

IN HIGH COURT OF SINDH AT KARACHI

(Company Jurisdiction)

J.C. Misc. No. 42 of 2017

Additional Registrar of Companies,
Securities & Exchange Commission of Pakistan,
Company Registration Office Karachi, 4th floor,
State life Building No.2, Wallace Road,
Off. I.I. Chundrigar Road, Karachi.

.....Petitioner

VERSUS

Haji Mohammed Ismail Mills Limited,
Having Registered Office at: 409, Commerce Center,
Hasrat Mohani Road, Karachi.

.....Respondent

PETITION UNDER SECTIONS 301 R/W 304 OF THE
COMPANIES ACT, 2017 AND RULE 75 OF THE
COMPANIES (COURT) RULES, 1997

The Petitioner above named most respectfully submits as here-under:

1. That, the address of the Petitioner for the service of all notices, processes, etc. is: Additional Registrar of Companies, Securities & Exchange Commission of Pakistan, Company Registration Office Karachi, 4th floor, State life Building No.2, Wallace Road, Off. I.I. Chundrigar Road, Karachi.
2. That the Respondent is a company incorporated on 05-02-1980, under the then Companies Act 1913, under the name and style of "M/S. HAJI MOHAMMED ISMAIL MILLS LIMITED." (Hereinafter referred to as "the Company").

*Copy of Certificate of Incorporation
attached as Annexure A/1.*
3. That the main objects *inter alia* of the Company as per it's Memorandum of Association are "to carry on the business of and establishment of vegetable ghee, plants, straw board mills, paper mills, gas plants and other plants of affiliated nature".

Copies of the Memorandum & Articles of Association at Annexures A/2 and A/3.

4. That the Respondent Company was initially incorporated as a private limited Company on 5-2-1980 but subsequently converted into a Public Limited Company on 15-10-1987.
5. That the Registered Office of the Company as per record maintained by the Petitioner is situated at: 409, Commerce Center, Hasrat Mohani Road, Karachi.

A copy of Latest Form-21 is annexed herewith as Annexure A/4.

6. That as per Form A made up to 31-10-2007 the Authorized Capital of the Company is Rs. 120,000,000/= divided into 120,000,00 shares of Rs.10 each. Whereas, paid up capital as per the said Form A is Rs. 119,750,400/= divided into 11,975,040 shares of Rs.10 each.

A copy of Form-A made up to 31-10-2007 is annexed herewith as Annexure A/5.

7. That the auditors _Naveed, Zafar, Ashfaq, Jaffery & Co., Chartered Accountants, in their report to the Members on the annual audited Financial Statements for the year ended on June 30, 2015 gave an adverse opinion based on their disagreement with the management's use of going concern assumption, the same for the sake of brevity and ease of reference is reproduced hereunder:

"The financial statements of the Company have been prepared on going concern basis, despite of the facts that the Company has closed down its yarn manufacturing operations in October 2007 and production activities remained suspended. The electric power generation and its sale were also suspended in August 2012. The management has disposed of the assets of the Company including land, building, plant & machinery to pay off its major debt. No further business activities have been carried out by the

Company. Further, the Company has not prepared any detailed business plan including profit or cash flow projection for an appropriate period subsequent to the reporting date. The foregoing conditions indicate material uncertainty which cast a significant doubt on the Company's ability to continue as a going concern.

The significance of matters discussed in the preceding paragraph, lead us believe that the going concern assumption used in the preparation of the financial statements of the Company is inappropriate: (continued)".

*Annual Audited Financial Statement
as at 30.6.2015 annexed herewith as
Annexure A/6.*

8. That subsequently, a Show Cause notice dated: 21-01-2016 under Section 309 read with Section 305 of the then Companies Ordinance, 1984 was served on the Company, its Directors, as to why a petition for winding up of the Company should not be presented by the Registrar of the Companies in the competent Court of Law, as all the fixed assets including land, building, plant and machinery etc. have been disposed of by the Company.

Show Cause Notice dated: 21-01-2016 annexed herewith as Annexure A/7.

9. That pursuant to the Show Cause notice the respondents were provided with an opportunity of personal hearing 1-2-2016. Wherein, Mr. Muhammad Sarfraz and Mr. Mushtaq A. Vohra appeared on behalf of the respondents.
10. That during the hearing the aforementioned representatives acknowledged that all the fixed assets of the Company including plant and machinery have been disposed of and the board of directors of the Company do not have any concrete plan for revival of business. However, the representatives requested on behalf of the management that some time may be granted to them to put the affairs of the company in order and to plan a way forward. It was also apprised that the Company is also exploring options regarding buy back of shares from general public and minority shareholders.

11. That subsequently and upon request of the Company the Respondent was allowed a month's time to submit a resolution passed by its board of directors approving a buyback plan for buying back shares from general public/minority shareholders.
12. That the Company vide letter dated 29-2-2016, provided minutes of the meeting held on 27-2-2016, relevant part for ease of reference is reproduced hereunder:

Resolved that buy back of Company's shares is approved subject to SECP allowing three months for arranging funds. Resolved that efforts should be continued for arranging funds for implementation of proposed business plan or merger or reconstruction, rehabilitation or reconstitution with other parties for revival of the Company.

*Respondent's Letter dated:
29-02-2016. Annexure A/8.*

13. That pursuant to the aforementioned Resolution wherein the Company had sought further three months for arranging funds, the SECP vide letter dated: 11-03-2016, informed the Company that based on the approval of its BOD's Resolution regarding buyback of shares, the competent authority have allowed three month's time to the respondents to implement the decision. It was further advised that the Company must update about the buyback process latest by 3-6-2016.

*SECP's Letter dated:
11-3-2016. Annexure A/9.*

14. That after the lapse of three months, an opportunity of personal hearing afforded to the Company to gauge the progress on buyback process. The hearing was fixed on 23-6-2016 and 14-7-2016 but were adjourned on request of the representatives of the Company.

15. That the matter was again fixed for hearing on 17-08-2016. Mr. Nauman Zuberi, Mr. Muhammad Sarfraz and Mr. Muhammad Sajid appeared on behalf of the Company and submitted that the management has decided to revive the Company and are considering various options.
16. That on fresh averments made by the representatives of the Company, it was advised by the SECP that a duly approved and updated revival plan regarding revival of the Company's business may be shared latest by 30-9-2016.
17. That the Respondent vide letter dated 17-8-2016 instead of submitting a detailed plan for the revival of the Company, only provided a sketch regarding prospects of FMCG & Pharmaceutical business.
18. That in Order to assess the credibility of the revival plan put forth by the Respondent and deliberate further a hearing was fixed on 7-11-2016, which was again adjourned on request of the Company's representative. However, the Company submitted its written submissions vide letter dated 10-11-2016. Relevant Para of the written Submission is reproduced hereunder:

The Company has changed its chief executive, who has vast experience of managing the distribution of consumer goods. The Company called an extra ordinary general meeting of the members for changing of business dimension from spinning of yarn to fast moving consumer goods.

The Company filed petition under section 21 of the Ordinance with the additional registrar of the Commission on October 4, 2016 for approval/addition of new business objective clauses in the memorandum of association of the Company according to new business dimension. Approval is still pending with the CRO Karachi. The chief executive has succeeded in his efforts to get the distribution contract with the meat and food chain manufacturing company. The Company has prepared its detailed business plan and

projection and submitted with the letter. The management is also considering the corporate restructuring of Company through prosperous investors to revive the Company. Shareholders of the Company in their extra ordinary general meeting and annual general meeting has approved/appreciated the efforts of the management for revival of the Company.

19. That a follow up hearing was scheduled on 23-11-2016, for evaluating the progress made by the Respondent for Reviving the Company. Mr. M. Sarfraz and Mr. Noman Mustafa appeared on behalf of respondents, reiterated the earlier written submissions, and asked for time to implement revival plan until 30-3-2017 and same was granted.
20. That final hearing in the instant matter was scheduled on 5-4-2017. Mr. M. Sarfraz and Mr. Adeel Arshad appeared on behalf of respondents and submitted that the new revival plan of the Respondent has been dented with delays. As there is long queue of buyers for refrigerated trucks. The representatives' of the Respondent also requested that the Respondent would require further time for implementation. Alternatively, the Company may buy back shares from minority shareholders.
21. That it would be pertinent to mention that despite a lapse of 2 years and receiving concessions from the SECP the management of the Company could not come up with a plan to revive the Company. Furthermore, the Company has also miserably failed to satisfy the SECP regarding any concrete steps or efforts made for revival plan or let alone buyback of shares from minority shareholders.
22. That it is also worthy to point out the Company's Auditors report to the members for the financial year 2016 in which they have observed that the financial statements of the Company have been prepared on going concern basis despite the fact that the Company has closed down its yarn manufacturing operation in October 2007 and production activities have remained suspended. The Company has also suspended its electric power generation since August 2012.

Furthermore, management has disposed off all the instrumental assets of the Company, which include land, building, plant & machinery to pay off its major debts during the year ended 30-6-2015. The Auditors have also observed in their Report that the Company has not prepared any detailed business plan including profit or cash flow projection for an appropriate period subsequent to the reporting date. The Auditors have thus concluded that these conditions indicate material uncertainty, which cast a significant doubt on the Company's ability to continue as going concern.

*Annual Audited Accounts 2016:
6-10-2016. Annexure A/10.*

23. That before filing of this Petition, the Petitioner had approached the Commission, for grant of sanction, in terms of clause (b) of Section 309 read with clause (c) of Section 305 of then Companies Ordinance 1984 to present a Petition before this Honorable Court for winding up of the Company on the grounds that the Company had suspended its business for more than a year.
24. That the past track record of the Company should also be taken in to account, wherein the company has also violated provisions of Sections 204-A. During the review of annual returns on Form-A made up to 26-10-2015, it transpired that Secretary of the Respondent Mr. Mohammad Sarfaraz was also a Secretary of Taha Spinning Mills acting as Secretary for both the listed companies simultaneously. In addition to being, the Secretary Mr. Mohammad Sarfaraz also served as the executive director of the Company. Thus contravening the provisions of sub-section (1) of section 204-A which emphasizes that a whole time secretary be appointed for the listed companies.

*Copy of Form A made up to
26.10.2015 is filed as Annexure
A/11.*

25. That despite elapse of several years since suspension of business of the Company, the management of the Company has not only been unable to buy back shares from minority shareholders through delisting the Company from the stock exchange but has also miserably failed to formulate any viable revival plan.

26. That the after disposing off all fixed assets of the Company by its Management the chances of revival of the Company are bleak.
27. That, business activities of the Company has remained suspended since 2007.
28. That before filing of this petition the petitioner had approached the Commission for grant of Sanction in terms of 309 Read with Section 305 of Companies Ordinance 1984 (Corresponding Sections 304 Read with Section 301 of Companies act 2017).
29. That, in view of the facts so elucidated and explicated elaborately herein above, the Respondent Company is thus justifiably liable to be wound up in terms of clause (m) of section 301 of the Act.

A copy of Sanction order dated 13-04-2017, is annexed herewith as Annexure A/12.

30. That, this Honorable Court has jurisdiction to entertain this Petition as the Registered Office of the Company is situated at Karachi.
31. That the instant Petition has been drafted in accordance with the Companies (Honorable Court) Rules, 1997 and the necessary documents are annexed with the Petition.
32. That in view of the forging circumstances and facts, the Respondent is liable to be wound up by this Honorable Court under the provisions of the Companies Act 2017 on the following grounds:

GROUND S

- A. That the Respondent Company has violated the mandatory provisions of clause (m) of section 301 of the Companies Act 2017 and has failed to discharge its legal obligations regarding the Statutory Provisions so enshrined therein.

- B. That the Company has suspended its business activities since 2007, more than ten years have elapsed since then.
- C. That since the closure of business in 2007, there is no change in the status of the Company. The chances of revival of the Company are remote.
- D. That lack of interest, seriousness and efforts for revival of Company is clearly visible by the acts of the Management of the Respondent Company.
- E. That the Petitioner has obtained sanction from the competent Authority in terms of Section 304 of the Companies Act 2017.
- F. That the Petitioner craves the leave of this Honorable Court to urge further/additional grounds at the time of hearing.

PRAYER

It is therefore, prayed that this Honorable Court in the circumstances and in the interest of the justice may be pleased to:

- i. Order that the above named Respondent Company be wound up under the provisions of the Companies Act, 2017.
- ii. That an Official Liquidator under Section 315 of the Companies Act 2017 may be appointed as the Liquidator of the Company.
- iii. Such other Order as this Honorable High Court deems just and proper in the circumstances of the case.
- iv. Grant costs of the Petition.

Advocate for Petitioner

For & behalf of Petitioner

Karachi Dated: November 2017

VERIFICATION

I, Muhammad Naeem Khan son of Muhamad Ayoub Khan, Muslim, adult, the Additional Registrar of Companies / In charge Company Registration Office, Karachi of Securities and Exchange Commission of Pakistan having office at 4th floor, state life Building No.2, Wallace Road, Off: I. I. Chundrigar Road, Karachi, do hereby state on oath that whatever is stated herein above true and correct to the best of my knowledge, information and is based on the record available with me.

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DEPONENT.

Cell No: 0321-3780223

CNIC: 42301-4668408-9

The Deponent above named is known to me and is identified by me to the Commissioner for taking Affidavits.

ADVOCATE

Stated on oath before me at Karachi on ____ day of December 2017 by the Deponent above named who is identified to me by Mr. Syed Imran Ali Shamsi, Special Public Prosecutor/Law Officer for the Petitioner, who is known to me personally.

For immediate use

IN THE HIGH COURT OF SINDH AT KARACHI

JCM No. 42 of 2017

Additional Registrar of Companies

----- Petitioner

Versus

Haji Mohammad Ismail Mills Limited

----- Respondent

AFFIDAVIT IN SUPPORT OF PETITION

I, Muhammad Naeem Khan son of Muhammad Ayub Khan, Muslim, adult, having office at 4th Floor, State Life Building No.2, Wallace Road, Off: I. I. Chundrigar Road, Karachi, do hereby state on oath as under:-

1. That I am Additional Registrar of Companies, Company Registration Office, Karachi, Securities and Exchange Commission of Pakistan, duly authorized to file the accompanying petition for winding up against Respondent Company and I am fully conversant with the facts of the matter.
2. That the accompanying Petition has been drafted and filed under my instructions, contents whereof are true and correct which may be read as part and parcel of this Affidavit for brevity sake.
3. I say that it is in the best public interest that the Respondent Company be ordered to be wound up by this Hon'ble Court.

Whatever stated above is true and correct to the best of my knowledge and belief.

Deponent
CNIC No.42301-4668408-9
Cell No.0321-3780223