November 1, 2010 and November 1, 2011 reveal that only three directors out of seven directors attended the board meetings. It means that all the three meetings of wherein remuneration of chief executive and three other directors was, inter alia, approved were lacking the quorum as only three directors were present against minimum requirement of four directors for listed companies in terms of section 193 of the Ordinance. Therefore, requirements of section 193 were not complied with. The respondents have admitted defaults in respect of meetings of directors held on November 1, 2009 and November 1, 2011. They have further stated that since there was no change proposed in the terms of compensation of directors and chief executive, the directors while approving those in the meeting held on November 1, 2011 did not consider the quorum requirements. However, this does not justify the default in complying with the provisions of section 193 of the Ordinance.
- (ii) It also transpires that meeting of November 1, 2010 wherein the appointment of chief executive was made was also not held as per the law, owing to deficient quorum which in the case of a listed company is set to be minimum of four directors in terms of section 193 of the Ordinance. Therefore, appointment of chief executive was not made in a duly held directors' meeting as required by section 199 of the Ordinance, which requires that chief



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

executive is to be appointed by the directors. The respondents have submitted that the minutes of the aforesaid meeting were not properly recorded, however, they have failed to provide any evidence or record to substantiate that the quorum of the directors was formed and appointment of the chief executive was made as per the law in a duly held meeting of directors.

6. For the foregoing reasons, I am of the view that the provisions of sections 193 and 199 of the Ordinance have been contravened and the respondents are liable for fines. Therefore, in terms of powers conferred by sections 193 and 204 of the Ordinance, I hereby impose aggregate fine of Rs70,000/- (Rupees seventy thousand only) on the respondents. The respondents are advised to deposit the fines as per following detail:

Name of Respondents	Section 193	Section 204	Total
1. Mr. Aamer Hameed, Director	Rs5,000	Rs5,000	Rs10,000
2. Mr. Murtaza Hameed, Director	Rs5,000	Rs5,000	Rs10,000
3. Mr. Abid Hussain, Director	Rs5,000	Rs5,000	Rs10,000
4. Mr. Mohammad Hameed, CEO	Rs5,000	Rs5,000	Rs10,000
5. Mr. Ijaz Hameed, Director	Rs5,000	Rs5,000	Rs10,000
6. Mr. Tariq Hameed, Director	Rs5,000	Rs5,000	Rs10,000
7. Mr. Farooq Hameed, Director	Rs5,000	Rs5,000	Rs10,000
		TOTAL	Rs70,000

The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid penalties are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Tahir Mahmood
Commissioner (Company Law Division)

Announced:
August 13, 2015
Islamabad