



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 25 of 2016

Taha Spinning Mills Limited
(through its CEO)

Appellant

Versus

Executive Director (Corporate Supervision Department)
SECP

Respondent

Date of hearing:

03/08/16

Present:

For Appellant:

1. Mr. M. Javed Panni (MJ Panni & Associates)
2. Mr. M. Sajid, Director Unity Group

For Respondent:

1. Mr. Abid Hussain, Executive Director (CSD)
2. Mrs. Amina Aziz, Director (CSD)
3. Mr. Aqeel Ahmad Zeeshan, Joint Director (CSD)

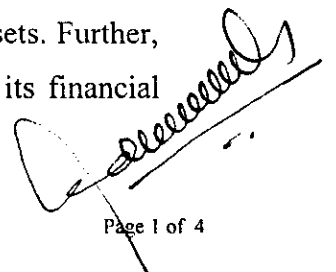
ORDER

1. This order shall dispose of appeal No.25 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 11/05/16 (the Impugned Order) passed by the Respondent under section 309 read with section 305 of Companies Ordinance, 1984 (the Ordinance).
2. Brief facts of the case are that Taha Spinning Mills Limited (the Appellant) has suspended its business for the past eight years and has disposed of its assets. Further, despite the fact of suspension of business, the Appellant has prepared its financial



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statements as going concern and the auditor has given adverse opinion with regard to going concern assumption. In view of above, the Joint Registrar of Companies, Company Registration Office, Karachi (the Joint Registrar) approached the Respondent on 03/02/16 for grant of sanction in terms of clause (b) of section 309 read with clause (c) of section 305 of the Ordinance to present a winding up petition before the court against the Appellant on the ground that it has suspended its business since 2008.

3. The Respondent issued a Show Cause Notice dated 16/03/16 (the SCN) to the Appellant and its Board of Directors under section 309 read with section 305 of the Ordinance. Hearing in the matter was held on 20/04/16 and Mr. Mushtaq Ahmed Vohra (the Representative) along with Mr. Muhammad Sarfraz, the Company Secretary appeared before the Respondent and made written as well as oral submissions. The Representative explained that suspension of Appellant business was caused due to factors beyond its control. He further stated that the Appellant management is endeavoring either to arrange funds for new business plan or to merge the Appellant with other prosperous company. The Representative stated that section 305 (c) of the Ordinance is not applicable in this case. The Respondent being dissatisfied with the response of Appellant passed the Impugned Order whereby the Joint Registrar was authorized to present a petition for winding up against the Appellant.
4. The Appellant being aggrieved from the Impugned Order preferred an appeal before the Appellate Bench (the Bench) inter alia on the grounds that the Impugned Order has been passed without jurisdiction and sub clause (c) of section 305 of the Ordinance is not applicable. Further, the Respondent has not considered revival plan of the Appellant, which has been given after hard efforts of the management.
5. The Respondent has denied and rebutted the grounds of appeal through written reply and stated that the Impugned Order has been passed in accordance with law and Appellant submissions were duly addressed in the Impugned Order. The grounds of appeal are self-explanatory that the Appellant is not able to operate as per the object clause of Memorandum of Association (the MOA). Further, there had not been any

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concrete efforts or business plan for revival of Appellant since suspension of its business.

6. We have heard the parties i.e. Appellant and Respondent and perused the record of the appeal.
7. In paragraph 16 of the appeal it has been stated by the Appellant that a new group of investors have acquired 9.8% shares of Appellant from the market and they are further interested to acquire management shares and entire minority shares through public offer in accordance with the takeover provisions of the Securities Act, 2015 (the Act). The Appellant has also annexed the profile of new investors as annexure "E" and "E-1". The Respondent, while submitting the reply of paragraph 16 of the appeal stated that the Appellant has not provided any agreement regarding investment by the new group of investors and in the absence of any concrete documentary evidence, it could not be considered as a revival plan. Moreover, the intended takeover of the Appellant by an investor who is entirely in a different line of business appears to be an effort to get their own entities listed by bypassing the system. It appears that the Appellant will serve as a vehicle for back door listing, through merger/ takeover and the checks and balances placed on new listing applications will be avoided.
8. We have considered the grounds of appeal and response of the Respondent. The Appellant plea with regard to non-application of section 305 (c) and 309 (b) cannot be acceded because said provisions are clear and applicable in case where business of a company is suspended for more than a year. In present case, Appellant business activities are suspended since 2008 therefore, the Respondent has rightly invoked the aforementioned provisions of the Ordinance. The Appellant other main plea that the Respondent has not taken into account its revival plan is also not confidence inspiring because prior to this appeal, the Appellant has failed to bring on record any material thing in support of its efforts to revive the Company, therefore, the Respondent was left with no other option except to pass the Impugned Order. It would be in the fitness of things to state that this is first time, the Appellant has disclosed the name and profile of new group of investors and their 9.8% shareholding.

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9. The above stated development with regard to new group of investors and intended merger reflects that after pronouncement of the Impugned Order the management of the Appellant has taken the task seriously and now, there is sufficient material on record to assess the intent and efforts of Appellant for its revival. The new group of investors have already acquired 9.8% shares of the Appellant and there is a likelihood that they will invest further for Appellant revival. Further, any addition, deletion or change in the object clause of MOA is an internal matter of the Appellant however, permission to allow such change is governed by the provisions of the Ordinance and without adhering to the requirements of relevant laws, alteration in the object clause of MOA is not allowed. The Respondent objection and apprehension with respect to reverse takeover or reverse merger takeover is not tenable because the acquisition of a public company by a private company is a well-recognized type of merger whereby a private company can bypass the lengthy and complex process of going public. This type of merger is not prohibited in our legal regime therefore, it should be allowed subject to fulfilment of legal requirements.

10. In the light of above mentioned new facts, we find it appropriate that the Respondent should reconsider the case of Appellant because revival of a Company would serve the cause of Securities and Exchange Commission of Pakistan in better way. In view of above discussion, we hereby set aside the Impugned Order and remand the matter to the Respondent with the direction to evaluate the submissions of Appellant in the best interest of existing investors especially the minority shareholders of the Company.

11. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 01 SEP 2016