



Corporate Supervision Department  
Company Law Division

Before Amina Aziz – Director (CSD)

*In the matter of*

**Apollo Textile Mills Limited**

Number and date of SCN: EMD/233/86/2002-996-1002 dated February 24, 2015  
Hearings held on: October 19, 2015 and November 2, 2015  
Present: Mr. Adnan Abdullah, Mr. Raheel, Authorized Representatives

**ORDER**

**UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including chief executive (together referred to as “respondents”) of **Apollo Textile Mills Limited** (the “Company”).

1	Mr. Ikram Zahur, CEO	5	Mr. Riaz Hussain
2	Mr. Abdul Rehman Zahur	6	Mr. Shabbir Ahmed
3	Mr. Muhammad Tahir Khan	7	Mr. Muhammad Liaquat
4	Mr. Muhammad Farooq		

These proceedings against the respondents were initiated through show cause notice (the “SCN”) dated February 24, 2015 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company was required to hold its annual general meeting (“AGM”) for the year ended June 30, 2014 on or before October 31, 2014, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the chief executive and directors of the Company failed to convene its AGM within the prescribed time. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time. In response to the SCN, the Company failed to submit any reply.

3. The case was fixed for hearing on October 19, 2015 through Commission’s letter dated October 12, 2015 and Mr. Adnan Abdullah, Advocate, appeared on behalf of the respondents as their representative before Mr. Ali Azeem Ikram, Executive Director (CSD), who was the



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authorized officer at that time. Mr. Adnan Abdullah stated that in 2013 the entire database and system of the Company got corrupted and after a lot of efforts, recovery of was in process. It was expected to be completed by November, 2015. Due to these circumstances, the Accounts for the year ended June 30, 2014 could not be completed and AGM also could not be held. He further stated that the AGM is expected to be held by December 2015 or January 2016 after preparation of Accounts of the Company. The authorized officer advised the representative to provide auditor's certificate to substantiate the statements made during hearing and allowed another opportunity of hearing to the respondents. Another hearing in the matter was fixed on November 2, 2015 before the undersigned and Mr. Adnan Abdullah again represented the respondents. He mainly reiterated his earlier verbal submissions and produced the following documents under cover of the letter dated October 29, 2016:

- (i) Letter dated October 28, 2015 from the Company wherein it was stated by the Company that the reason for delay in finalization of the Accounts for 2014 was due to the fact that the accounting data got corrupted and the IT staff of the Company failed to recover the data. The Company subsequently hired the services of Sidat Hyder Morshed Associates Private Limited ("SHM") for recovery that recovered that data which was expected to be finalized latest by November, 2015.
- (ii) Letter dated October 27, 2015 from SHM addressed to the Company wherein it was stated that the database recovery activity, which was carried out on August 12, 2015. After performance of the specified activities, the restoration was successful and database was accessible which was demonstrated to the Company's representative.

Based on their submissions, the respondents requested for a lenient view.

4. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance.

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

*"Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every*



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*calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:"*

Sub-section (4) of section 158, inter alia, provides as under:

*"If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--*

*(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;"*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four month from the close of its financial year provided that the Commission may extend the time for thirty days based on application by the company. Holding of AGM is a very important statutory event and provides an opportunity to the shareholders, including those in minority, to participate in discussion and voting on agenda items of the AGM. This includes consideration and approval of a company's financial statements, which not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. The timeline of the provision of financial statements to the shareholders is of utmost importance. The investment decisions of the shareholders are based on the information presented to them in financial statements. Delay in presentation of the said information could lead to either uninformed decision or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance for holding the AGMs. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and



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prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts.

6. The respondents have stated the corruption of accounting data as the reason for delay in finalization of Accounts for 2014, which caused delay in holding the AGM for the year ended June 30, 2014. It has been stated that the data got corrupted in 2013-14 and could not be retrieved by the Company's staff and, therefore, the Company hired professional services of SHM for restoration of data. A copy of letter dated October 27, 2015 from SHM has been provided as evidence. Having reviewed the aforesaid letter it transpires that the database recovery activity, which was carried out on August 12, 2015 by the SHM was successful and after performance of the specified activities, the database was restored. However, I have not been able to understand the reasons behind the inordinate delay in engaging the professional services for restoration of data which was imperative to prepare financial statements of the Company. As per latest available information in the file, after inordinate delays, the Company has held its AGM's for the year ended June 30, 2014 and June 30, 2015 on January 22, 2016 after seeking direction of the Commission under section 170 of the Ordinance.

7. In view of the foregoing, I have concluded that the provisions of the law have been violated and the respondents are liable to fine in terms of section 158 of the Ordinance. However, taking cognizance of the fact that though with a delay, the AGMs of the Company have been finally held, instead of imposing maximum fine on all the respondents, in exercise of powers under sub-section (4) of section 158 of the Ordinance, I hereby impose a fine of Rs50,000/- (Rupees fifty thousand only) on the chief executive of the Company.

The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of failure to deposit of the fine, proceedings for recovery of the fines as arrears of land



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revenue will be initiated. It may also be noted that the aforesaid fine is imposed on the respondent in his personal capacity; therefore, he is required to pay the said amount from personal resources.

Aamina Aziz  
Director (CSD)

**Announced:**  
February 24, 2016  
Islamabad