



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Company:	M/s D.S. Industries Limited
Show Cause Notice No. & Date:	No. CSD/ARN/233/2015-884 dated January 28, 2025
Respondents:	(i) Mr. Ali Pervez Ahmad, CEO/ Director; (ii) Mr. Hassan Ibrahim Ahmad, Director; (iii) Ms. Rukhsana Khalid, Director; (iv) Mr. Haider Ali, Director; (v) Mr. M. Naeem Ilyas, Director; (vi) Mr. Suleman Ahmed, Director; (vii) Ms. Rehana Pervez Ahmed, Director; and (viii) M/s D.S. Industries Limited
Date of Hearing:	(i) March 04, 2025; (ii) March 20, 2025
Case represented by:	(i) Ms. Minahil Khan, Legal Counsel – Cornelius, Lane & Mufti – Advocates & Solicitors; and (ii) Mr. Salman Farooq – Company Secretary (As the Authorized Representatives)
Provision of law involved:	Section 183(3)(a) of the Companies Act, 2017 and S.R.O. 423(I)/2018 read with Section 183(6) and 510 of the Companies Act, 2017
Date of Order:	April 28, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the “**Commission**”) through the Show Cause Notice No. CSD/ARN/233/2015-884 dated January 28, 2025 (“**SCN**”) against M/s D.S. Industries Limited (the “**Company**”) and its Board of Directors, including Chief Executive Officer (“**CEO**”), hereinafter collectively referred to as the “**Respondents**”, issued under clause (a) of sub-section (3) of Section 183 and S.R.O. 423(I)/2018 dated April 03, 2018 (the “**SRO**”) read with Section 183(6) and 510 of the Companies Act, 2017 (the “**Act**”).

2. The provisions of clause (a) of sub-section (3) of Section 183 of the Act restricts the board of directors of a company from selling, leasing or otherwise disposing-of the undertakings or a sizeable part thereof without the consent of general meeting unless the main business of the company comprises of such selling or leasing. Further the provisions of sub-clause (I) of clause 5 of the SRO prescribes the minimum information the company is required to state in the statement of material facts along with the notice of general meeting, pursuant to sub-section (3) of Section 134 of the Act, where the special business relates to member’s approval for sale, lease or disposal of the undertaking or sizeable part thereof that is to be transacted under clause (a) of sub-section (3) of Section 183 of the Act.

3. The penalty for non-compliance of the aforementioned provisions of Section 183 of the Act attracts a penal action under Section 183(6) of the Act read with Section 479 thereof as whoever contravenes or fails to comply with any of the provisions of Section 183 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale. Further whoever contravenes or fails to comply with any

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of the requirements of the SRO is punishable by a penalty of level 3 on the standard scale under sub-section (2) of Section 510 of the Act.

4. Brief facts of the case are that investigation of the Company was carried out under Section 257 of the Act by the Commission and the Investigation Report dated June 28, 2024 revealed that as per annual audited financial statements for the year ended June 30, 2022 (the "Accounts"), the Company disposed-off fixed assets costing Rs. 498.915 million, being 95% of the total fixed assets of Rs. 524.951 million. Further 97.52% of the total assets which were disposed-off i.e. Rs. 486.542 million were sold to a single party i.e. M/s. Ayesha Spinning Mills Limited ("ASML"). The Company was required to obtain prior approval from its shareholders before disposal of the aforesaid assets however, as per available record and reviewed agendas and minutes of the Company's general meetings held in 2021 and 2022 by the Inspection Team, no such approval/ authorization was obtained. Furthermore, it was revealed that the proposal to sell the Company's factory building and land to ASML to pay the overdue loan to M/s Silk Bank and meet working capital needs was presented by the Chief Executive Officer of the Company ("CEO") during the meeting of Board of Directors held on January 14, 2022 and as per the submitted documents, the Company executed the agreement to sell its factory building and land to ASML on June 03, 2022.

5. The CEO, during the hearing before the Inspection Team, acknowledged that formal approval of the shareholders to dispose-of the fixed assets of the Company was not obtained due to time constraints and loan repayment pressure from M/s Silk Bank. He further informed that after the disposal of fixed assets, the matter was discussed in the Annual General Meeting held on November 04, 2022 (the "AGM") and the shareholders consented to approve the said disposal in an ex-post-facto manner.

6. As the Board of Directors of the Company ("BOD") failed to obtain shareholders' approval before disposing-off a substantial part of the Company's fixed assets, the Company, *prima-facie*, contravened with the provision of clause (a) of sub-section (3) of Section 183 of the Act. Further, the Company was unable to provide any evidence to substantiate its claim that details of aforesaid disposal were furnished before the members during the AGM for obtaining approval of members in an ex-post-facto manner. Moreover the notice of AGM and the statement of material facts annexed thereto provided to the Inspection Team also lacked any detail in respect of the prescribed information of the fixed assets disposed-off, which reflects that the Company has, *prima-facie*, failed to follow the requirements of sub-clause (1) of clause 5 of the SRO.

7. Accordingly, SCN was served upon the Respondents, requiring them to show the cause as to why penal action as provided under sub-section (6) of Section 183 read with Sections 479 and 510 of the Act may not be taken against them for the aforementioned contraventions of the law. In response, the Company Secretary ("CS") of the Company vide letter dated February 12, 2025 requested an extension of fourteen (14) days to submit the response to SCN which was duly accepted. Later the Respondents vide letter dated February 28, 2025 furnished the response to SCN, *inter-alia*, stating that:

- (i) *The Company sold its land and building in 2022 on the compulsion to settle the overdue liabilities of M/s Silk Bank Limited and other creditors to protect shareholders' wealth. The Company had fallen behind on payments for the past twelve months and had stopped making monthly installments to M/s Silk Bank Limited and it was expected that the bank might obtain a Court order, which could result in the sale of the said property at a distressed price to recover its loan.*
- (ii) *The land was sold for more than three times its carrying value and the building/ structure (20 years old) was sold at a very reasonable price, considering the significant alterations or improvements required for it to be suitable for its intended use. The sale of these assets was not planned, therefore,*

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shareholders' approval could not be sought which under the circumstances would have been granted, if sought. The proceeds of the sale were only utilized for servicing of debts and liabilities.

- (iii) *The spinning operations were closed in 2019 and it is felt that the property was sold at the right time and at the right price, as since then, more than one-third of textile mills have been closed.*
- (iv) *The sale transaction was duly considered and approved by the shareholders at the AGM held on November 4, 2022 and was also disclosed in the Annual Audited Accounts of the Company for the year ended June 30, 2022, which were unanimously approved by the members. Further the auditors of the Company also did not make any observations or qualifications regarding the said transaction;*
- (v) *Management's actions were aimed at the betterment of the Company and to avoid multiple due to its inability to discharge debt obligations and the procedural irregularity regarding the failure to seek shareholder consent, especially in the absence of any allegations of misappropriation, should not be penalized.*

8. In order to provide an opportunity of being heard to the Respondents, hearing in the matter was first fixed for March 04, 2025, which however was adjourned upon request by the Respondents. Subsequently, in order to meet the ends of justice, another hearing opportunity was provided for March 20, 2025, which was attended by Ms. Minahill Khan-Legal Counsel and Mr. Salman Farooq-Company Secretary on behalf of the Respondents as their **Authorized Representatives**. The Authorized Representatives reiterated the written submissions made earlier in response to SCN and, *inter-alia*, stated that *the situation relating to repayment to M/s Silk Bank demanded emergent action and there was no time for holding of AGM. The Authorized Representative further pointed that the directors took a decision most feasible in the best interest of the shareholders and the Company.* The Authorized Representatives were advised during the hearing to submit shareholding pattern of the Company as on June 30, 2022 and minutes of the AGM held on November 04, 2022 which were subsequently submitted by the Authorized Representative vide letter dated March 20, 2025.

9. I have gone through the relevant provisions of clause (a) of sub-section (3) of Section 183 of the Act, and the requirements prescribed under the SRO, considered the facts of the case & written and verbal submissions of the Respondents. I have also perused Sections 183(6) and 510(2) of the Act, which stipulates penal provisions for contravention of the afore-referred provision of law. I have noted that the Respondents were indisputably obligated to comply with the specified requirements of obtaining consent of the general meeting before selling its land and building to the ASML. The foremost contention put forward by the Respondents is the necessity of the sale, the timing, the favorable price and subsequent shareholder disclosure, but they fail to address the core issue: non-compliance with the procedural requirements of the Act. It is noted that regardless of the circumstances, the sale of any undertaking or sizeable part thereof requires prior approval from the shareholders and the Company's actions, though arguably motivated by a desire to protect the business, cannot override the legal requirements. The argument of urgent requirement to dispose of the asset to repay the debts of the Company cannot be taken as a ground to absolve the Respondents from their obligation to ensure meticulous compliance of applicable laws at all times. In 2017 CLD 1019, it was rightfully held by the Appellate Bench of the Commission that "*...the company being a public limited company has a responsibility to ensure full compliance of the provisions of the Ordinance, therefore, the violation...cannot be excused and the penalty was rightly imposed on the Appellants.*". Furthermore the assertion that there is no overall loss is misleading, as IAS 36 requires **asset-level** evaluation, not portfolio-level aggregation.

10. The arguments of the Respondents that the unplanned sale of assets was executed to protect the shareholders wealth and was made at a very lucrative price do not provide a tenable justification for non-

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compliance with the provisions of the Act as the law is not merely concerned with the need of the transaction or the sale price but also with the procedure and process followed for such transaction. It is observed that the law explicitly require prior approval of shareholders for the sale of any undertaking or sizeable part thereof, regardless of the circumstances. It is noted that objective of the law is to safeguard the interest of the shareholder and to maintain transparency in major transactions and the prescribed requirement of law is not meant to be bypassed in cases where a company is in financial distress as in such cases the Company could have sought approval of the members through a specially convened meeting. Further the argument that the shareholders would have granted approval, if sought, in the circumstances leading to sale is speculative and does not mitigate the breach of legal obligations.

11. The reliance by the Respondents on the appropriateness of timing of sale due to reason that afterward other textile mills in the country were closed is neither relevant in the instant matter nor provides a legal justification for bypassing the mandatory requirement for obtaining shareholder approval. It is important to note that the purpose of shareholders' approval under Section 183(3)(a) of the Act is to ensure that all significant corporate decisions, especially the disposal of undertaking or a sizeable part thereof, are taken with the explicit consent of the ultimate owners of the Company. Further the contentions of the Respondents do not address the legal breach; instead, attempts to justify the breach by focusing business reasons for the sale including the need, timing and price which is irrelevant to the core issue of procedural non-compliance. The intentions of the Company behind disposal of its assets, either good or bad, do not absolve the Respondents from their fiduciary responsibility of adhering to the applicable statutory requirements under the law, providing clear procedures for the sale of undertakings, which must be followed irrespective of the Company's internal circumstances.

12. The arguments of the Respondents and their Authorized Representatives that subsequent approval of members for disposal of the assets to ASML was obtained in the AGM held on November 04, 2022 is not based on facts as the same could not be substantiated from the record, agenda and minutes of Company's general meetings held during the years 2021 and 2022 and the Inspection Team could not find any such approval, therein. Further it is also observed that even the matter, as claimed to be approved by the shareholders in the AGM, the Company was required meet the criteria of proper disclosure of disposed-off assets as prescribed through the SRO (disclosure of minimum information) in the statement of material facts issued along with the notice of AGM. The Company, however, was neither able to provide any such statement, issued for AGM held on November 04, 2022, to the Inspection Team during the Inspection nor could produce the same during the instant proceedings. Furthermore, it is observed from the minutes of AGM held on November 04, 2022, as provided by the Respondents through letter dated March 20, 2025, that no such approval was obtained from/ accorded by the members during the said meeting.

13. The contention that said sale of assets was disclosed in the Accounts and subsequent AGM does not hold plausibility as adoption of Accounts by the shareholders in the AGM cannot be considered a substitute for the legally required pre-sale approval of the undertaking or sizeable part thereof and accordingly does not rectify the non-compliance of law. Further the fact that the auditors of the Company did not raise objections does not absolve the Respondents of their legal obligations. In 2016 CLD 2318, the Appellate Bench observed that "*... We are of the view that the company being a public listed company has a responsibility to ensure full compliance of the provisions of the provisions of the Ordinance, therefore, the violations cannot be excused and the penalty was rightly imposed on the Appellants. In view of the foregoing, we see no reason to interfere with the Impugned Order.*"

14. It is also observed that *it is a settled law that where a thing is required to be done in a particular manner, it must be done in that manner or not at all. It is not up to State functionaries to choose which rule to follow and which to ignore. Such unstructured discretion would breed arbitrariness in decision making processes*

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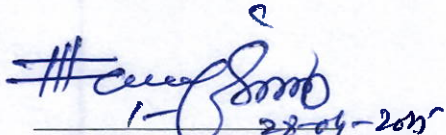
which is contrary to the principles of good governance. Reliance in this regard is placed on Tehsil Nazim TMA, Okara v. Abbas Ali and 2 others (2010 SCMR 1437) Raja Humayun Sarfraz Khan and others v. Noor Muhammad (2007 SCMR 307) Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759) and M. Yousuf Adil Saleem & Co. Chartered Accountants through Partner and 5 others v. Muhammad Saleem and another (2012 CLC 415)." (emphasis provided)

15. After careful consideration of all the facts of the case in light of the relevant provisions of the law, and the written and verbal submissions made by the Respondents, I am of the considered view that the Respondents have contravened the provisions of clause (a) of sub-section (3) of Section 183 of the Act and requirements of the SRO as notified under Section 510 of the Act and such contravention attracts penal action as provided under Sections 183(6) and 510(2) of the Act. I, therefore, in exercise of the powers conferred upon me under sub-section (6) of Section 183 and sub-section (2) of Section 510 read with Section 479 of the Act in terms of S.R.O. 1545(I)/2019 dated December 06, 2019, hereby conclude the proceedings by imposing an aggregate penalty of Rs. **Rs. 200,000/- (Rupees Two Hundred Thousand only)** on the Respondents in the following manner:

<i>Sr. #</i>	<i>Names</i>	<i>Penalty (Rs.)</i>
1.	Mr. Ali Pervez Ahmad, CEO/ Director	20,000/-
2.	Mr. Hassan Ibrahim Ahmad, Director	20,000/-
3.	Ms. Rukhsana Khalid, Director	20,000/-
4.	Mr. Haider Ali, Director	20,000/-
5.	Mr. M. Naeem Ilyas, Director	20,000/-
6.	Mr. Suleman Ahmed, Director	20,000/-
7.	Ms. Rehana Pervez Ahmed, Director	20,000/-
8.	D.S. Industries Limited	60,000/-
	Total	200,000/-

Further the Respondents are advised to ensure meticulous compliance with the applicable legal and regulatory framework in future.

16. The Respondents are, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue pursuant to provision of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.


 1-28-04-2025
Sohail Qadri
 Director/ HOD
 Adjudication Department-I

Announced:
 April 28, 2025
 Islamabad.

