



Page 1 of 4



Securities & Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

ORDER

This order will dispose off appeal No. 32 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Schon Textile Mills Limited (the “Appellant”) against the order dated 02-07-2003 (the ‘Impugned Order’) passed by Commissioner (Enforcement & Monitoring).

1. The facts leading to this appeal are that the Appellant has failed to hold its annual general meetings from 1997 onwards. Its business has also been suspended since 1997 and it has not filed any statutory returns with the CRO ever since. In addition, it is not maintaining its registered office at the notified address. The financial condition of the Appellant as on June 1996 showed that the accumulated losses of the Appellant stood at Rs.26.54 million. Its fixed assets stood at Rs.66.106 million, current assets at Rs.193.707 million, whereas its long term liabilities stood at Rs.23.901 million and its current liabilities at 140.829 million. Various fines have been imposed on the Company for violation of different provisions of law, which fines have not been deposited by it. It was in light of all these facts that the concerned Registrar approached the Commission for grant of sanction in terms of clause (b) of section 309 of the Companies Ordinance, 1984 for winding up the Appellant. A notice dated 13-06-2003 was issued by the Commissioner (Enforcement & Monitoring) to the Appellant and its management to show cause as to why the sanction may not be granted to the Registrar. An opportunity of hearing was given however, no one appeared on the said date of hearing before the Commissioner (Enforcement & Monitoring) and consequently a sanction was granted to the Registrar by the Commissioner vide the Impugned Order.



Securities & Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

2. Aggrieved by the Impugned Order, the Appellant has preferred this appeal. Mr. Maqsood Raza FCA appeared before us on 21-04-2004 on behalf of the Appellant. Mr. Raza contended that statutory defaults can be regularized and were not as serious a reason to invite such harsh penalty as compulsory winding up of the Company. He stated that the real reason for the downfall of the Company was political victimization as the management was forced to flee the country in 1997, which resulted in closing of all business. He stated that prior to 1997, the Company was an award winning textile exporter and held all its AGM within the time prescribed. He stated that the management was negotiating their return with the Government to restart the business and are trying to hold the AGM. However, as the records of the Company had been seized by FIA, it was not possible to draw up the accounts. He contended that the non-compliance of the statutory provisions was due to reasons beyond the control of the management. He further argued under section 309 of the Ordinance, the Commission was required to hold an investigation into the affairs of the Company before it could grant the sanction to the Registrar, which investigation was never held. He contended that the sanction under section 309 (c) could only be granted if any unlawful business had been conducted by the Company. He prayed that the Impugned Order be set aside.
3. Mr. Mubasher Saeed, Joint Director appearing on behalf of Commissioner (Enforcement & Monitoring) that sub-clause (b) of 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 6 consecutive AGMs and has suspended its business for more than 6 years. He argued that for the purposes of granting the sanction under clause (b) of section 309 of the Ordinance, the Commissioner was not required to prove that the



Securities & Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

failure to hold AGM by the Company's management was willful and deliberate. He stated that the sanction had been granted under clause (b) of section 309 of the Ordinance and not under clause (c) and there was no requirement under clause (b) to hold any investigation or that some illegal business must have been conducted by the Company. He pleaded that the appeal should be dismissed and the Impugned Order be upheld.

4. We have heard both the parties in detail and considered their arguments. The Appellant has been in constant default as to the mandatory statutory requirements. It has not held its AGM or prepared its accounts for the past 7 years making it virtually impossible for the shareholders to know about the affairs of the Company. We also note that although the counsel has contended that the management intends to revive the Company, however no plan for such revival has been presented so far by them even after filing of the petition for winding up against the Company. The counsel's argument that the Commission is required to hold an investigation, or that there must have been some illegality as to the business of the Company before granting a sanction is misconceived. These requirements are laid down in clause (c) of section 309, whereas the sanction which has been granted by the Commissioner in the Impugned Order is under clause (b) of section 309. In light of these circumstances, we find no reason to interfere with the order passed by the Commissioner. The appeal is dismissed.

(ETRAT H. RIZVI)

Commissioner (Specialized Companies)

(SHAHID GHAFAR)

Commissioner (Securities Market)

Announced in Islamabad on April ____, 2004