



Securities and Exchange Commission of Pakistan

SECP

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 32 of 2017

- i. Mr. Humayun Mazhar, Chief Executive Crescent Jute Products Limited
- ii. Mr. Ahmad Rashid Muhammad Hanif
- iii. Mr. Khurram Mazhar Karim
- iv. Mr. Qamar Nawaz Qureshi
- v. Mr. Saif Ullah
- vi. Ms. Shafiq Anwer
- vii. Mr. Syed Raza Abbas Jaffery
- viii. Mrs. Abida Mazhar
- ix. Mrs. Ayesha Khurram Mazhar
- x. Mrs. Mehreen Humayun Mazhar

All Directors of Crescent Jute Products Limited

...Appellant

Versus

Executive Director
(Corporate Supervision Division),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 20/08/2020

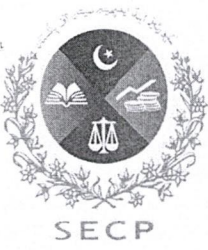
Present:

For the Appellants:

- i. Mr. Syed Ahmad Ashraf, Advocate
- ii. Mr. Rana Waseem, Advocate

For the Respondent:

- i. Mr. Amir Saleem, Joint Director (Adjudication-1)
- ii. Mr. Sardar Sohaib Amin, Assistant Director (Adjudication-1)



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ORDER

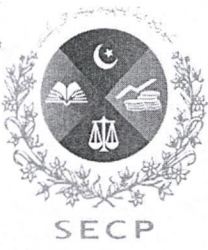
1. This Order is passed in the matter of Appeal No.32 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the order dated 10/03/17 (the Impugned Order) passed by the Executive Director (Corporate Supervision Department) (the Respondent).
2. The brief facts of the case are that review of annual audited financial statements for the year ended 30/06/15 of Crescent Jute Products Limited (the Company) filed with the Securities and Exchange Commission of Pakistan (the Commission) pursuant to the provision of section 233 of the Companies Ordinance, 1984 (the Companies Ordinance) revealed the following:

- (i) Disposal of assets had not been made within one year of the passing of the special resolution, contrary to the requirements of SRO1227/2005 (the SRO) read with section 196(3) of the Companies Ordinance. Year-wise disposal detail is as under:

S. No.	Particulars	Year of Accounts
1.	Plant and machinery and other assets including Vehicle and Furniture & Fixtures	June 30, 2014
2.	Building and other assets including Vehicle and Furniture & Fixtures – Receipt of advance against sale of land Rs 20 million	June 30, 2015

Fresh approval from shareholders had not been obtained for disposal of assets despite lapse of the special resolution passed at the Annual General Meeting (the AGM) held on 31/10/11.

- (ii) Review of account and correspondence received revealed that some of the proceeds had been utilized for repayment of interest free loans from Directors during the years 2014 and 2015 amounting to Rs 51.068 million and Rs. 48.432 million respectively. The Company had omitted to disclose in the notice of the AGM direct interest of Directors with regard to their loans to the Company contrary to the requirements of section 160(1)(b) of the Companies Ordinance. Instead the Company had misstated that “*directors have no direct*



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or indirect interest in the above said special business that would require further disclosure, save their shareholdings in and remuneration by the Company”,

- (iii) As per the board of directors meeting held on 30/09/11, disposal proceeds were to be utilized towards repayment of bank borrowings and surplus amount of Rs 63.6 million would be left before repayment of sponsors’ loan. In the section “*benefits expected to accrue to the shareholders*” of the AGM Notice, the Company stated that the proceeds will be utilized towards repayment of borrowings so that finance cost could be minimized. Furthermore, in the section of “*Future Business Plan*” the Company had clearly stated Rs 60 million will be left over after taking care of all liabilities other than interest free sponsors’ loan. However, contrary to the aforesaid, disposal proceeds of approximately Rs 100 million had been utilized towards repayment of interest free loans from Chief Executive Officer.

3. The Show Cause Notice dated 28/12/16 (the SCN) was issued to the Directors of the Company (the Appellants) under the provisions of section 196 and 160 of the Companies Ordinance. Hearing in the matter was held on 02/02/17 and the authorized representatives appeared on behalf of the Appellants and reiterated the earlier submissions made in the written reply and further submitted that the loan repaid to Directors was provided by them after the approval of sale of assets as a bridge finance to settle bank liabilities until such time proceeds from sale of assets could be realized. The authorized representatives were advised to provide evidence in this regard.
4. The Respondent dissatisfied with the response of the Appellants held that he had reasonable grounds to believe that the Appellants sold the entire undertaking without the consent of the general meeting as the previous resolution lapsed on 30/10/12 and, therefore, contravened the provisions of section 196 of the Companies Ordinance. The Respondent was also concerned with the manner through which the assets were disposed of and acceptance of the amount in installments against the disposal, spreading over a period of two and a half years. The Respondent further held that fresh advertisement for seeking quotations for disposal of assets should have been given to fetch the best price and the best interest of the shareholders had not been kept in mind while structuring this transaction. Furthermore, the Respondent held that the Appellants had failed to provide any evidence during the hearing and in subsequent correspondence reflecting bona fide intent while undertaking the transactions in such an ordinary manner. Furthermore, the Appellants should have been careful while structuring the transaction and should have given special attention for undertaking the sale of assets



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in a transparent manner and safeguarding the shareholder's interest. In light of the facts given, and in exercise of the powers conferred by the aforesaid provisions of the Companies Ordinance, a penalty of Rs 140,000 was imposed in aggregate on the Appellants by the Respondent in terms of section 196 of the Companies Ordinance. The Appellants were directed to deposit the fine in the following manner:

<u>Names of Appellants</u>	<u>Amount in Rs.</u>
1. Mr. Humayun Mazhar, Chief Executive	50,000
2. Mr. Ahmed Rashid Muhammad Hanif, Director	10,000
3. Mr. Khurram Mazhar Karim, Director	10,000
4. Mr. Qamar Nawaz Qureshi, Director	10,000
5. Mr. Saif Ullah, Director	10,000
6. Mr. Shafiq Anwar, Director	10,000
7. Mr. Syed Raza Abbas Jaffery, Director	10,000
8. Mrs. Abida Mazhar, Director	10,000
9. Mrs. Ayesha Khurram Mazhar, Director	10,000
10. Mrs. Mehreen Humayun Mazhar, Director	10,000

5. The Appellant preferred the instant appeal *inter alia* on the following grounds:

- i. At the time of approval, the Company had informed the shareholders that restructuring plans depend on No Objection Certificate (the NOC) from the Bank of Punjab (the BOP) and it will take around three years. On approval from shareholders, the Company advertised the tender for sale of assets in newspapers on 04/11/11 and short listed the buyers. The Court issued NOC on 09/10/13 and the Company entered into Agreement/Memorandum of Understanding (the MOU) for sale of land, machinery and building on 03/10/12, 03/04/12 and 11/09/12 respectively. Furthermore, due to nature and size of transaction the payments were received in installments and title and ownership was transferred on final payments. The disposal entries were made in books of accounts on finalization of transaction and amount received was shown as advance received against sale of assets.
- ii. As per approval of shareholders, the Company had sold assets on the following dates but disposal was to be recorded at the time of final payment.



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Description of Asset	Date of Advance	Date of entry
Sale of land	September 25, 2012	No disposal entry
Sale of machinery	April 3, 2012	June 2014
Sale of building scrap	July 17, 2014	June 2015

The Appellants had implemented the special resolution as their actions demonstrate that they had taken steps for starting the process of disposal after passing of the said resolution. The Respondent has erred in assuming that the word “*implemented*” means to complete and close the transaction of sales. The Law Dictionary defines the word “*implement*” in the following words, “*Implement – carry into effect, carry into execution, carry out, carry through, make active, provide the means, put in force, put in practice, put into effect, set in motion....*”. Therefore, the Appellants implemented the authority of the special resolution, on the day after the passing of the resolution and initiated the process for sale. However, due to professional and commercial reasons, the transaction took some time to complete.

- iii. The SRO issued under section 246(1) of the Companies Ordinance, is *ultra vires* the applicable law. The SRO reads as follows:

“S.R.O. 1227/2005 in exercise of the powers conferred by section 246(1) of the Companies Ordinance, 1984, the Securities and Exchange Commission of Pakistan is pleased to direct that a company listed on a stock exchange in Pakistan and any subsidiary of such company shall, while issuing notice of its general meeting where a special business relating to sale, lease or disposal of the undertaking or sizeable part thereof, is to be transacted under section 196(3) of the said Ordinance, annex a statement, pursuant to section 160(1)(b) of that Ordinance, detailing, as minimum the following information, namely...”

Section 246 of the Companies Ordinance, under which the SRO has been issued, is titled “*Power of Commission to require submission of additional statements of accounts and reports*”. Furthermore, Chapter titled, “*Accounts*”, which forms sections 230 to 247 of the Companies Ordinance, only gives limited power under section 246 of the Companies Ordinance to require submission of additional statement of accounts and reports. The SRO is also contradictory to section 160 of the Companies Ordinance, which deals with “*Provision as to Meetings and Votes*” under chapter “*Meetings and Proceeding*” as well as section 190 of the Companies Ordinance i.e. “*Power of Directors*” under chapter “*Directors*”. It is a well settled principle of law that any secondary legislation has to be restricted and interpreted within the meaning of the governing



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law. The various SROs are issued under section 506 and 506-A of the Companies Ordinance, as the same empower the Federal Government and the Commission to make rules. In the light of established precedents, it is established that the power of making rules and regulation under section 246(1) of the Companies Ordinance is restricted to the “*accounts and reports*” only.

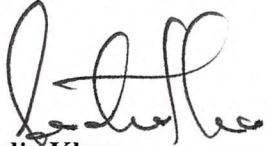
6. The Respondent rebutted the arguments of the Appellant *inter alia* on the following grounds:

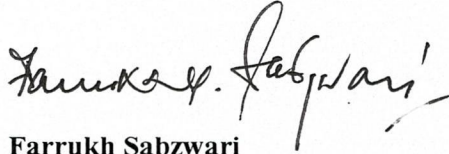
- i. The SCN alleged that the Company *prima facie* contravened the requirements of SRO which was issued in pursuance of Section 196(3) and Section 160(1)(b) of the Companies Ordinance. The Commission issued the SRO in exercise of powers conferred by Section 246(1) of the Companies Ordinance and directed listed companies and subsidiaries of such companies while issuing notice of general meeting where a special business relating to sale, lease or disposal of the undertaking or sizeable part thereof, is to be transacted under Section 196(3)(a) of the Ordinance, annex a statement pursuant to Section 160(1)(b) of the Companies Ordinance detailing information to be provided to members. The SRO further directed that in case any decision to sell assets of Company under authority of a special resolution had already been passed but had not been implemented within one year, such resolution would stand lapsed. In the instant case, the Company sold the whole undertaking without the consent of the general meeting as previous resolution lapsed within one year on 30/10/12 which is a contravention of the Companies Ordinance. Furthermore, the Company has not provided information as per the requirement of SRO in the Statement of Material facts under Section 160 of the Companies Ordinance which is a contravention of section 160 of the Companies Ordinance.
- ii Fresh approval from shareholders under Section 196 of the Companies Ordinance had not been obtained for disposal of land on 17/07/14 despite lapse of the special resolution passed at the AGM held on 31/10/11. Furthermore, fresh approval from shareholders under Section 196 of the Companies Ordinance was also not obtained for disposal of machinery, building scrap and vehicles despite lapse of the special resolution passed at the AGM held on 31/10/11. As per financial statements for the year ended 30/06/16, Rs. 4.46 million was payable to sponsors and Rs. 55 million was payable to the Company. However, it had been noticed with concern that the Company disposed of the entire undertaking without a concrete future business plan and no restructuring plan has been implemented till date.



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7. We have heard the parties i.e. the Appellants and the Respondent. Section 246 of the Companies Ordinance enables the Commission to require additional statements of accounts and reports, and in exercise of powers conferred under section 246(1), the Commission has directed listed companies and their subsidiaries to annex a statement pursuant to section 160(1) of the Companies Ordinance while issuing a notice of general meeting where a special business relating to sale, lease or disposal of undertaking is to be transacted under section 196(3)(a) of the Companies Ordinance. Therefore, we are of the view that the SRO was correctly issued and the argument of the Appellants that the SRO was *ultra vires* the applicable law, is without any substance whatsoever. Furthermore, Clause 3 of the SRO states that, “*In case any decision to sell assets of Company under authority of a special resolution already passed, is not implemented within one year the resolution would stand lapsed*”. In the instant case, the Company had violated section 196 of the Companies Ordinance by failing to get fresh approval for disposal of assets of the Company after the special resolution stood lapsed on 31/10/12 and also failed to provide information as per the requirement of the SRO in the Statement of Material Facts under section 160 of the Companies Ordinance. The Appellants’ argument that special resolution had been implemented as approval had been taken from shareholders for sale of assets but disposal was to take place at a later date after final payment is without any merit. The definition of “*Implement*” in the law dictionary clearly states that the act must be carried into effect or execution and until the full disposal of assets had taken place, the said resolution cannot be said to have been implemented.
8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.


Sadia Khan
Commissioner (SCD-S&ED)


Farrukh Sabzwari
Commissioner (SCD-PRDD)

Announced on: **01 FEB 2021**