



Corporate Supervision Department
Company Law Division

Before Amina Aziz –Director (CSD)

In the matter of

Usman Textile Mills Limited

- Review sought for:**
1. Order dated April 14, 2016 of Director (CSD) under sections 245, read with section 476 of the Companies Ordinance, 1984 regarding non-filing of quarterly accounts for the quarters ended **September 30, 2009 to September 30, 2014** and
 2. Order dated April 14, 2016 of Director (CSD) under sections 245, read with section 476 of the Companies Ordinance, 1984 regarding non-filing of quarterly accounts for the quarters ended **December 31, 2014, March 31, 2015 and September 30, 2015.**

Date of Hearings: June 8, 2016, August 31, 2016, September 21, 2016, October 17, 2016 and November 7, 2016

Present: None

ORDER

Review Applications under Section 484 of the Companies Ordinance, 1984

This Order shall dispose of the review applications dated May 16, 2016 filed under section 484 of the Companies Ordinance, 1984 (the “Ordinance”) to review the orders dated April 14, 2016 (the “impugned orders”) passed by the Director (Corporate Supervision Department) under section 245 read with section 476 ibid whereby aggregate penalties of Rs224,000 and Rs70,000 were imposed on the following Chief Executive and Directors of Usman Textile Mills Limited (the “Company”) for non-filing of quarterly accounts above-mentioned:

1	Mr. Noor Qadir	Chief Executive
2	Mr. Jehangeer Akbar	Director
3	Mr. Mushtaq Ahmed Jatoi	Director
4	Mr. M. Moosa Phulpoto	Director
5	Mr. Liaquat Ali Awan	Director
6	Mr. Jahanzaib	Director
7	Mr. Nasim Ahmed	Director

2. On receiving the review applications, hearing in the matter was fixed for June 8, 2016 which was adjourned on the request of the applicants and after that re-fixed four times for August 31, 2016, September 21, 2016, October 17, 2016 and November 7, 2016. But no one appeared on the date of hearing to plead the case despite the hearings were adjourned and re-fixed on requests of the applicants. However, the Company’s request for adjournment of hearing fixed for November 7, 2016 submitted vide its letter dated November 3, 2016 was not acceded to in view of the large number of adjournments as mentioned above. The Commission vide its letter dated November 7, 2016 informed the applicants that the Commission shall now proceed to pass an ex parte order on the basis of material available on record. The applicants



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vide Company's letter dated November 9, 2016 again requested to fix hearing in first week of December 2016 which was not responded as the Commission has already informed that an ex parte order on the basis of material available on record.

3. The brief facts of the case are that impugned orders were passed after carrying out proceedings and providing opportunity of hearing for failure to file its quarterly accounts with the Commission falling within the period September 30, 2009 to September 30, 2015 (Separate period mentioned in both impugned Orders) as per sub-section (1)(b) of section 245 of the Ordinance for which aggregate penalties of Rs224,000 and Rs70,000 were imposed on the applicants under sub-section (3) of section 245 of the Ordinance.

4. The Applicants have filed the application for review citing similar grounds, though very briefly, as were stated during the proceedings under section 245 of the Ordinance, which resulted in the impugned orders. The Applicants have also requested to set aside the impugned orders whereby penalties were imposed on them as being bad in law. The applicants have contravened the provisions of section 245 by not filing of quarterly accounts within prescribed time for which aggregate penalties amounting to Rs224,000 and Rs70,000 were imposed on the applicants respectively after giving opportunity of hearing.

5. 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 Director (CSD) has the power to review the order originally passed by him in pursuance of the delegated powers.

6. It is important to highlight here that the Ordinance has been repealed while promulgating Companies Ordinance, 2016 ("Ordinance 2016"). However, provisions of Section 509(1)(f) of the Ordinance 2016 clearly provides that pending proceedings shall be concluded as provided in the Ordinance:

"509. Repeal and savings. — (1) The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIII A consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIII A along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:

Provided that repeal of the repealed Ordinance shall not-

(f) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed".

7. 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), referring to numerous previous judgments of the apex court, has held as



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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 advertent 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."

8. I have examined the subject applications considering the scope of review in the light of judgment of the apex court and the submissions made by the Applicants as mentioned hereinabove which appear to be devoid of merit. The Applicants have repeated similar submissions that were made by them during the original proceedings that resulted in the impugned order whereof fine has been imposed on them. I have observed that the Applicants have neither brought up any new and important matter or evidence nor has he been able to highlight any mistake or error of facts or law apparent on the face of the record. Moreover, applicants did not appear before the undersigned in the matter of review applications to plead the case as adjournments were sought several time by the applicants. The amount of penalty, which in my view commensurate with the level of the default, cannot be waived of as the applicants have violated the provisions of section 245 ibid by not filing of quarterly accounts mentioned in the impugned Orders. Also, stay as requested cannot be granted till disposal of appeal pending before the Appellate Bench as the appellants have deprived the members from the financial position of the Company since the year 2009 by not holding of overdue annual general meetings and transmission of quarterly accounts and has not submitted any plan to the Commission to rectified the default to hold overdue AGMs and preparation and filing of annual as well as quarterly accounts. Therefore, in the light of the facts on record, the limited scope of review and failure of the Applicants to highlight any material error or mistake in record of the case, the review applications are hereby dismissed.

Amina Aziz
Director
Corporate Supervision Department

Announced:
December 15, 2016
Islamabad

