



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Say no to corruption

No. CSD/ARN/197/2015 - 697

September 3, 2021

S. No.	Names of Respondents	Address
1.	Mr. Muhammad Akhtar Mirza, chairman	Gulistan Spinning Mills Limited Through Company Secretary, 2 nd Floor, Finaly House, I.I Chundrigar Road, Karachi
2.	Mr. Sohail Maqsood, director	
3.	Mr. Muhammad Ashraf Khan, director	
4.	Mr. Akhtar Aziz, director	
5.	Mr. Muhammad Asif Akram, director	
6.	Mr. Abid Sattar, director	
7.	Mr. Muhammad Arif, director	
8.	Gulistan Spinning Mills Limited	

Subject: Order in the matter of Show Cause Notice dated August 1, 2019 under Clause (m) of Section 301 read with Clause (b) of Section 304 of the Companies Act, 2017 – Gulistan Spinning Mills Limited

Dear All,

Please find enclosed copy of subject mentioned order passed by Mr. Amir M. Khan Afridi, Director/HOD (Adjudication Department-I) for your record and necessary action.

Regards,

Muhammad Anwar Hashmi
Additional Joint Director

Enclosed: Annexed as above



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I *SAY NO TO CORRUPTION*

Adjudication Division

Before

Amir M. Khan Afridi - Director/Head of Department

In the matter of

Gulistan Spinning Mills Limited

Show Cause Notice No. & Date	No. CSD/ARN/197/2015-293-300 dated August 1, 2019
Dates of Hearings:	August 19, 2019; September 12, 2019; September 26, 2019; September 3, 2020; October 2, 2020; January 21, 2021; February 12, 2021; March 15, 2021; March 18, 2021; April 14, 2021; and June 1, 2021.
Hearings attended by:	(i) Mr. Muhammad Hamza Khokhar, Advocate (ii) Mr. Muhammad Ijaz, Company Secretary

ORDER

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

This Order shall dispose of the proceedings initiated through the above stated Show Cause Notice (**the SCN**), issued under Section 304 of the Companies Act 2017 (**the Act**) read with Section 301 thereof, to Gulistan Spinning Mills Limited (**the Company**), and its directors including the Chief Executive Officer of the Company, herein after collectively referred to as the Respondents.

2. Brief facts of the SCN are that the Company is a public limited company incorporated under the Act (the repealed Companies Ordinance, 1984) and shares of the Company are listed on the Pakistan Stock Exchange (PSX). As per available information, principal business of the Company is to manufacture and sale yarn. Annual audited accounts of the Company for the year ended June 30, 2018 transpired that the Company had suspended its business for a whole year. The Additional Registrar, the Company Registration Office, Karachi approached the Commission for grant of sanction in terms of Section 304 of the Act to present a petition before the honorable High Court of Sindh for winding up of the Company on the grounds that the Company had suspended its business for a whole year. Keeping in view the above, proceedings under clause (b) of Section 304 of the Act read with clause (m) of Section 301 thereof were initiated vide the SCN and were advised to appear on August 19, 2019, to show cause as to why petition for winding up of the Company may not be presented by the Registrar of Companies before the honorable Court.

3. In response to the SCN, the Company vide letter dated August 19, 2019, *inter alia*, stated that:

"...due to various disputes, inter alia, including (a) disputes inter se the financial institutions regarding various securities provided by the Company to the financial institutions; (b) restrictions being imposed upon the Company's free access to the securities/assets owned by the Company, which were otherwise being dealt with by the Company in its normal course of business; (c) non-

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provision of true and accurate statement of accounts despite repeated requests; and (d) charging of amounts, neither due nor payable, in shape of penal charges, mark-up on mark-up and additional mark-up etc (the "Disputes"), arose between the Company and the financial institutions it was dealing with. Due to such Disputes our mills are not operational. However, Scheme of Arrangement u/s 279 of the Companies Act 2017 has already been filed jointly by the majority of the Financial Institutions and the Company before the Sindh High Court at Karachi (the "Court") for resolution of Disputes by amicable settlement in terms of the Scheme of Arrangement, subject to sanction of the Scheme by the Court.

In view of the foregoing, it is requested that winding up petition may not be presented. Your cooperation in this regard will be highly appreciated."

4. The Securities and Exchange Commission of Pakistan (the Commission) through letter dated September 6, 2019 sought certified true copy of the aforesaid scheme of arrangement along with the updated status to be furnished within ten days.

5. Thereafter, hearing in the matter was fixed for September 12, 2019. Company Secretary vide letter dated September 11, 2019 requested to reschedule the hearing due to some important meetings with the lenders/ banks. Hearing in the matter was then fixed on September 26, 2019. In response to the Commission's letter dated September 06, 2019; the Company Secretary vide letter dated September 20, 2019 submitted that:

"... we are enclosing herewith the duly certified copy of Scheme of Arrangement under section 279 to 283 and 285(8) of the Companies Act-2017. The company along with its majority of its secured creditors have filed the Scheme of Arrangement before Sindh High Court, Karachi (SHC) vide J.C.M No. 15/2019. The court vide its order dated 21.06.2019 appointed the chairman for holding the meeting of the creditors and shareholders of the Company. The meeting of the shareholders have already been held on August 7, 2019 wherein 99.9996% present and voting passed the resolution in favor of the scheme."

6. On hearing date i.e. September 26, 2019, Mr. Abid Amin appeared as Authorized Representative. He was advised to provide updated status of the scheme. During the hearing proceedings, the Representative submitted that the Company has signed agreements with the banks. Things are being finalized and will soon be concluded. The Court order on the scheme of arrangement will be issued soon. Thereafter, hearing in the matter was fixed for September 3, 2020. The Company Secretary vide letter dated August 28, 2020 sought adjournment and cited reason of heavy moon soon rains and heavy flood in the city. Hearing was fixed for October 2, 2020. The Company Secretary vide letter dated September 30, 2020 requested that due to some important meetings with the creditors the said hearing be rescheduled. Hearings were later fixed for January 21, 2021; February 12, 2021; and March 15, 2021. However, no one appeared on the hearing dates. Hearing in the matter was then fixed for March 18, 2021. On the said date of hearing i.e. March 18, 2021, Mr. Muhammad Hamza Khokhar, legal counsel of the Company and Mr. Muhammad Ijaz, the Company Secretary appeared before the then Adjudication Officer. The Representative was advised to furnish status of the scheme of arrangement. Subsequently, the Company vide letter dated March 19, 2021 submitted the following response;

"This is with reference to our meeting dated 18.3.2021 on the captioned subject wherein we have been directed to provide you the current status of the Scheme of Arrangement.

Please note that the shareholders have already approved the Scheme in the meeting held pursuant to directions of the Court. (Copy of the report submitted to the Sindh High Court by the chairperson of the meeting duly appointed by the court, is attached). The Meeting of the secured creditors shall also be held accordingly pursuant to directions of the Court. After



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approval of the creditors and sanction of the Scheme by the Court, the litigation will be withdrawn by the creditors and the Company in terms of the Scheme as agreed under the Scheme of Arrangement.”

In this regard, as informed that in terms of Chairman’s Report in the matter of JCM 15 of 2019 dated August 16, 2019, a meeting of shareholders of the Company was held on August 7, 2019 in order to approve adopt and agree the scheme of arrangement. Following information is relevant in this regard:

“The following objections were raised by a shareholder Mr. Adam A. Habib bearing CDC Account No. 03277-80320-IIA

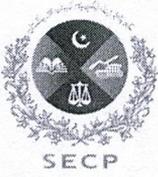
<i>Sr. No.</i>	<i>Objections</i>	<i>Responded by the Company</i>
<i>1</i>	<i>That the Asset Sale Committee comprised five creditors while, directors/ shareholders of the respondent company not included in the said Committee.</i>	<i>The Asset Sale Committee shall oversee the sale of sale assets and the pledged stocks on behalf of the Creditors for their full and final settlement as assets of the company had mortgaged with the creditors.</i>
<i>2</i>	<i>Minority shareholder’s rights are not protected in the Scheme.</i>	<i>Company is not being wound up and it can start trading or such other business activities for the mutual benefit of the Company and its shareholders.</i>

Consequently, after detailed deliberations and discussions, and being fully addressed and satisfied, the following resolution was passed by the majority required under Section 279(2) of the Companies Act, 2017:

“RESOLVED THAT the Scheme of Arrangement for, inter alia, the settlement and repayment of the existing liabilities of Gulistan Spinning Mills Limited towards its secured creditors, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modification/amendments required or conditions imposed by the creditors of the Company or the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Act, 2017.”

7. Next hearing in the matter was fixed for April 14, 2021, however, no one appeared. In order to provide another opportunity of personal representation, hearing in the matter was fixed for June 1, 2021. On the date of hearing, Mr. Muhammad Hamza Khokhar Advocate, the Representative and Mr. Muhammad Ijaz, the Company Secretary appeared before the undersigned. The Representative submitted that:

- (i) the scheme of arrangement under Section 279 of the Act was approved by the shareholders on February 6, 2020 and is subject to approval of creditors. He informed that copy of scheme of arrangement was provided to the Commission vide dated September 20, 2020.
- (ii) the creditors’ meeting for approval of the scheme of arrangement was yet to be held. He cited that due to COVID-19 delay was occurred as Order of the honorable Sindh High Court is required for holding the meeting of creditors as per the applicable requirements of the Act.
- (iii) the assets of the Company to be sold by the committee of five creditor/ banks and liabilities to be settled as per the scheme.



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- (iv) the Company shall exist after settlement of liabilities. He cited that “*a company live is better than a company dead*”.
- (v) even if winding up order is passed, the honorable Court would look the case with other *subjudice* matter of the scheme of arrangement.
- (vi) the Company has plan to engage in trade in textile business after settlement of liabilities as assets would be disposed of as part of the scheme.

8. Relevant provisions of the Act are reproduced as under:

Section 301:

A company may be wound up by the Court- (m) if a listed company suspends its business for a whole year.

Section 304(b):

An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately or by the registrar, or by the Commission or by a person authorized by the Commission in that behalf:

Provided that—

(b) the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition: Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;

9. In terms of notification S.R.O. 1545 (I)/2019 dated December 6, 2019, the power to sanction for presenting winding up petition before the Court under Section 304 of the Act has been delegated to the undersigned as Head of Department (Adjudication Department-I).

10. I have gone through the facts of the case, written reply submitted and arguments made during the hearing by the Representative, and state that:

- (i) as per the available information, the scheme of arrangement was filed under Section 279 to 283 and 285 of the Act jointly by the Company and its creditors in terms of J.C.M 15 of 2019. As per the scheme, the existing financial obligations/ liabilities of the Company towards the Creditors be settled by way of sale of assets of the Company and payment of the proceeds thereof to the creditors as contemplated under this scheme;
- (ii) the scheme of arrangement was approved by the shareholders on February 06, 2020 along with any modification/amendments required or conditions imposed by the creditors of the Company or the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh and as per the available information the Company will engage in trading in textile sector or such other business activities after disposal of assets for the purpose of settlement of liabilities of the creditors; and
- (iii) I have reviewed disclosures given in directors’ report annexed with latest available annual audited financial statements of the Company for the year ended June 30, 2019, wherein sales for the years 2018 and 2019 were disclosed as “*nil*” and the directors’ reported that: “*The year under review has been proved difficult period. The on-going financial impediments have*”



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obstructed the operations of the Company. The root cause for this obstruction had been non-availability of working capital facilities which were blocked by the banks/financial institutions unilaterally, and resultantly the Company could not purchase raw material to run the mills."

11. It is stated that winding-up proceedings initiated by the Commission are independent from the above-mentioned scheme of arrangement filed by the Company along with its creditors and the same is subject to the judicial review. Hence, I am of the view that the grounds on the basis of which winding-up proceedings were initiated, as mentioned in the SCN i.e. suspension of business operations since 2018 still exist and no evidence is submitted, which could support the case for resumption of business activities by the Company. The Respondents have not furnished any concrete revival plan to resume the operations by the Company. It is, therefore, established that the business operations of the Company have remained suspended for more than a year, hence, attracting applicability of Section 301(m) of the Act. I, therefore, in exercise of the powers under 304 of the Act, hereby, authorize the Registrar of Companies, the Company Registration Office, Karachi, to present winding up petition before the august Court, for winding-up of the Company.

12. 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.

(Amir M. Khan Afridi)
Head of Department
Adjudication Department-I

Announced: September 3, 2021
Islamabad