



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Suhail Jute Mills Limited

Dates of Hearing

January 19, 2021

Order-Redacted Version

Order dated February 16, 2021 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Suhail Jute Mills Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated November 23, 2020
2. Name of Company	Suhail Jute Mills Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. Suhail Jute Mills Limited
4. Nature of Offence	Violation of under section 183 and section 479 of the Companies Act, 2017
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have gone through the facts of the case, record of the Company, given requirements of the Act, and submissions made by the Authorized Representative and reply furnished in this regard. I, have analyzed the matter in the following manner:</p> <p>(i) The requirements of section 183(2)(c) of the Act are clear and explicit. The objective of the aforesaid provisions is to borrow moneys for the purpose of the Company with the approval of board of directors. The law gives complete authority to the directors of the Company to borrow the moneys and does not impose any restriction of taking approval even from the shareholders or any regulatory authority. Therefore, it is the responsibility of the board of directors to utilize this authority with utmost care and decisions should be taken diligently. However, in the instant case, I have observed that as per audited accounts huge amounts of funds or moneys were borrowed from director of the Company and such transactions pertain to financial years from 2014 to 2018 and a total net amount of Rs. 192,657,842 was outstanding as on June 30, 2018, however, the aforesaid funds were borrowed without resolution of board</p>

	<p>of directors of the Company. Hence, violation of section 183(2)(c) of the Act is attracted.</p> <p>(ii) In terms of note 13.3 to the Accounts 2018 of the Company, following disclosure was made: "13.3- loan from director-unsecured: This represents interest free unsecured borrowing from the director, ***, of the Company, payable at the convenience of the Company". The aforesaid disclosure quite evidently reveals that moneys were borrowed from director of the Company. In view of given disclosures made by the Company, stance of the Respondents that moneys borrowed from the director amounting to Rs. 192,657,842 does not fall in the definition of borrowing as given in section 183 of the Act, is not tenable. I, am of the view that the moneys or funds which are owed by the Company are borrowings, irrespective of terms of repayment for which compliance is required from the board of directors of the Company.</p> <p>(iii) Relevant note 2 to the Accounts for the year ended June 30, 2016 of the Company discloses following details about the scheme of arrangement with the associated company namely ***:</p> <p>"Management is of the view that the Honorable Lahore High Court's order dated April 14, 2016, approving and sanctioning the Scheme of Arrangement involving the merger of the company with its associated company *** has eliminated the negative financial elements that had cast material uncertainties on the Company's ability to continue as a going concern. The said Order was passed on the basis of Scheme of Arrangement forming part of a petition (number CO 2 of 2013 filed in accordance with law."</p> <p>As per available information, the scheme of arrangement was sanctioned by the order of the honorable Lahore High Court vide dated April 14, 2016 and as informed by the Respondents, an amount of Rs. 64,400,670 of loan from director pertains to the aforesaid scheme of arrangement. However, for the balance amount of Rs. 128,257,172 which was borrowed from the director by the Company itself, I, am of the view that the Respondents failed to comply the given mandatory requirements of the Act and, in absence of resolution passed by the directors, the need for borrowing such moneys is also questionable.</p> <p>(iv) The Respondents are of the view that (i) the disclosures given in financial statements were approved by the directors (ii) the financial statements were approved by the shareholders (iii) subsequent compliance in this regard was made by the directors. Moreover, the Respondents are also of the view that amount of the funding was reviewed and authorized by the board on a quarterly basis and by the shareholders and board on an annual basis, provide post facto authorization and hence spirit of law was duly complied. However, I, consider that aforesaid are not sufficient as the resolution of board of</p>
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	<p>directors in their duly held meeting is the legal requirement for borrowing moneys for the purpose of the Company. Approval of accounts on quarterly basis is separate legal requirement in terms of section 183 of the Act and the Respondents' reliance is not tenable as the law envisages that resolution of directors be passed which is subject to proper discussion, disclosure of interest relating to such transaction and only directors who are not interested to pass the resolution for the purpose of borrowing moneys from the directors and the requirement of the law is on pre-facto basis. I, am not convinced that spirit of law was observed by the Respondents as law requires to demonstrate the compliance hence observance of spirit does not suffice the matter and any subsequent compliance in this regard does not exonerate the Respondents to not to take action against them for the aforesaid violation which persisted over given period of time for the amounts borrowed on need basis by the Company. The Respondents, hence, failed to demonstrate compliance with the requirements of section 183(2)(c) of the Act for the amounts borrowed.</p> <p>2. Considering the circumstances of the case, I, am of the view that as per the audited accounts moneys were borrowed from director of the Company and which are not subject to any scheme of arrangement and compliance was not made with the requirements of clause (c) of sub-section (2) of section 183 of the Act. I, therefore, in term of sub section (6) of section 183 of the Act, hereby, impose a fine of Rs. 210,000/- (Rupees two hundred and ten thousand) on the Respondents</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.</p> <p>Penalty order dated February 16, 2021 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs. 210,000 only (Rupees two hundred and ten thousand) was imposed on all the respondents.
7. Current Status of Order	No Appeal has been filed by the respondents.