



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

ORDER	
Name of Company:	The Crescent Textile Mills Limited
Show Cause Notice No. & Date:	No. CSD/ARN/505/2017-658 dated November 29, 2024
Respondents:	(i) Mr. Ahmed Shafi, Chief Executive Officer; (ii) Mr. Khalid Bashir, Director; (iii) Mr. Muhammad Anwar, Director; (iv) Mr. Imran Maqbool, Director; (v) Mr. Amin Anjum Saleem, Director; (vi) Mrs. Nazia Maqbool, Director
Date(s) of Hearing(s):	December 27, 2024; January 06, 2025;
Case represented by:	(i) Mr. Rashid Ibrahim; and (ii) Mr. Tariq Aleem
Provision of law involved:	Section 183 of the Companies Act, 2017 read with sub-section (6) of Section 183 and Section 479 thereof

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/505/2017-658 dated November 29, 2024 (the “SCN”) against the Directors of The Crescent Textile Mills Limited (the “Company”) hereinafter collectively referred to as the “Respondents”, issued under clause (c) of sub-section (2) of Section 183 of the Companies Act, 2017 (the “Act”) read with sub-section (6) of Section 183 and Section 479 thereof.

2. The brief facts of the case are that the Commission had received information from one of the directors of the Company (“Complainant Director”), which alleged that the sponsor’s loan of Rs. 252.9 million appearing in the financial statements of the Company for the year ended June 30, 2024 (the “Accounts”) was not placed before the Board of Directors (“BoD”) for its approval and the said borrowings were made without meeting the requirements of clause (c) of sub-section (2) of Section 183 of the Act.

3. In order to probe the matter, the Commission vide email dated October 23, 2024 sought clarification from the Company regarding approval of aforesaid loan by the BoD. In response, the Company through email dated October 31, 2024 stated that:

*“You will appreciate that sponsors’ loan of Rupees 252,981,808 to CTML are interest free, unsecured and repayable at discretion of CTML, hence are classified as “equity” (capital contribution) in the financial statements. These sponsors’ loans are not “financial liability”/ “borrowings” of CTML, hence do not fall under section 183 of the Companies Act, 2017. The concerned minutes were pending for approval of board due to few changes from Mr. Aurangzeb Shafi, director and we will provide you extract of sponsor loan discussion when minutes were approved by board.”*

4. A reminder was issued to the Company to share the minutes of the meeting wherein sponsor’s loan was approved. In response, the Company vide email dated November 13, 2024 informed that the minutes are under consideration of the Board and may be revised on approval, however the draft extract of minutes, as shared by the Company, is as follows:

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"Mr. Aurangzeb Shafi said that, : I asked specifically who provided loans as the financial accounts did not mention the parties involved. The notes of the account only made cursory comment that out of total 252 million loan, 120 million was provided by the director and spouse. Upon question further, I asked the management to list each and every individual and the amount loaned for the unsanctioned sponsor's loan."

One board member informed the board that board approval and disclosure of name of sponsors is not required because its part equity not loan. He further added that for the information of the board, name and amount of each sponsor loan should be read out in the meeting.

The board was briefed that loan was obtained during financial year 2024 and name and amount of each sponsor loan was read out by CFO in the meeting one by one as requested by one member.

The board ratified/ approved the accounting treatment made by the management regarding sponsor loan."

5. The aforesaid response of the Company was not found cogent as the Company apparently has received a loan without the approval of its BoD and the said, *prima-facie*, constitutes a contravention of clause (c) of sub-section (2) of Section 183 of the Act which attracts penal action as provided under sub-section (6) of Section 183 thereof. For the case of understanding, the same are reproduced as under:

**"183. Power of board.** — (2) The board shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passes at their meetings, namely—

(c) to borrow moneys otherwise than on debentures;

(6) Any contravention or default in complying with requirement of this section shall be an offence liable to a penalty of level 2 on the standard scale and shall be individually or severally liable for losses or damages arising out of such action."

6. Having being not satisfied with the aforesaid response, the SCN was issued to the Respondents to show the cause in writing as to why a penal action may not be taken against them for non-compliance of the requirements of Section 183 of the Act. In response to the SCN, the Company Secretary, vide letter dated December 12, 2024, *inter-alia*, made the following written submissions:

- (i) It is surprising that SCN has not been addressed to the seventh director, Mr. Aurangzeb Shafi and, therefore, liable to be withdrawn in light of judgement 870/2010 by the Hon'ble Supreme Court of Pakistan whereby it was held that SECP cannot exonerate any director at the time of issuance of show cause notice;
- (ii) The Complainant director is an executive and a shareholder in Crescent Bhuman Limited ("CBL"). The Company has disputes with CBL and the Company is facing cash flow/ liquidity issues due to a long outstanding interest free amount of around Rs. 3 billion receivable from CBL. The Complainant director is working against the interest of the Company to extend benefits to CBL.
- (iii) The amount paid by sponsors has been recognized as sponsor's loan at the close of FY 2024 and the said loan is interest free, unsecured and are payable at the discretion of the Company. These loans are capital contributions by sponsors and not liability/ borrowing of the Company, therefore, have been classified in accordance with Accounting Technical Release 32 ("TR 32") "Accounting Directors' Loans" issued by the Institute of Chartered Accountants of Pakistan ("ICAP") which requires recording

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- of such loans as equity.
- (iv) The Company has received capital contribution (equity) from the sponsors which does not fall under the purview of Section 183(2)(c) of the Act. However realizing the technical difference of interpretation between directors, BoD in its meeting held on September 20, 2024 has ratified/ approved receipt of said sponsor's loan by the Company. Section 183(2)(c) does not specifically require prior approval of the board.
  - (v) Sponsors acted bona-fide and in the best interest of the Company and its shareholders, therefore, lenient view is requested.

7. In order to provide opportunity of personal representation, hearing in the matter was fixed for December 27, 2024 which was adjourned on the request of Mr. Rashid Ibrahim, representing the Respondents, vide letter dated December 24, 2024. Another hearing in the matter was fixed for January 06, 2025 wherein Mr. Rashid Ibrahim and Mr. Tariq Aleem appeared as Authorized Representatives ("ARs") and reiterated the response to SCN dated December 12, 2024 and informed that the Complainant Director dissented the decision of BoD taken in its meeting held on September 30, 2024, approving sponsor loan.

8. I have examined the facts of the case in light of applicable provisions of law and have given due consideration to the arguments made by the ARs during the hearing. I am of the considered view that the Respondents were required to comply with the requirements of aforesaid provisions of law. At this juncture it is observed that:

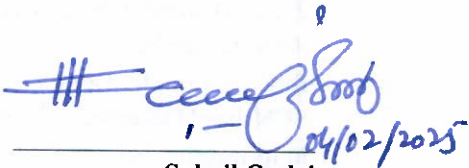
- (i) The assertion that the SCN should be withdrawn because it was not addressed to Complainant Director, is not plausible. The referred decision of the Honorable Supreme Court of Pakistan is not relevant in the instant matter as it requires to show cause the whole board on its non-compliance of applicable legal framework as a collective body. However in the instant case, the Complainant Director acted as an aggrieved reporting party and his decision to raise the issue with the Commission was a responsible act for protecting his own rights as the member of the BoD, to protect the fundamental principles of corporate governance, transparency, accountability and compliance with law. Accordingly the act of the Complainant Director needs to be recognized and protected, rather than undermined, in legal proceedings. Moreover, the facts provided by the Complainant Director are comprehensive and filed in writing thereby demanding no further contribution by him in the proceedings in the instant matter and the same were also not contested.
- (ii) The disputes of the Company with CBL and the claim that the Complainant Director is working against the interests of the Company to benefit CBL is not relevant with the actual issue at hand i.e. non-approval of sponsor's loan by BoD which is a requirement of the law. The Respondents cannot absolve themselves from their fiduciary responsibility to follow due process in accordance with the law even if there exists disputes between the companies or potential conflicts of interest of the Complainant Director.
- (iii) The argument that the amount received by the Company has been classified as a sponsor's loan and, therefore, not a liability or borrowing, is legally not based on facts. The TR 32 only provides the accounting treatment/ disclosure requirements for such director's loan which do not pass the test of liability and requires them to be recorded as equity at face value. However such disclosure does not change the nature of the transaction/ loan. In the instant matter the loan provided to the Company by the sponsor's does qualify for disclosing the same by stating sponsor's loan under equity in the financial statement of the Company but does not change its nature of a "loan" to the Company by the sponsors.

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#Crescent Mills  
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The said loan though disclosed as equity in the Accounts will remain a loan and will be considered while determining the entitlements (dividend, bonus or right shares) of the shareholders.

- (iv) It is observed from the minutes of the meeting of BoD held on September 30, 2024 that BoD has ratified the non-compliance of clause (c) of sub-section (2) of Section 183 of the Act by subsequently according approval of the sponsor's loan.

9. The aforesaid contravention with the requirements of clause (c) of sub-section (2) of Section 183 of the Act at relevant point in time has been established beyond doubt which attracts penal action in terms of sub-section (6) of Section 183 of the Act. However the same was ratified by BoD in its meeting held on September 30, 2024. I, therefore, in exercise of the powers conferred upon me under sub-section (6) of Section 183 of the Act read with SRO 1545(I)/2019 dated December 06, 2019, hereby **Warn** the Respondents and advise them ensure meticulous and timely compliance with the applicable legal and regulatory framework in future.

  
1-04/02/2025  
**Sohail Qadri**  
Director/ HOD  
Adjudication Department-I

**Announced:**  
February 04, 2025  
Islamabad.