



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before Ali Azeem Ikram – Executive Director/Head of Department

In the matter of

Ravi Textile Mills Limited

Number and date of notice: CSD/ARN/115/2015-274-275 dated August 15, 2017

Date of hearings: October 16, 2017, November 16, 2017, February 14, 2018, November 22, 2018, December 19, 2018, September 30, 2019, January 07, 2020, January 22, 2020, January 29, 2020, September 17, 2020

Present: Mr. Rashid Sadiq (CEO, RS Corporate Advisory (Pvt.) Limited)

ORDER

Under Clause (b) of Section 304 read with Clause (m) of Section 301 of the Companies Act 2017

This Order shall dispose of proceedings initiated in the matter of Show Cause Notice (“SCN”) dated August 15, 2017, under clause (b) of Section 304 read with clause (m) of Section 301 of the Companies Act 2017 (“the Act”), issued to Ravi Textile Mills Limited (“the Company”) and board of directors of the Company (collectively called “Respondents”).

2. The facts leading to this case, briefly stated, are that the Company Registration Office (“CRO”) Multan, approached the Commission for grant of sanction in terms of clause (b) of Section 304 read with clause (m) of Section 301 of the Act (clause (b) of Section 309 read with clause (c) of Section 305 of the repealed Companies Ordinance, 1984) to present a petition before the Honorable High Court for winding up of the Company on the grounds that the Company has suspended its business since August, 2015.

3. In this regard, SCN dated August 15, 2017 was served on the Company under clause (b) of Section 304 read with clause (m) of Section 301 of the Act indicating the aforesaid grounds to present a petition for winding up of the Company. The Company vide their letter dated August 25, 2017 requested time to respond to SCN which was acceded vide letter dated August 30, 2017. Mr. Rashid Sadiq, being authorized representative of the Respondents, responded to SCN vide letter dated September 11, 2017 providing submission summarized as below:

A. Jurisdictional Issues:

- i. As per Section 304 (b) of the Act, the Registrar of Companies is competent to file a petition for winding up to the Court with the previous sanction of the Commission to the presentation of the



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petition. No such sanction, in turn, is to be given by the Commission to the Registrar until the company has been afforded an opportunity of making a representation and of being heard. The SCN did indicate that CRO, Multan has approached the Commission for grant of sanction for winding up of the Company before the Honorable High Court. However in the instant case, it is pertinent to mention that the Registrar has not even required any clarification from the Company regarding suspension of its business which is a necessary requirement before due process and procedure before approaching the Commission for filing of petition for winding up of a company. It appears that the Registrar has not followed the due process and procedure and the Company was not provided a copy of application/ request of the Registrar, CRO, Multan filed with the Commission which is the only document on which reliance is being placed by the Commission in this SCN. The Commission is requested to provide application / request of Registrar.

B. Suspension of Operations of the Company:

- i. As explained in Directors' report to shareholders for year ended June 30, 2016, the majority shareholders have executed an agreement with the acquirer under the Securities Act, 2015 for the acquisition of majority shareholding and control of the Company however, the acquirer failed to acquire the shares from the majority shareholders resulting in litigation for the specific performance of Share Purchase Agreement dated January 13, 2015 ("SPA") by the seller. The Honorable Civil Judge-III, Multan has cancelled the SPA and therefore the Company was still under the control of its previous management which are trying its best to revive the operations, This material information was duly disseminated to the stock exchange, SMD and Enforcement Division of SECP vide letter dated June 07, 2017. In June 2017 the management received the order which gave clarity regarding pending acquisition of majority shareholding. The directors/sponsors have been providing funding from their own resources for operations of the Company. Further there is no default in repayment to creditors including financial institutions. It is further submitted that the Company has suspended its operations and not in business as mandated under the MOA of the Company.
- ii. The entire spinning industry has sustained large losses due to shortage of electricity and other reasons and a large number of textile units had been closed. The Company I one of such units which closed operations of its mills for the time being to be revived on availability of abundant supply of electricity and other favorable market opportunities. The reason that the Company has not been able to restart the operations is because of the direct economic and law and order situation in the country and only recently due to positive development in country, the Company has been considering formulating a viable revival plan in hope that there would be abundant supply of gas/ electricity and textile sector shall have a change to operate at its full capacity.
- iii. Company has closed down spinning operations of its mills and not suspended its business within the meaning of Section 304 (b) of the Act. During the year ended June 30, 2016 the Company has low operations and sales, is meeting its statutory obligations, kept



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production assets in good conditions and reduced number of employees. The Company is earning income from other sources as disclosed in financial statements for period ended March 31, 2017. In these circumstances above, it cannot be said that the Company has suspended its business. All these acts, directly or indirectly, are related, or incidental to, the business of the Company and which acts are also included in the objects of the Company.

C. Suspension of business-Judicial interpretation:

- i. The word suspend has not been defined in Companies Act, 2017 and reference is made of case law under Section 305 and Section 309 of the Companies Ordinance, 1984. Following case laws referred:
 - Habib Bank Ltd. V Golden Plastic Pvt. Ltd, 1991 MLD 124, Re: Alliance Motors Pvt. Ltd. 1997 MLD 1966 and Joint Registrar of Companies vs. Sh. Fazal Rehman and Sons Ltd. 2008 CLD 465.'
 - Chitty J.'s definition of "suspend its business" in Re: The Tomlin Patent Horse Shoe Company Ltd. (1986) 55 L.T.R. 314 is quoted. It was stated that the learned judge also said in Tomlin case that the phrase "suspends its business" did not mean the same thing as "business has been suspended".
- ii. The fact that the Company is actively considering various options for purpose of revival and / or to explore new business opportunities for the benefit of its shareholders amply demonstrates that the business has neither been completely set at naught nor has there being a complete cessation of business and nor do these activities signify an intention on the part of the company to abandon its business so as to render the Company liable for being wound up in terms of Section 304 (b) of the Act.

D. Suspension of business for a whole year by itself does not entitle the petitioner to get the company wound up as a matter of right.

- i. In spite of business of a company being suspended, a petitioner is not entitled to get the company wound up as a matter of right and the same will be at the discretion of the Court, depending on the peculiar facts and circumstances of the case at hand Reference is made to excerpts from Re: Alliance Motors (Pvt.) Ltd, 1997 MLD 1966. Further, cases laws Murlidhar Roy vs. Bengal Steamship Company, 59 Ind Cas 542, Paramjit Lal Badhwar vs Prem Spinning and Weaving Mills, 1986 60 CompCas 420 All is referred.
- ii. The petitioner is not entitled to get the company wound up as a matter of right and the same will be at the discretion of the Court. Accordingly, there should be an application of mind by the honorable Registrar, and all the relevant facts and circumstances must be taken into consideration, before seeking sanction of the Commission, Therefore, the sanction requested by Registrar should be rejected.



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E. No intention to suspend business

Company has no intention to suspend its business under its MOA. Therefore, there is no reason for winding up of the Company. Reliance is placed on the case laws mentioned as Habib Bank Ltd. V Golden Plastic Pvt Ltd., 1991 MLD 124, Malabar Iron and Steel Works vs. the Registrar of Companies, AIR 1965 Ker 35, East India Wires Limited v. Mohan Lal Ghosh 2004 118 Cmp Case Cal.

F. Revival of companies to be encouraged

- i. Commission has justified issuance of SCN by referring to the Company having suspended its operations since August 2015. Even for sake of argument if it is assumed that business of the Company is suspended, the majority stakeholders of the Company have intention to carry on the company business as mandated in the MOA. Furthermore, the alleged suspension of operations hitherto has been satisfactorily accounted for which includes factors like adverse economic climate and policies of the government, law and order situation and no electricity and power. Excerpts mentioned from case RE: Alliance Motors.
- ii. Winding up is tantamount to a death sentence given to a juristic person being a corporate entity and such death should only be given in the rarest of case and should be resisted if there is slightest hope of revival (East India Wires Limited v. Mohan Lal Ghosh, 2004 118 Comp Case 322 Cal). In view of the above, it is clear that the Company is carrying out its business activities and has reasonable prospects of revival of its business operations.

G. Revival plan of Company

Without prejudice to above, the Company is exploring various options for revival by reorganizing its business and diverting its existing resources for financially viable activities. In terms of Section 26 of the Act, the Company can undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities. The said provision also provides if the principal line of business is changed, the company shall report the same to the registrar within 30 days from the date of change. The management expect to take a decision after due deliberation which will add value to the shareholders of the Company.

Based on above it was requested that the SCN be withdrawn without grant of sanction to Registrar, CRO Multan.

4. The Company was provided opportunity of personal hearings on October 16, 2017 which was adjourned on request of Respondent and rescheduled on November 16, 2017 however no one appeared on the aforesaid date. Subsequent opportunity of hearing was provided on February 14, 2018. Mr. Rashid Sadiq appeared on date of hearing and reiterated his submission regarding cancellation of SPA. Further, it was submitted that business plan regarding the revival of the Company shall be sent. Based on aforesaid six months' time was given finalize the proposed plan of revival. Subsequently another opportunity of hearing



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was provided on November 22, 2018 however no one appeared on the aforesaid date. Mr. Rashid Sadiq vide email dated December 17, 2018 stated the following:

- a) The shareholders of the company in their meeting held on March 02, 2018 has resolved to dispose of the assets of the Company and utilization of the proceeds thereof partially to repay the liabilities and to utilize the remaining proceeds to start an alternate business plan which was also approved by the shareholders.
- b) SECP in tis order dated March 11, 2018 under Section 474 of the Companies Act, 2017 has directed the Company to dispose of the assets through tender in newspaper having nationwide circulation and status of implementation of business plan including all the relevant details of the disposal and utilization of the proceeds thereof shall be attached to every interim and annual financial statements of the Company till implementation of the said plan.
- c) Accordingly, the tender for disposal of the assets were published on May 10, 2018 in the daily nation-wide newspaper in English and Urdu language (copies provided).
- d) A committee of directors comprising of independent and nonexecutive directors was constituted to oversee the implementation of business plan and ensure transparency of the entire process.
- e) The Company has not received any offers pursuant to the tender published in newspapers. The tender was repeated in same newspapers on December 09, 2018 (copies provided). The management is hoping to receive offers for disposal of assets and any decision in this regard will be duly disseminated to PSX.

5. An opportunity of hearing was given on December 19, 2018 however no one appeared on the said date. Subsequently another opportunity of hearing was provided on September 30, 2019. Mr. Rashid Sadiq appeared on date of hearing reiterating the submission as provided vide email dated December 17, 2018. It was also stated that total assets were sold as per shareholders' approval and the Company is in process of agreement for acquiring ginning factory. It was also submitted that written submission regarding status of business implementation plan and breakup of utilization of proceeds shall be provided. Hearing opportunities were provided on January 07 and January 22, 2020 however the authorized representative sought adjournment and therefore hearing was fixed on January 29, 2020. Mr. Rashid Sadiq appeared on date of hearing and reiterated the earlier submissions informing that the Company has entered into lease agreement and that the Company will be operational by September 20, 2020. Therefore, time was given till March 2020 to provide status of the Company. Hearing in the matter was fixed on September 17, 2020. Mr. Rashid Sadiq appeared on the stated date of hearing and submitted that delegation of power in terms of SRO 1545(I)/2019 dated December 06, 2019 is contrary to the requirements of Section 304 (b) of the Act. Earlier written submissions in matter of Registrar not approaching company prior to seeking sanction for winding up, meaning of closure of business whilst suspension of business was reiterated. It was inquired if the MOA enabled the alternate business and it was affirmed that para 6 of MOA is relevant enabling clause. The evidence of agreement, copy of financial statements for period September 30, 2020 were to be provided by the Respondents. Moreover, the Authorised Representative provided a copy of lease agreement vide email

Rashid Sadiq



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dated September 17, 2020 and affirmed that the unaudited financial statements for period ended September 30, 2020 showing operations of the Company will be provided by October 30, 2020. Further, the authorized representative provided a letter from Company dated September 16, 2020 reiterating the submissions provided earlier. Subsequently, the Company vide his letter dated November 02, 2020 provided the financial statements for the period ended September 30, 2020 and stated that the Company has recorded a turnover of Rs 23.478 million and a profit after tax of Rs. 613,100 during the aforesaid quarter. The ginning operations as envisaged under the alternate business plan unanimously approved by the shareholders, has commenced and the attached financial statements for period ended September 30, 2020 reflect the result of these operations. In view of the submissions, the Company is carrying on business activities and the SCN for grant of sanction to Registrar, CRO Multan may be withdrawn.

6. It is necessary to advert to the following relevant provisions of the Ordinance:

Section 301 of the Act states:

"301. Circumstances in which a company may be wound up by Court. — A company may be wound up by the Court —

(m) if a listed company suspends its business for a whole year.

Section 304 of the Act states:

"304. Provisions as to applications for winding up. — An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately or by the registrar, or by the Commission or by a person authorised by the Commission in that behalf:

(b) the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition: Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;"

7. In terms of the Commission's notification SRO 1545 (I)/2019 dated December 06, 2019, the powers to adjudicate cases under section 304 of the Act have been delegated to the undersigned as Executive Director/Head of Department (Adjudication Department -I).

8. I have gone through the fact of the case, submission made during hearing proceedings and written responses. I have observed that the commercial operations of the Company ceased since August 2015; however, the Company in its financial statements for the period ended September 30, 2020 has disclosed that a ginning and pressing unit and a cotton pressing factory has been obtained on lease. Moreover, the Company has reported sales of Rs. 23.478 million by resumption of commercial operations in the aforementioned financial statements. In view of the submissions above, I have observed that the basic



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premise of the show cause notice i.e. suspension of business of the Company has been addressed by the Company. I therefore find no reason to continue the winding up proceedings initiated against the Company, and thereby drop the same with no further action.

Ali Azeem Ikram
Executive Director
Adjudication Department -I

Announced: January 21, 2021,
Islamabad