



Securities & Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

BEFORE **RECONSTITUTED APPELLATE BENCH NO. III**

In the matter of

Appeal No. 01 of 2004

Karim Silk Mills Limited
14/E, 2nd Floor, Writers Chambers
Mumtaz Hassan Road
Karachi.....Appellant

Versus

1. Commissioner (Enforcement & Monitoring) SEC
2. Additional Registrar
Company Registration Office
Karachi.....Respondents

Date of Impugned Order December 31, 2003

Date of Hearing May 06, 2004

Present:

Muhammad Farooq, Director for the Appellant

Mubasher Saeed, Joint Director SEC for the Respondent



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ORDER

Through this order we intend to dispose off appeal No. 01 of 2004 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Karim Silk Mills Limited (the “Appellant Company”) against the order dated 31-12-2003 (the ‘Impugned Order’) passed by Commissioner (Enforcement & Monitoring).

1. The facts of the appeal are that the Appellant Company has failed to hold 11 annual general meetings from 1992 onwards. Its business has also been suspended since 1993 and it has failed to comply with various other mandatory legal requirements. The financial condition of the Appellant Company as shown by the last available annual accounts for year 1991 revealed that the accumulated losses of the Appellant Company stood at Rs.111,373,432. Its fixed assets stood at Rs.18,232,558, current assets at Rs.18,489,430, whereas its current liabilities at 138,184,125. It was in light of all these facts that the Additional Registrar concerned approached the Commission for grant of sanction in terms of section 309 of the Companies Ordinance, 1984 (“Ordinance”) for winding up the Appellant Company. A notice dated 11-08-2003 was issued by the Commissioner (Enforcement & Monitoring) to the Appellant Company and its management to show cause as to why the sanction may not be granted to the Registrar. After providing them an opportunity of hearing, the Commissioner (Enforcement & Monitoring) granted the sanction to the Registrar under clause (b) of section 309 of the Ordinance vide the Impugned Order.
2. The Appellant has preferred this appeal before us against the Impugned Order, which was heard on 06-05-2004. Mr. Muhammad Farooq, director of the Appellant appeared before us on the said date on behalf of the Appellant Company. Mr. Farooq contended that the default committed by the Appellant



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Company was not willful and in fact due to circumstances which were beyond its control. He stated that the present management had sold the Appellant Company to a new management controlled by Haji Hashim group in August 1993, which continued to manage the Appellant Company till 1999 when the present management re-acquired it. He stated that the defaults had been committed by that new management. He further stated that the reason for re-acquiring the Appellant Company was the indifferent attitude of that new management and the consequent loss to the Appellant Company and its shareholders. He stated that the Haji Hashim group was only interested in acquiring the assets of the Appellant Company and not running it. He stated that after re-acquiring the Appellant Company, the present management bought the shares of the minority shareholders at a handsome premium when the market value of the said shares was less than Rs.1/- per share. This, he argued proves the honorable intentions of the present management. He stated that the Appellant Company had now held all 12 of its AGMs. He accepted that the company only existed on paper and had no assets whatsoever. He however contended that the Appellant Company had a goodwill and the management should be allowed to sell the company, or in the alternative wind it up voluntarily. He prayed that the Impugned Order may be set aside.

3. Mr. Mubasher Saeed, Joint Director appearing on behalf of Commissioner (Enforcement & Monitoring) contended that Section 305 states that a company may be wound up by the Court, if inter *alia*, default is made in holding any two consecutive annual general meetings, and/or if the company suspends its business for a whole year. In the case at hand, the Company failed to hold 11 consecutive AGMs and has suspended its business for more than 11 years. He argued that even if the AGMs have now been held, the Appellant company had still not started its business. He pleaded that the appeal should be dismissed and the Impugned Order be upheld.



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4. We have heard both the parties in detail and considered their arguments. The Appellant Company has been in constant default as to the mandatory statutory requirements. Its business has been suspended since 1993 and it has not held its AGM or prepared its accounts for the past 11 years making it virtually impossible for the shareholders to know about the affairs of the Company. Mr. Farooq's contention that the default of not holding the AGMs was committed by the new management is not entirely correct as he himself has informed us that the present management had reacquired the Appellant company in 1999, and the AGMs were not held till 2004. In any case the issue here is not about placing the fault. The Appellant company failed to hold its AGMs under both the managements. And the requirement under Section 305 being default in holding any two consecutive annual general meetings, and/or suspension of business for a whole year has been fulfilled. Moreover, Section 305 does not require that the default committed by the company should be willful. Although Mr. Farooq has contended that the management intends to revive the Company, however no plan for such revival has been presented. More importantly, even the management accepts that the Appellant Company exists only on paper, and it also foresees its eventual winding up. In these circumstances, the holding of AGMs now by the Appellant Company cannot be considered as rectifying the dire situation in which the Company stands today. We therefore, find no justification for the Appellant Company to continue existing as a shell company. The order of winding up passed by the Commissioner being reasonable in the situation is upheld. The appeal is dismissed.

(ETRAT H. RIZVI)
Commissioner

(SHAHID GHAFAR)
Commissioner

Announced in Islamabad on May _____, 2004