



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

No. CSD/ARN/69/2015- 55

August 1, 2023

Sr. #	Names of Directors / Respondents	Registered Address
1	The Board of Directors	Nina Industries Limited Through the Company Secretary,
2.	Nina Industries Limited through the Chief Executive	SF Unit No. 89, S.I.T.E Area <u>Karachi</u> <u>Phone No. 0333-8782277</u>

Subject: Order in the matter of Show Cause Notice dated January 25, 2022 under Section 301 of the Companies Act, 2017 and Section 304 thereof - Nina Industries Limited

Dear Sir,

Please find enclosed copy of the order passed by Mr. Shahzad Afzal Khan, Head of Department (Adjudication Department-I) for your record and necessary action.

Regards,


1-8-2023.

Muhammad Anwar Hashmi
Additional Joint Director

Enclosed:

Copy of the order passed dated August 1, 2023



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan – Director/Head of Department
Adjudication Department-I

In the matter of

Nina Industries Limited

Show Cause Notice No. & Date: No. CSD/ARN/69/2015-33 dated January 25, 2022

Date of hearing February 10, 2022, March 16, 2022; April 8, 2022; April 25, 2022; May 11, 2022; June 21, 2022; January 12, 2023; February 6, 2023; May 10, 2023; May 25, 2023

Hearing attended by: Mr. Fayyaz Karim Malik, Company Secretary

ORDER

Under clause (c) and (d) of Section 301 of the Companies Act, 2017 read with clause (b) of Section 304 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/69/2015-33 dated January 25, 2022 (the SCN) issued under clause (c) and (d) of Section 301 of the Companies Act, 2017 (the Act) read with clause (b) of Section 304 thereof against Nina Industries Limited (the Company) and its board of directors, hereinafter collectively referred to as the Respondents.

2. The Company was incorporated in Pakistan as a Private Limited company on February 18, 1992 and subsequently converted into Public Limited Company on October 29, 1997. The registered office of the Company is situated at Karachi and the Company is listed on the Pakistan Stock Exchange, however, trading in the shares of the Company is suspended with effect from October 26, 2009. The Company operates a textile processing unit and is mainly engaged in exports. The brief facts of SCN are that as per the record available with the Securities and Exchange Commission of Pakistan (the Commission), the Company did not:

- a. Held its Annual General Meetings (AGMs) for the years ended June 30, 2016; June 30, 2017; June 30, 2018; June 30, 2019; June 30, 2020 and June 30, 2021; and
- b. File with the Registrar its annual audited financial statements for the years ended June 30, 2016; June 30, 2017; June 30, 2018; June 30, 2019; June 30, 2020 and June 30, 2021 respectively.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

3. The Company's failure to hold its aforesaid AGMs and non-filing of aforesaid annual audited financial statements with the Registrar, *prima facie*, renders the Company liable to be wound up in terms of Section 301 (c) and (d) of the Act. In this regard, the Registrar of Companies, Company Registration Office, Karachi has approached for grant of sanction in terms of clause (b) of Section 304 read with clauses (c) and (d) of Section 301 of the Act to present a petition before the Honorable High Court for winding up of the Company on the aforesaid grounds, hence, the instant proceedings through the SCN were initiated against the Respondents and they were called upon to show cause in writing, within fourteen (14) days of the date of the SCN, as to why a petition for winding up of the Company may not be presented before the competent Court.

4. In reply to the SCN, the Company through its letter dated February 08, 2022, *inter alia*, submitted that:

- (a) After prolonged litigation of almost ten years between the Company and its secured creditors, the Company and its secured creditors mutually agreed to a scheme of Arrangement. Accordingly, the Scheme of Arrangement was filed in 2016 at the Honorable Sindh High Court for its approval. The Honorable Sindh High Court approved the Scheme of Arrangement on 26th October 2021.
- (b) Due to litigation of recovery suits filed by the Company's secured creditors in the Sindh High Court the Company confined its operation to third parties and run its production at 25% of capacity. The Company could not be able even to recover its variable cost.
- (c) Despite the above obstruction which were further intensified by the epidemic Covid-19 in the month of January 2021, unfortunately number of staffs been infected also, with these limitations the Accounts Department of the Company. The Accounts were prepared and provided to the external auditors, the Audits for the Year 2016 and for the Year 2017 had been completed and were presented at Annual General Meetings were held respectively. Initial Accounts for the Year 2016 and for the Year 2017 were sent to the SECP.
- (d) The Audit of the Accounts for the year ended June 30, 2018 was almost complete and Audit for the Year ended June 30, 2019 was in process. The Company is contemplating to hold its AGM by the end of March 2022. After the approval of JCM 49 of 2016 by the Honorable Sindh High Court the Company has determined to put all efforts in completion all Audits and holding its AGM by the June of 2022.

5. In order to provide opportunity of personal representation, hearings in the matter were fixed for February 10, 2022, March 16, 2022; April 8, 2022; April 25, 2022 and May 11, 2022, but no one appeared on the said dates of hearings. Another hearing in this regard was scheduled to be held on June 21, 2022. On the date of hearing, Mr. Fayyaz Karim Malik, Company Secretary, appeared and reiterated stance as was given in the writing. He informed that defaults would be regularized. He also informed that audit of accounts for the year 2018 was at last stage and for the year 2019 was under process. He requested that time till December 2022 be allowed in order to ensure compliance of the given provisions of the Act. The Company Secretary was advised to furnish a power of attorney to attend the aforesaid hearing, however, no reply in this regard was received.

6. In this regard, the Company through another letter dated June 18, 2022, *inter alia*, submitted that:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

- (a) Right after the assignation of Benezir Bhutto, the Company has been a victim of unfortunate event due to fire incident occurred at the Company's grey fabric store, which further deteriorated by the delay in settlement of Insurance Claims. The Export Orders shipment delayed due to unavailability of grey fabric and resultantly the Banks or financial institutions, lenders of the Company, halted the transactions/ clearing the Company's cheques. Later on, the lenders (banks and financial institutions) of the Company filed suits against the Company in the Honorable Sindh High Court for the recovery of the Loans. The above-mentioned obstacles had their snowball effect on all workings of the Company including the accounts department.
- (b) The Company had no option except of defending the suits filed by the bankers or lenders and decided to keep plants and machineries in operation by processing to third parties or rendering printing services to local as indirect exporters. Moreover, the Company within the limited resources managed to prepare and present the financial statements till the year 2017 in the AGM.
- (c) Due to litigation of recovery suits filed by the Company's secured creditors in the Sindh High Court the Company confined its operation to third parties and run its production at 25% of capacity. The Company could not be able even to recover its variable cost. Consequently, the Company has directed its all efforts and capacity towards the working and submission of documents in the High Court of Sindh.
- (d) The Audit of the Accounts for the year ended June 30, 2018 has been almost completed and Audit for the Year ended June 30, 2019 is in process and expects to be completed very soon. The Company is contemplating to hold its AGM by the end of July 2022. After the approval of JCM 49 of 2016 by the honorable Sindh High Court the Company has determined to put all efforts in completion all Audits and holding its AGM by October 2022.

7. Thereafter, hearings in the matter were fixed for January 12, 2023; February 6, 2023 and May 10, 2023; but no one appeared on the said dates of hearings. However, the Company Secretary, through letter dated May 10, 2023 requested to adjourn the hearing fixed in the matter and scheduled to be held on May 10, 2023. Next hearing in the matter was again fixed for May 25, 2023. Due to non-appearance, hearing notices were also sent at the residential addresses of the directors of the Company. On the date of hearing, Mr. Fayyaz Karim Malik, Company Secretary, appeared before me. He, *inter alia*, submitted that the audit of 2019 was under process. He also referred that the scheme of arrangement was being implemented with the banks. He was advised to furnish auditors' certificate for the audit of 2019 and an undertaking to comply and to hold AGM for the year 2019. Moreover, an assurance plan, duly signed by Chief Executive, was requested stating to hold overdue AGMs for the years as stated in the SCN. In this regard, the Company through email dated June 14, 2023 furnished a reply subsequent to the aforesaid hearing, however, the said document attached with the email was not accessible. The Commission through its email dated June 19, 2023 requested the Company Secretary to submit a duly signed reply. The Company, however, did not furnish a duly signed reply along with the undertaking of the Chief Executive to comply with the cited defaults highlighted in the SCN.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

8. I have gone through facts of the case, replies furnished, previous proceedings in the matter and submissions made during the hearings held and it is observed as under:

(i) **Previous proceedings of winding up withdrawn through order dated October 21, 2019:**

The Commission through its order dated October 21, 2019 has withdrawn the proceedings of winding up against the Company under Section 301 and Section 304 of the Act, *inter alia*, for its failure to hold three consecutive overdue AGMs for the years 2011, 2012 and 2013. The proceedings were concluded on the grounds that the aforesaid overdue AGMs were subsequently duly held. Moreover, as stated in the said order, the Company also held AGMs for the years 2014, 2015 and 2016. Nevertheless, after conclusion of the said proceedings, the Company did not take steps to ensure meticulous compliance of the law to rectify the defaults as stated in the SCN.

(ii) **No restriction to comply with the law is placed in terms of JCM 49 of 2016:**

The Company has also shown reliance on JCM 49 of 2016 pursuant to which the Company and its secured creditors mutually agreed to a scheme of arrangement which was filed in 2016 before the Honorable Sindh High Court and was approved through the Court Order dated October 26, 2021. It is to be noted that the Honorable Sindh High Court in its Order dated October 26, 2021, which was issued prior to the issuance of SCN, does not restrict the Company to comply with the given provisions of the Act as alleged in the SCN. I am, therefore, of the view that JCM 49 of 2016 has no bearing in the matter of the instant proceedings initiated through the SCN.

(iii) **Steps were not taken to ensure compliance despite given ample time:**

It is relevant to highlight that subsequent to the initiation of instant proceedings through the SCN, the Company was given ample time in order to furnish evidence of compliance for holding of overdue AGMs and to file respective annual audited accounts with the Registrar. In this regard, it was also assured that overdue AGMs for the years 2018 and 2019 would be held latest by October 2022. However, subsequent to the initiation of instant proceedings, overdue AGMs were not held for the years i.e. 2018, 2019, 2020 and 2021 and respective annual audited accounts were not filed with the Registrar, as per the provisions of clause (c) and (d) of Section 301 of the Act. Therefore, I am of the view that in absence of evidence, necessary steps were not taken in this regard.

(iv) **Applicability of Section 301 of the Act in the instant matter:**

The proceedings through the SCN were initiated on the grounds that the Company did not:

- (a) hold its AGMs for the years ended June 30, 2016; June 30, 2017; June 30, 2018; June 30, 2019; June 30, 2020 and June 30, 2021, hence, is liable to be wound up under clause (c) of Section 301 of the Act. In this regard, the matter of holding of AGM for the year 2016 has already been disposed of through order dated October 21, 2019. Moreover, review of notices of the Company, as placed on the website of Pakistan Stock Exchange, it was transpired that notice of AGM for the year 2017 was also available,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

and the AGM was scheduled to be held on November 15, 2019. However, for the consecutive four years 2018, 2019, 2020 and 2021, as alleged in the SCN, overdue AGMs were not held and evidences in this regard were not submitted. Therefore, the provision of clause (c) of Section 301 of the Act is attracted for the aforesaid defaults.

- (b) file with the Registrar its annual audited financial statements for the years ended June 30, 2016; June 30, 2017; June 30, 2018; June 30, 2019; June 30, 2020 and June 30, 2021 respectively, hence, is liable to be wound up under clause (d) of Section 301 of the Act. In this regard, for the consecutive four years 2018, 2019, 2020 and 2021, as alleged in the SCN, filing of the respective annual audited financial statements with the Registrar were not made and relevant evidences were not submitted during the course of instant proceedings. Therefore, in absence of any evidence of compliance, the provision of clause (d) of Section 301 of the Act is attracted for the cited defaults.

9. I am, therefore, of the view that the grounds on the basis of which winding up proceedings were initiated through the aforesaid SCN; still exist, due to the defaults for the years 2018, 2019, 2020 and 2021 respectively and no evidence is submitted, which could support the case of the listed company in the matter of proceedings under Section 301 and Section 304 of the Act. From the above discussion and after careful consideration of all the facts and circumstances of the case and based on available information, I am of the view of that the Company is liable to be wound up due to cited defaults for the consecutive years 2018, 2019, 2020 and 2021 respectively in terms of clause (c) and (d) of Section 301 of the Act. I, therefore, in exercise of the powers conferred under Section 304 of the Act, hereby, authorize the concerned Registrar, Company Registration Office, Karachi, to present a petition of winding up of the Company before the Honorable Court.

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

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced:

Dated: August 1, 2023

Islamabad