



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
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Before Tahir Mahmood, Executive Director

In the matter of

Taj Textile Mills Limited

Number and date of show cause notice EMD/233/286/2002 dated November 22, 2002

Date of hearing May 08, 2007

Present:

1. Mr. Fakhar Mahmud Chanda, Advocate, representing Mr. Alamgir Elahi
2. Mr. Shahid Mehmood, representing Mr. Muhammad Asif, Nominee Director NIT

ORDER

Under Sub-section (3) of Section 193, Sub-section (6) of Section 214, Section 215, Section 216 and Section 217 of the Companies Ordinance, 1984

This order will dispose of the proceedings pertaining to contravention of the provisions of Section 193, Section 214, Section 215, Section 216 and Section 217 of the Companies Ordinance, 1984 (herein after referred to as “the Ordinance”), which has arisen out of the show cause notice No.EMD/233/286/2002 dated January 09, 2003 served on six directors, Company Secretary and Chief Financial Officer of Taj Textile Mills Limited (herein after referred to as “Taj Textile”).

2. Taj Textile is a public company limited by shares and was incorporated on March 24, 1986 having authorized capital of Rs.500 million divided into 50.00 million shares of Rs.10 each and paid up capital of Rs.334.420 million divided into 33.442 million shares of Rs.10 each as per its audited financial statements for the year ended June 30, 2006. Taj Textile is listed on all the three Stock Exchanges in Pakistan. Taj Textile is engaged in the business of textile manufacturing (spinning and weaving) and sale of yarn and cloth.

3. The facts leading to this case are that the annual accounts of Taj Textile for the year ended September 30, 2001 received at the Securities and Exchange Commission of Pakistan (herein after referred to as the “Commission”) under Section 233 of the Ordinance were examined and it was noticed that from Note 7.3 to the aforesaid accounts that short term borrowings of Rs. 246.853 million had been



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transferred to Taj Textile from Elahi Enterprises (Pvt.) Limited (herein after referred to as “Elahi Enterprises”). Further, scrutiny of the documents obtained from Taj Textile through various correspondences revealed that the following resolution was passed by the Board of Directors in their meeting held on February 23, 1998:

Quote

“RESOLVED that the company to accept shifting of various financial facilities, as required by various banks from Elahi Enterprises Limited, and Chief Executive is authorized to take necessary steps in this regard. It is further resolved that the company will pay the required amounts to the bank, only after receiving, so from Elahi Enterprises Limited for discharge of these facilities from banks.

FURTHER RESOLVED that, if any loss or damage will be caused by this shifting of loans from any financial institution, that will ultimately be borne by Elahi Enterprises Limited in all respects and as the business of the Elahi Enterprises Limited is also being shifted gradually to the company, the mark-up will be born by the company.”

Unquote

The following directors of Taj Textile, who were also the directors of Elahi Enterprises, took part in the discussion and voted on the aforesaid resolution authorizing the Chief Executive to enter into contract/arrangement by or on behalf of the Company:

- 1) Mr. Jahangir Elahi
- 2) Mr. Alamgir Elahi
- 3) Mr. Tanvir Elahi
- 4) Mr. Akhlaq Ali Khan

Further, following interested directors / officers of Taj Textile and Elahi Enterprises, took part in the discussion and voted on the resolutions, regarding transferring of loans of Elahi Enterprises amounting to Rs. 246.853 million (upto 2001), to Taj Textile in the board meetings held on April 20, 1998, June 26, 1999, October 18, 1999, February 03, 2000 and January 02, 2001:



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Sr. No	Names	Taj Textile		Elahi Enterprises	
		Designation	Tenure	Designation	Tenure
1	Mr. Jahangir Elahi	Director	March 31, 1996 to the date of SCN	Director	June 24, 1997 to the date of SCN
2	Mr. Alamgir Elahi	Director	March 31, 1996 to May 31, 2002	Director	June 24, 1997 to July 21, 2001
3	Mr. Tanvir Elahi	Director	March 31, 1996 to the date of SCN	Director	June 24, 1997 to the date of SCN
4	Mr. Akhlaq Ali Khan	Director	March 31, 1996 to December 30, 1999	Director	June 24, 1997 to December 30, 1999
5	Mr. Ahmed Jahangir	Director	July 19, 1997 to March 15, 2001	Director	June 24, 1997 to September 15, 2000
6	Mr. Amir Jahangir	Director	July 19, 1997 to the date of SCN	Director	June 24, 1997 to the date of SCN
7	Mr. Humayun Nabi Jan	Company Secretary	July 19, 1997 to September 17, 1998 September 01, 1999 to July 04, 2000	Director	June 24, 1997 to September 15, 2000
8	Mr. Nadir Ali Awan	Director, Chief Financial Officer	December 30, 1999 to March 16, 2001 December 14, 1988 to July 01, 2002	Director	December 30, 1999 to September 15, 2000

4. In view of the above findings, show cause notice reference No.EMD/233/286/2002 dated January 09, 2003 under the provisions of Sub-section (1) of Section 193, Section 214, Sub-Section (1) of Section 215, Sub-section (1) of Section 216 and Section 217 of the Ordinance was issued to the following six directors of Taj Textile, Company Secretary and the Chief Financial Officer. The show cause notice required them to submit their reply within 14 days as to why the directors lacked fiduciary behavior and penalty may not be imposed on the following officers of the Company:

- 1) Mr. Jahangir Elahi, Chief Executive
- 2) Mr. Alamgir Elahi, Director
- 3) Mr. Tanvir Elahi, Director
- 4) Mr. Amir Jahangir, Director
- 5) Mr. Ahmed Jahangir, Director
- 6) Mr. Akhlaq Ali Khan, Director
- 7) Mr. Nadir Ali Awan, Chief Financial Officer
- 8) Mr. Humayun Nabi Jan, Company Secretary

5. The reply of the show cause notice was submitted through M/s Cornelius, Lane & Mufti, Advocates and Solicitors ("the Counsel") vide letter dated February 22, 2003 and following arguments were presented:



Relationship between Elahi and Taj Textile:

- 1) The main sponsors, namely, Jehangir Elahi, Tanvir Elahi, and Alamgir Elahi (the “Sponsors”), jointly in the early 1970’s ventured into establishing their business. In this connection the Sponsors incorporated a company now called Elahi Enterprise (Pvt.) Limited (“Elahi Enterprises”). Since its inception Elahi Enterprises was one of the largest exporters of textile products from Pakistan and earned a lot of foreign exchange.
- 2) During the early period from early 1970s till 1990s, Elahi Enterprises undertook various business ventures. Elahi Enterprises not only excelled financially but was also able to accumulate quota for export of textile products as well as trade connections with persons/entities within and outside Pakistan. The goodwill of Elahi Enterprises generated by the management of Elahi Enterprises during the said period was colossal and a substantial benefit to the company engaged in the business of exporting textile products.
- 3) During the said period the sponsors also incorporated and undertook various businesses through various companies and firms. The Sponsors incorporated Taj Textile for the purposes of undertaking the business of manufacture and sale of textile products. It was stated that at the early stages, Taj Textile was helped enormously by Elahi Enterprises through various means and Taj Textile primarily entered into the market both within and outside Pakistan on account of the goodwill of Elahi Enterprises. Thereby, Taj Textile availed substantial benefit with respect to its profitability and earning capacity, on account of Elahi Enterprises.
- 4) On account of various reasons, and keeping in view the business requirements of Taj Textile including the requirement and benefits of having a launching pad in terms of goodwill in the local and international market, Taj Textile and Elahi Enterprises entered into discussions for the sale/use of the assets defined below. The said transaction was also beneficial for Elahi Enterprises on account of various reasons, i.e. Elahi Enterprises suffered a set back with respect to its business particularly on account of the fact that the long term buyer of the products exported by Elahi Enterprises in France went bankrupt. This caused a severe liquidity crunch for Elahi Enterprises. The financial institutions, directly and indirectly, started modulating mechanism for limiting/reducing/transferring their exposures from Elahi Enterprises. In view of the above Taj Textile and Elahi Enterprises entered into agreement dated April 22, 1998 (“Agreement”) as modified vide Supplemental Agreement of September 21, 1998.



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- 5) In terms of the Agreement as modified by the supplemental, Elahi Enterprises agreed to transfer various tangible and intangible assets of Elahi Enterprises described in the supplemental, amounting to Rs. 250 million to Taj Textile, and agreed to authorize and facilitate Taj Textile to use the assets. In consideration for the aforesaid transfer, Taj Textile agreed to pay a sum of Rs. 246.853 million to Elahi Enterprises. In order to make the payment of the sale price to Elahi Enterprises, Taj Textile procured finance facilities from financial institutions. Keeping in view the business constraints of both the companies, under the agreement as modified by the supplemental, an option was given to Elahi Enterprises that in case Elahi Enterprises does not intend to effect a complete and absolute transfer of the assets to Taj Textile, then Elahi Enterprises may make the payment of the sale price to Taj Textile on or before 29.09.02. In case the option is exercised by Elahi Enterprises on or before the closing date, the financial charges for the subject transaction shall be the cost of Taj Textile for the use of the assets. In case Elahi Enterprises does not exercise the option on or before the closing date, then it shall be deemed that the assets stood absolutely transferred and vested in Taj Textile on the date of signing of the Agreement at the sale price.

Preliminary Submissions

- 1) It was stated that it is an established principle of law that multiple proceedings may not be instituted against a person for the same cause of action. Moreover, it was submitted that the subject matter has already been addressed and is also pending adjudication before the Commission. Therefore, it was stated that simultaneous proceedings may not be commenced with respect to the same subject matter, and the show cause notice may be withdrawn.
- 2) From the aforementioned facts it is evident that the directors acted bona fide and for the beneficial interest of Taj Textile and its shareholders collectively during the entire period subject matter of the present proceedings. Furthermore, the equity directors on numerous occasions kept the interest of Taj Textile supreme then their own personal interest. The same is evident from the fact that the sponsors have mortgaged their personal properties, on accounts of finance facilities availed by the Taj Textile, amounting to Rs. 100 Million. Thus the issue of director's interest does not arise. Therefore, the show cause notice may be withdrawn.
- 3) That it is pertinent to note that the directors were segregated in the manner discussed above. Therefore, the subject proceedings having been intimated without due observance of the legal



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requirements in this regard and the authoritative pronouncements of the superior courts is liable to be set aside.

- 4) Neither the shareholders nor the creditors of Taj Textile has raised any concerns regarding the affairs and management of Taj Textile. Furthermore, even when the entire industry was in crises, Taj Textile was managed and run in smooth manner, which is evident from the facts that in such years Taj Textile managed to run smoothly and paid dividend to its shareholders.

Taj Textile's reply to the Show Cause Notice

- 1) It was stated that the directors duly complied with the subject provision of law stipulated in the show cause notice.
- 2) Taj Textile has not created any charges over its assets in order to secure loans to its associated company, or charges over its assets in order to secure loans to its associated company, Moreover, from the submissions made above the transaction in question was not a loan but an absolute transfer of the assets for the sale price, subject to exercise of the option by Elahi Enterprises on the closing date. Furthermore, it was denied that in substance the loans amounting to Rs. 246.853 million were transferred to Taj Textile from Elahi Enterprises. It was submitted that the assets were purchased by Taj Textile for the sale price subject to the option, which option was not exercised by Elahi Enterprises on the closing date. Thereafter, the transaction crystallized. Thus the allegations contained in the show cause notice are contrary to facts. As stated above, the subject transaction was undertaken for mutual benefit of Taj Textile and Elahi Enterprises, and for adequate consideration. The financial charges paid by Taj Textile were on account of and in terms of its own financial arrangement with financial institutions and in accordance with the law. It is pointed out that the effect of the subject transaction was explained to the shareholders to their satisfaction a) in the Annual accounts for the year 2001, Annual General Meeting held on May 31, 2002 and b) the Annual Accounts for the year 2002, as and when the same materialized. Hence, the subject acts of the directors were ratified by shareholders of Taj Textile. Therefore, the subject show cause notice should be withdrawn.

Without prejudice to the above, it was further submitted that as there was no willful default on the part of the aforesaid persons. Therefore, the penalty for the contravention of subject sections is not applicable and the show cause notice may be withdrawn. Furthermore, it was stated that the penal



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provisions with respect to contravention of the aforesaid transactions is attracted provided default is on account of directors of the company “knowingly” causing the default. Thus if the default is not knowingly, and willfully executed then the same will not attract any penalty and may be condoned. The word “knowingly” has been interpreted by the superior courts of Pakistan to imply commission of an act, with knowledge, consciously, intelligently, willfully, intentionally, and knowledge must be actual and not merely constructive and there must be an element of malafide.

6. Mr. Alamgir Elahi, through his letter dated January 31, 2003 and various subsequent letters intimated to the Commission stated that he did not have access to the records of the Company so he was unable to file the reply in writing to the Commission against the said show cause notice. Whereas, the Counsel of the Company M/s Cornelius, Lane & Mufti through a letter dated January 31, 2003, addressed to the Commission, stated that the matter regarding the access to the record of the Company was amicably settled with Mr. Alamgir Elahi. Further since the said person is neither the shareholder nor the director of Taj Textile, the Company was not obliged to provide him the information he sought. A Power of Attorney dated April 03, 2004 in favor of Mr. Asim Nazir, Advocate was however received from Mr. Alamgir Elahi authorizing him to appear before the Commission as their Counsel.

7. Various hearings in the matter were fixed but adjourned on the request of the Counsel. The Commission on the request of the counsel re-fixed the hearing date on March 28, 2003 which was attended by the Counsel of director and Chief Financial Officer of Taj Textile. The Counsel reiterated the same arguments which were submitted through their written reply. They further contended that the show cause notice was only on the basis of the balance sheet and no complaint from shareholders is on record. Both the Companies entered into agreement on April 22, 1998 and modified on September 21, 1998.

8. Mr. Asim Nazir, however appeared before the Executive Director on behalf of Mr. Alamgir Elahi on April 1, 2003 submitting that his clients have not been provided access to the record for preparation of the reply for the show cause notice. He further requested to grant him time up to April 15, 2003 for submitting the reply.

9. The next hearing in the matter was held on December 29, 2003, in which the Counsel appeared before the Executive Director and argued that the transaction was presented to the shareholders in the general meeting and not a single shareholder objected to it. Further, the conveyance in question was not a



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loan, but a sale transaction between the two companies and payment has been made by the transfer of export quota and good will. They further added that the goodwill can be sold and purchased and is a property and finally that no creditor has raised any objection or filed a complaint with the Commission.

10. The matter was again taken up and following hearing opportunities have been provided to the directors of Taj Textile:

- a) Hearing notice dated February 6, 2007 for fixing hearing on February 21, 2007;
- b) Hearing notice dated March 01, 2007 for fixing hearing on March 14, 2007;
- c) Hearing notice dated March 15, 2007 for fixing hearing on April 24, 2007; and
- d) Hearing notice dated April 25, 2007 for fixing hearing on May 08, 2007.

11. In the last three hearings mentioned above, Mr. Fakkahr Mahmud Chanda, Advocate appeared on behalf of Mr. Alamgir Elahi a director of Taj Textile and submitted the same stance, which was given earlier by the director, that he does not have access to the record and therefore he is unable to clarify his position in the matter.

However, remaining directors and their Counsel paid no heed to the Commission' letters and avoided representation in all the hearings. In response of every notice, the counsel for Taj Textile requested for adjournment and requested for a new date of hearing. I therefore believe that they have nothing more to say beyond to what has already been said and submitted through written replies and therefore I have decided to conclude the proceedings on the bases of the record available to the Commission.

12. In order to sum up the case, it is important to gather the facts of the case obtained from the record of Taj Textile maintained with the Commission and provided by the directors and their Counsel. The same are as follows:

1. Agreement between Taj Textile and Elahi Enterprises was executed in the year 1998, for the transfer of Elahi Enterprise's bank liabilities to Taj Textile.
2. The copies of agreements provided by the Counsel were on the letterhead of Taj Textile and not on stamp papers;
3. Elahi Enterprises was a public limited company at the time of execution of the agreement.



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4. Loans of Rs. 246.853 million payable by Elahi Enterprises to its various bankers were transferred to Taj Textile during the years 1998 to 2001.
5. As per record provided by Taj Textile, at least 11 Board of Directors meetings were conducted and in the Board of Directors meetings held on February 23, 1998, April 20, 1998, June 26, 1999, October 18, 1999, February 03, 2000 and January 02, 2001 resolutions were passed to transfer the liabilities of the associated company to Taj Textile.
6. The transactions relating to transfer of loans were not disclosed in the annual accounts of Taj Textile during the years ended September 1998 to 2001. However, in the annual accounts for the year ended September 30, 2001 note 7.3 providing details of "short term borrowings" it was stated that the short term borrowings included bank credit facilities amounting to Rs. 246.853 million conveyed from M/S Elahi Enterprises (Private) Limited.
7. None of the directors or the officers of the Company showed their interest through a general notice to the members.

13. I have gone through the facts of the case, record placed before me, relevant provisions of the Ordinance, arguments by the directors and their counsels in the hearings and written submissions given in response to the show cause notice. The argument of the Counsel that it is a sale transaction between the two parties does not stand on merit as for a valid sale transaction there must be identified buyer and seller who agree to transact on an identified price through a mutual contract for delivery at a specified time. Whereas in the instant case the agreement entered into on September 21, 1998 and price of the assets transferred to Taj Textile was not determined. Further, it is a commonly known provision of the law that "*Ignorance of law is not excuse*". None of the directors in any board meeting showed any interest regarding the conveyance of loans and payment of heavy financial charges or in the provision of the directors' guarantees in favor of the banks against the loan liabilities of the Elahi Enterprises. The minutes of the directors meeting reflect that interested directors participated in the board meetings in which the transfer of loan was discussed. The requirements of quorum were not observed. As regards the argument that multiple proceedings may not be instituted against a person for the same cause of action, it is to be made clear that the said transaction has different facets explained as under:

- a) The investment was made in the associated company with out the approval of the shareholders;



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- b) Non-disclosure of interest by the directors through a general notice in the relevant board meetings;
- c) Proceedings of the Board of Directors meetings were in the absence of quorum as the directors did not disclose their interest through a general notice to members, and the BOD meetings were held in the absence of a quorum.
- d) The investment in the associated company was never disclosed in the accounts of the company, and the receivables and payables were off-set

14. From the above discussion, facts of the case and arguments put forward by the Counsel, I am of the considered view that the provisions of Section 193, Section 214, Section 216 and Section 217 of the Ordinance have been violated and directors are liable for the penalties as defined in the Ordinance. I therefore, impose a fine of Rs. 120,000 (One hundred and twenty thousand rupees only) in aggregate on the directors of Taj Textile for contravention of the following provisions of the Ordinance, falling within the jurisdiction of the Commission, in the following manner:

(Amount in Rupees)

Name of Director	Mr. Jahangir Elahi	Mr. Alamgir Elahi,	Mr. Tanvir Elahi,	Mr. Amir Jahangir	Mr. Ahmed Jahangir	Mr. Akhlaq Ali Khan
Penalty under Section 193	10,000	10,000	10,000	10,000	10,000	10,000
Penalty under Section 214	5,000	5,000	5,000	5,000	5,000	5,000
Penalty under Section 216	5,000	5,000	5,000	5,000	5,000	5,000
Total	20,000	20,000	20,000	20,000	20,000	20,000

I am not imposing any penalty on the officers of the Company i.e Chief Financial Officer and Company Secretary under the provisions of Section 215 of the Ordinance. However they are hereby strictly warned to be vigilant in future.

15. The Chief Executive and directors of the Company are 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 bank vouchers to the Commission. In case of non-deposit of the penalty proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed



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on the directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

Tahir Mahmood
Executive Director

Announced
September 03, 2007
Islamabad