



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

*Before*

**Asif Iqbal -Director/ Head of Department**

*In the matter of*

**DM Textile Mills Limited**

Number and date of Notice: CSD/ARN/381/2015-142 dated August 15, 2022

Date of hearings: November 23, 2022

Present (Authorized Representatives): Barrister Shahzad Javed Panni (Authorized Representative)

### ORDER

Under Regulation 27 and Regulation 36 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 read with Regulation 37 thereof and Section 512 of the Companies Act, 2017

This Order shall dispose of proceedings initiated in the matter of Show Cause Notice dated August 15, 2022 (the SCN) under Regulation 27 and Regulation 36 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations) read with Regulation 37 thereof and Section 512 of the Companies Act, 2017 (the Act) issued to DM Textile Mills Limited (the Company) and its following directors of hereinafter collectively referred as the Respondents namely:

S.No.	Name of the Respondents
1.	Mr. Shahid Hussain
2.	Mr. Mian Habib Ullah
3.	Mr. Shahid Aziz
4.	Mr. Hussain Ahmad Ozgen (June 30, 2020)
5.	Mr. Rao Khalid Pervaiz (June 30, 2021)
6.	Mr. Sami Ullah
7.	Mr. Amer Zeb
8.	Mr. Abrar Alam
9.	DM Textile Mills Limited Through Chief Executive Officer

2. Facts of the case are that review of the financial statements of the Company for the periods ended June 30, 2020 (accounts 2020) and June 30, 2021 (accounts 2021) revealed that the Auditor, Riaz Ahmad & Company (the Auditor) of the Company in its review reports

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regarding Company's "Statement of Compliance with the Regulations" highlighted non-compliances with the Regulations in respect of qualification of Chief Financial Officer (CFO), Company Secretary (CS) and Audit Committee. The Securities and Exchange Commission of Pakistan (the Commission) vide letter dated February 17, 2022 asked the Auditor to comment on said non-compliances. The Auditor vide letter dated March 03, 2022 explained both the non-compliances as under (extracts):

## A. Issue of Audit Committee:

The members of the audit committee for both the years ended 30 June 2020 and 30 June 2021 were as follows:

Name of the member	Qualification	Experience as member of audit committee	Senior management experience in overseeing of financial, audit related matters
<b>June 30, 2021</b>			
Mr. Amer Zeb	Graduate	5 years	5 years
Mr. Shahid Aziz	Graduate (major in economics)	7 years	11 years
Mr. Abrar Alam	Graduate	1 year	1 year
<b>June 30, 2020</b>			
Mr. Hussain Ahmed Ozgen	Graduate	3 years	9 years
Mr. Shahid Aziz	Graduate (major in economics)	6 years	10 years
Mr. Abrar Alam	Graduate	0 year	0 year

It is evident from above that no member of the audit committee has the requisite qualification or experience as per explanation to the Regulation 27(1) of the Listed Companies (Code of Corporate Governance) Regulations, 2019".

## B. Issue of Appointment/ Qualification of CFO/ CS:

Review report includes modification with respect to non-compliance of Regulation 20 stating that the Board has not appointed whole time Company Secretary and Chief Financial Officer.

the Company has conceded in its Director's Report that "the Company is making efforts to fulfill the requirements and also advertised in the Newspaper. However, professionals are not willing to join the Company due to closure of Mills and various reasons. The requirement will be fulfilled

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as soon as possible." We were explained by the management that acting company secretary and chief financial officer is not a graduate.

3. The Auditor in its review reports for the years 2020 and 2021 highlighted that the Board has not appointed whole-time CFO and CS since the resignation of previous CFO and CS as required per regulation 20 of the Regulations and the acting CFO and CS do not fulfill the qualification criteria mentioned in regulation 22 of the Regulations. Further, the Company misstated at serial No. 10 of Statement of Compliance that CFO fulfills the requirements of the Regulations, and no member of the Audit Committee is "financially literate" in contravention of regulation 27(1)(iii) of the Regulations;

4. The director's report for the year 2021 clarified that the Company is making efforts to appoint full time CFO and CS however professionals are not willing to join due to various reason including closure of Mill and the Board is of the view that members of the existing Audit Committee have relevant experience. The report further states that compliance with Regulations will be made as soon as possible;

5. In view of the above, proceedings under regulation 27, 36 and 37 of the Regulations and Section 512 of the Act were initiated against the Respondents through serving the SCN requiring them to show cause in writing within fourteen (14) days, as to why penalty, as provided, should not be imposed on them.

6. Barrister Shahzad Javed Panni, Authorized Representatives (**the Representative**) of the Respondents submitted response to SCN vide letter dated September 15, 2022, as follows:

*"On behalf of all the directors and the Company we make the following submissions:*

**(A) Issue of Audit Committee :-**

*Regarding members of the Audit Committee for both the years ended 30.06.2020 and 30.06.2021, it has been alleged that no member of the Committee has the requisite qualification or experience as prescribed in the Code. This assumption does not appear to be correct.*

*As per regulation 27(1)(iii) of the Code, it is laid down that one member of the Audit Committee shall be financially literate. This means that such a person understands and correctly interprets the accounting principles and the financial statements. We would like to clarify that Mr. Shahid Aziz, a nominee of NIT, headed the Audit Committee for the said accounting periods. Although, he does not have a postgraduate degree but does meet the alternate qualification of experience of 10 years. It is further added that Mr. Shahid Aziz has been on the board of the Company for the last ten (10) years. He is also a director on the board of Sanghar Sugar Mills Limited and he is member of the Audit Committee of that Company. We*



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are of the considered view that Mr. Shahid Aziz has the requisite experience as he has vast experience of financial matters of the listed Companies. We would like to further add that Mr. Hussian Ahmad Ozgen, was member of the Audit Committee for the year ended 30.06.2020. He is the owner and CEO of Rahat Woollen Mills (Pvt.) Ltd. for more than 20 years. He also remained the President of the Rawalpindi Chamber of Commerce and Industry and was also on the Board of erstwhile Islamabad Stock Exchange. This speaks of his wide range Of experience of financial and corporate matters.

**(B) Issue of Appointment/Qualification of CFO/Company Secretary:**

**(i) Appointment of CFO**

The Company has made every effort to appoint Chief Financial Officer (CFO) who meets the qualifications and experiences prescribed by the Commission. However, due to the fact that the factory has remained closed for a long time and is not in good financial health, no qualified person is willing to join the Company. The post has been advertised several times. It may be added that the person presently working on the position has considerable working experience to manage financial matters of the Company and is performing duties to the entire satisfaction of the management and the Board. It may be further added that qualification concerns the basic knowledge and working experience is of paramount importance which always carry greater weightage.

**(ii) Appointment of Company Secretary**

The Company has made every effort to hire services of a qualified person for the job of Company Secretary as prescribed by the Commission. However, due to closure of the factory for a long time and is in no good financial health, no qualified person with relevant experience is willing to join the Company. The post has been advertised several times. Thus the Company is caught-up in a situation in which it finds itself helpless to fill the vacancy.

You would appreciate that the Company is faced with tremendous problems due to closure of its factory for a long period of time and laying of all the employees. The Company has successfully been able to pay off all the outstanding loans of banks/financial institutions. Due to the turbulent economic and political situation prevailing in the country, the directors have not been able to chalk out any scheme for undertaking a new line of business.

It may please be noted that the defaults of the Code of Corporate Governance Regulations are not at all willful or mala fide but have been force majeure defaults. Commission may kindly take a lenient view of the un-willful defaults and give reasonable time to the Company to overcome its problems."

7. The Representative, vide letter dated November 23, 2022 submitted following submissions for the hearing (relevant extracts):



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"Reference Commission's Hearing Notice No. CSD/AkN/81/2015-493 dated November 08, 2022 to all the directors of the Company and also to the Company for various contraventions of Listed Companies (Code of Corporate Governance) Regulations, 2019 (Code).

It is advised that following persons are no more directors of the Company:

- |       |                        |                              |
|-------|------------------------|------------------------------|
| (i)   | Mr. Shahid Aziz        | Resigned on January 27, 2022 |
| (ii)  | Mr. Hassan Ahmed Ozgen | Resigned on June 16, 2021    |
| (iii) | Mr. Shahid Hussain     | Died on March 05, 2022       |

On behalf of the remaining five (05) directors and the Company we make the following submissions:

**(A) Issue of Audit Committee :-**

Regarding members of the Audit Committee for both the years ended 30.06.2020 and 30.06.2021, it has been alleged that no member of the Committee has the requisite qualification or experience as prescribed in the Code. This assumption does not appear to be correct.

As per regulation 27(1)(iii) of the Code, it is laid down that one member of the Audit Committee shall be financially literate. This means that such a person understands and correctly interprets the accounting principles and the financial statements. We would like to clarify that Mr. Shahid Aziz, a nominee of NIT, was member of the Audit Committee for the said accounting periods. Although, he does not have a postgraduate degree but he does meet the alternate qualification of experience of 10 years. It is further added that Mr. Shahid Aziz has been on the board of the Company for the last ten (10) years and has been member of the Audit Committee since the year 2014. He is also a director on the board of Sanghar Sugar Mills Limited and he is member of the Audit Committee of that Company for the last fourteen (14) years since 2008 till date. We are of the considered view that Mr. Shahid Aziz has the requisite experience as he has vast experience of financial matters of the Listed Companies. We would like to further add that Mr. Hussian Ahmad Ozgen, was member of the Audit Committee for the year ended 30.06.2020. He is the owner and CEO of Rahat Woollen Mills (Pvt.) Ltd. for more than 20 years and also looking after its audit and financial matters. He also remained the President of the Rawalpindi Chamber of Commerce and Industry and was also on the Board of erstwhile Islamabad Stock Exchange. This speaks of his wide range of experience of financial and corporate matters.

**(B) Issue of Appointment/Qualification of CFO/Company Secretary:**

**(i) Appointment of CFO**

The Company has made every effort to appoint Chief Financial Officer (CFO) who meets the qualifications and experiences prescribed by the Commission. However, due to the fact that the factory has remained closed for a long time and is not in good financial health, no qualified person is willing to join the Company. The post has been advertised several times. It may be added that the



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person presently working on the position has considerable working experience to manage financial matters of the Company and is performing duties to the entire satisfaction of the management and the Board. It may be further added that qualification concerns the basic knowledge and working experience is of paramount importance which always carry greater weightage. The present arrangement is a stop-gap arrangement and management is keen to employ a CFO with the required qualification.

(ii) Appointment of Company Secretary

The Company has made every effort to hire services of a qualified person for the job of Company Secretary as prescribed by the Commission. However, due to closure of the factory for a long time and being not in good financial health, no qualified person with relevant experience is willing to join the Company. The post has been advertised several times. Thus the Company is caught-up in a situation in which it finds itself helpless to fill the vacancy. However the management shall continue to make efforts to employ a person meeting the prescribed requirements.

You would appreciate that the Company is faced with tremendous problems due to closure of its factory for a long period of time and lying of all the employees. The Company has successfully been able to pay off all the outstanding loans of banks/financial institutions. Due to the turbulent economic and political situation prevailing in the country, the directors have not been able to chalk out any scheme for undertaking a new line of business.

It may be noted that the defaults of the Code of Corporate Governance Regulations are not at all willful or mala fide but have been force majeure defaults. Commission may kindly take a lenient view of the un-willful defaults and give reasonable time to the Company to overcome its problems."

8. In order to provide opportunity of personal representation, hearing in the matter was fixed for November 16, 2022 that was adjourned on the request of the Authorized Representative. The hearing was later rescheduled for November 23, 2022. On the date of hearing, the Representative appeared before the undersigned and submitted that:

- The following persons are no more directors of the Company:
  - (i) Mr. Shahid Aziz Resigned on January 27, 2022
  - (ii) Mr. Hassan Ahmed Ozgen Resigned on June 16, 2021
  - (iii) Mr. Shahid Hussain Died on March 05, 2022
- Mr. Shahid Aziz, nominee of NIT, member of Audit Committee, qualifies the 10 years requirement of being 'financial literate' given in CCG 2019 as he is member of Audit Committee of Sanghar Sugar Mills Limited for the last 14 years;



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- *Mr. Hussain Ozgen was member Audit Committee in year 2020 and fulfils the 20 years criteria of 'financial literate' given in CCG 2019 as he is CEO of Rahat Woolem Mills for more than 20 years. He also remained member of Rawalpindi Chamber of Commerce and Industries;*
- *We have no idea as to why modified opinion was issued by the Auditor;*
- *Company was established in 1978, grew and had more than 1000 employees on its payroll however collapsed in 2014 and now has only 20 employees. It has been trying to fill the positions of CFO and CS and has also advertised both the positions but remained unable to appoint adequately qualified persons mainly due to the reason that qualified individuals are not interested to join;*
- *The existing person holding both the positions of CS & CFO is working in the Company since 1989, worked under the direct supervision of all previous CFOs & CSs and though he does not have any degree in finance or secretariat but is well versed with the affairs of the Company;*
- *The Company in the process of reviving its affairs has paid off all the loans of the financial institutions;*
- *There is non-compliance but the same is neither willful not with any mala fide intention, therefore, SECP is requested to take a lenient view;*
- *Documentary evidences in support of claims will be submitted soon; and*
- *Clarification relating to mis-reporting in terms of regulation 36 of the Regulations, shall be submitted shortly.*

9. Subsequent to the hearing the Representative vide email submitted that:

*Reference our hearing dated November 23, 2022 regarding D.M. Textile Mills Ltd. As desired by you, our further submissions on the matter are as follows:*

*(i) With respect to point 5(b) of SECP Show Cause Notice dated August 15, 2022 regarding non-disclosure of the status of compliance with the requirements of the Regulations relating to qualification criteria of CFO and CS, it is advised that for the year 2020, at Sr. No. 18 of Statement of Compliance with Listed Companies (Code of Corporate Governance) Regulations, 2019, it is stated that "all requirements of regulations 3,6,8,27,32,33 and 36 of the Regulations have been complied with except Regulation 7, which will be complied with shortly" (copy attached).*

*(ii) Letter from CEO regarding Acting Company Secretary/CFO having necessary experience and competency to hand corporate affairs (copy attached).*

*(iii) For the year 2021, in the Independent Auditors Modified Review Report, it has been mentioned that the instances of non-compliance with requirements of the Regulations were observed which are not stated in the Statement of Compliance. The non-compliances are duly mentioned in the said report. (copy attached).*

*(iv) With respect to documentary proof of Mr. Shahid Aziz as member Audit Committee of Sanghar Sugar Mills Limited, Company Information pages of the Company's Annual Reports*



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from 2008 to 2021 are attached showing the name of Mr. Shahid Aziz in the Audit Committee as member.

10. Relevant legal provisions are reproduced as hereunder:

### The Regulations:

**"27 (1) - Audit Committee.-** (1) It is mandatory that the audit committee shall be constituted by the Board keeping in view the following requirements,-

(iii) the Board shall satisfy itself that at least one member of the audit committee shall be "financially literate".

*Explanation:- for the purposes of this clause the expression, "financial literate" means a person who,-*

(a) is a member of a recognized body of professional accountants; or

(b) has a post graduate degree in finance from a university or equivalent institution, either in Pakistan or abroad, recognized by the Higher Education Commission of Pakistan; or

(c) has at least ten (10) years of experience as audit committee member; or

(d) at least twenty (20) years of senior management experience in overseeing of financial, audit related matters.

**"36 Compliance Statement and Auditor Review.-** (1) It is mandatory that the company shall publish and circulate a statement, as given under Annexure A to these Regulations, along with their annual reports to set out the status of their compliance with the requirements of these Regulations and the said statement shall be specific and supported by necessary explanations."

**"37. Penalty. -** Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act."

### The Act:

**"Section 512(2):** Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."

11. I have gone through the facts of case and considered the both written verbal submissions of the Representative in light of the relevant provisions of the law and state that:

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- It is clear from the evidence provided by the Representative that Mr. Shahid Aziz fulfills the criteria of 'financial literate' as provided in regulation 27(1)(iii) (c) as he is the member of Audit Committee of Sanghar Sugar Mills Limited since 2008;
- With regard to the compliance with the provisions of regulation 36 of the Regulations; it is pertinent to mention here that the said regulation requires every listed company to publish and circulate a statement as per Annexure A to the Regulations to set out the status of their compliance with the requirement of these Regulations and the said statement shall be specific and be supported by necessary explanations. In this context, it is observed that the Company was non-compliant with the provisions of regulation 20 of the Regulations by not having the whole time CFO and CS. Further, the acting CS who had the additional charge of acting CFO did not fulfill the qualification criteria as provided in Regulation 22 of the Regulations. However the Company failed to disclose these facts in the statement of compliance for the year 2020 and 2021; which is in contravention with the requirements of regulation 36 of the Regulations.

12. Keeping in view the above, the non-compliance of regulation 36 of the Regulations is established and, therefore, I, in exercise of the powers conferred under regulation 37 of the Regulations read with Section 512 of the Act, hereby impose penalty of Rs. **25,000/- (Rupees twenty five thousand only)** on the Company and warn all the remaining Respondents to ensure compliance with the relevant provision of the law in future, in letter and spirit.

13. The aforesaid penalties 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 furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

14. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

(Asif Iqbal)  
Director/ HoD  
Adjudication Department-I

Announced: November 30, 2022  
Islamabad

