



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

D. M. Textile Mills Limited

Number and date of notice: CSD/ARN/81/2015-3639-45 dated May 9, 2017
Date of hearing: September 14, 2017 & January 16, 2018
Present: Mr. M. J. Panni, Chief Executive, M. J. Panni
& Associates (Authorized Representatives)

ORDER

**UNDER SECTION 204-A READ WITH SECTION 498 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceeding initiated against directors and chief executive (*the "respondents"*) of D.M. Textile Mills Limited (*the "Company"*) through show cause notice dated May 9, 2017 (*the "SCN"*) under the provisions of Section 204-A read with Section 498 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. The facts leading to this case, briefly stated, are that Mr. Rao Khalid Pervaiz, an elected director has been working as Chief Executive Officer of the Company and also acting as the Company Secretary and Chief Financial Officer since 2015 as per the information available on Form-29 filed on December 14, 2015. The Company in Statement of Compliance with the Code of Corporate Governance for the year ended June 30, 2015 stated:

"The Board has approved appointment of Chief Financial Officer (CFO) and Company Secretary including remuneration and terms and conditions of employment"



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3. In view of the above, it *prima facie* appeared that the Company had not appointed a qualified whole time secretary in contravention with Section 204-A of the Ordinance and Circular 15 of 2003. Therefore, SCN was issued to the respondents under the provisions of Section 204-A read with Section 498 of the Ordinance to clarify as to why penal action may not be taken against the Company.

4. The Company vide letter dated May 23, 2017 submitted a written reply clarifying that Mr. Rao Khalid Pervaiz is not acting as CEO of the Company. His appointment as acting secretary was only a short-term stopgap arrangement. He was holding the additional charge of CFO to manage day-to-day financial affairs of the Company. It further stated that due to the closure of the mill and halting of the operations, no professional is willing to join the Company. However, efforts are being made to fill in the vacancy as soon as possible.

5. Hearing in the matter was fixed for September 14, 2017 which was adjourned on the Company's request. The hearing was held on January 16, 2018 and Mr. M. J. Panni, the authorized representative appeared on behalf of respondents and reiterated the facts stated earlier and submitted a written response as well. It was submitted that Mr. Rao Khalid Pervaiz was appointed as acting Company Secretary and was having additional charge of CFO to manage the daily affairs of the Company. The Company has been in turmoil for quite a long time, which made it difficult to comply with the mandatory requirements of law. He reasserted that the Company would do the needful soon and will be employing a regular CFO. However, it is pertinent to note that in spite of lapse of considerable time same has still not yet been done and nothing has been communicated to the Commission in this regard subsequent to the hearing.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance and Rules, which are stated as under:

Sub-section (1) of section 204-A of the Ordinance:

"a listed company shall have a whole time secretary and a single member company shall have a secretary possessing such qualification as may be prescribed".

Section 498 of the Ordinance:

"if a company or any other person contravenes or fails to comply with any provision of this Ordinance or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in this Ordinance, the



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company and every officer of the company who is in default or such other person shall be punishable with a fine which may extend to one million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day after the first during which the contravention continues."

7. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 498 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

8. It is necessary to emphasize the importance and need of a Company Secretary. A Company Secretary is a senior position in a private sector company or public sector organization, normally in the form of a managerial position or above. The directors delegate the duties of a company secretary. He is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. Despite the name, the role is not a clerical or secretarial one in the usual sense. The company secretary ensures that an organization complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law. It is also their responsibility to register and communicate with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts. The Ordinance along with the Code of Corporate Governance stresses the importance towards appointing a separate company secretary and CFO.

9. I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the authorized representative during the hearing and written response submitted by the Company. I have observed that Mr. Rao Khalid Pervaiz being an executive director was appointed as acting Company Secretary and was given the additional charge of CFO against the mandatory requirements of law which prescribes a whole time secretary. The time lapse negates the proposition of the respondents that it was a short-term stopgap arrangement, had it been so the needful should have been done as stated during the hearing and also mentioned in written submissions.



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10. Keeping in view of the above, I am of a considered view that the provisions of the law have been violated as a whole time Company Secretary has not been appointed by the Company. Further, despite the passage of considerable time the corrective measures as undertaken vide written submission and as reiterated in the hearing, have also not been taken by appointing a whole time Company Secretary. I therefore impose a fine of Rs.10,000 (Rupees ten thousand only) on Mian Habib Ullah, Chief Executive Officer of the Company for contravening the mandatory provisions of law.

The aforesaid fines 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 fines are imposed on the respondent in his personal capacity; therefore, he is required to pay the said amount from personal resources.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
February 22, 2018
Islamabad