



[Islamabad]

Before Abid Hussain, Director (Enforcement)

Order in the matter of

Babri Cotton Mills Limited

(Under Section 160 read with Section 476 of the Companies Ordinance, 1984)

Number and date of notice: No.EMD/233/92/2002-1305
November 25 ,2008

Date of Hearing: December 19, 2008

Present: Mr. Zaheer Mir
Company Secretary

Order

This order shall dispose off the proceedings initiated against the Chief Executive, Directors and Company Secretary of Babri Cotton Mills Limited (hereinafter referred to as “the Company”) under the provisions of Section 160 read with Section 476 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. Facts leading to this case are that the Enforcement Department of the Securities and Exchange Commission of Pakistan (hereinafter referred to as “the Commission”) while examining the notice of 38th Annual General Meeting (hereinafter referred to as “the AGM”) of the Company observed that the following ‘Special Businesses’ is proposed for approval of the shareholders:

“4. Resolved that the consent of the shareholders is hereby granted to the board of directors of the company to purchase/book/pay advance for the acquisition of 1/10th portion of office space at Islamabad Stock Exchange (Guarantee) Limited tower under construction at Blue Area Islamabad.....”

3. The statement of material facts provided with the notice in terms of Section 160(1)(b) of the Ordinance explained the following facts about the business:

“In order to run the business affairs of the company at a centralized place in Islamabad, board of directors of the company has decided to purchase 1/10th portion of one floor of the Islamabad Stock Exchange (Guarantee) Limited tower with the financial assistance of the other Bibojee Group companies (associated companies).”



This will allow establishment of central offices of all the group companies at one place which will reduce expenses incurred on traveling of the directors/executives of the company to look after the affairs of the Company. This step will be in line with the austerity measures taken by the company and will reduce the overhead expenses of the Company. Further, it will also facilitate smooth flow of financial and administrative operations of the company. This decision has also been taken by the board of directors of the company keeping in view its location in the fast deteriorating law and order situation of the North West Frontier Province.

1/10th portion of the office space purchased by the company in any of the floors of The Islamabad Stock Exchange (Guarantee) Limited tower will be registered in the name of the company which is expected to prove to be a highly profitable investment in future.

Majority of directors of the company are also shareholders/members and directors of associated companies/undertaking who are also acquiring offices in the same floor of the Islamabad Stock Exchange (Guarantee) Limited. Apart from this fact the directors are interested in this business only to the extent of their shareholding in the company.

4. The Commission vide letter dated October 17, 2008 followed by a subsequent reminder dated October 24, 2008, required the Company to provide the following important information necessary for the shareholders to understand the transaction:

- i Amount of funds provided by the Bibojee Group Companies clearly indicating the name of each company against amount advanced / to be advanced by them;
- ii Agreement made in this respect with Bibojee group companies in order to know the terms and condition;
- iii Total price of the subject premises in Pak Rupees to be acquired along with the amount of advance (if any);
- iv Agreement with Islamabad Stock Exchange (Guarantee) Limited Towers; and
- v Certified copy of board resolution regarding the acquisition of premises under discussion.

5. The Company conducted the AGM on October 31, 2008 without providing the aforementioned material information to the Commission or to the shareholders. Consequently, a show cause notice (hereinafter referred to as "the SCN") dated November 25, 2008 was issued to the Chief Executive, Directors and the Company Secretary of the Company to show cause as to why fine may not be imposed on them as provided under Section 160(8)(a) of the Ordinance for not providing the complete and material information to the shareholders necessary to understand the special business to be approved.

6. The response of the SCN was received vide letter dated December 02, 2008 stating as follows:



- i. The proportionate share of each of the Company in office space at the ISE tower has yet to be finalized. Further, no arrangements have been finalized by the company to advance or get an advance from any of the Bibojee Group Company for this purpose
Keeping in view requirements of the company 1/10th portion of one floor is considered adequate for the company (the portion of office space to be acquired by the company has been disclosed in statement under Section 160 of the Ordinance.
 - ii. The company has not yet entered into any financing arrangement for acquiring the said premises.
 - iii. The total price of said office space exclusive of incidental expenses will be approximately Rs.14.10 million. No advance has been paid by the Company for the purpose of this acquisition to date.
 - iv. Agreement for acquisition of the said office space has not yet been entered with the Islamabad Stock Exchange (Guarantee) Limited by the Company. No payment has yet been made by the company for this purpose to date. However, Bibojee Services (Private) Limited (an associated company and shareholder holding more than 10% of voting interest in the company) (herein after referred to as "the BSL") has entered into a sub-lease agreement with Islamabad Stock Exchange (Guarantee) Limited (herein after referred to as "the ISE") for sub-lease of office space on 13th floor of the ISE tower having gross measurement of 9,349 sq. feet for total consideration of Rs. 140.235 million.
 - v. The sub-lease agreement entered between BSL (Lessee) and ISE provides that:
"Subject to the permission of the lessor, the lessee may nominate any person(s) in his place or assign this agreement in favor of any other person specified in clause-7 of Annexure-II, in which case, upon payment of specified fee fixed from time to time by the lessor, the lessor will execute, in physical presence of the lessee, a fresh agreement with the nominee or assignee in the office of the secretary of the lessor."
 - vi. We do intend to proceed with sub-leasing of 1/10th portion of the office space at 13th floor of ISE tower after completion of all the necessary legal requirements and after Commission is completely satisfied about this transaction/has withdrawn its show cause notice on this subject.
 - vii. We will also like to submit that we had complied with requirements of Section 160(1) (b) of the Ordinance and had disclosed material facts regarding the special business stated above. However, if your office is of the opinion that some of the facts were not appropriately presented before the shareholders we are ready to convene another meeting of the shareholders for re-consideration of this issue (before execution of any part of this transaction) in light of the revised statement under Section 160(1)(b) of the Ordinance.
7. In order to provide an opportunity of personal representation a hearing in the matter was fixed on December 19, 2008. Mr. Zaheer Mir, Company Secretary ("the authorized representative") appeared on the date of hearing also representing the Chief Executive and Directors of the Company. His main contentions at the time of hearing were the same as were given earlier through written reply.



He accepted the default under the provisions of Section 160(1)(b) of the Ordinance and requested to condone the default. Moreover he assured that the Company will not proceed with the transaction and the matter will be placed before the shareholders once all the information will be available with the Company which will be provided to the shareholders through statement of material facts under the aforesaid provisions of the Ordinance.

8. I have analyzed the written submissions made by the Company, gone through the arguments put forth during the hearing and record available with the Commission and have noticed as follows:

- i. The BSL has entered into a sub-lease agreement with ISE for sub-lease of office space on 13th floor of the ISE tower having gross measurement of 9,349 sq. feet for total consideration of Rs. 140.235 million;
- ii. Majority of the directors of BSL are also on the board of the Company;
- iii. The Company was indecisive about the material facts mentioned below:
 - a) The proportionate share of each of the Company in office space at the ISE tower.
 - b) No arrangements were finalized by the company to advance or get an advance from any of the Bibojee Group Company for this purpose.
 - c) Financing arrangement for acquiring the said premises had not been entered.
 - d) Agreement for acquisition of the said office space had not been executed with ISE by the Company.
 - e) The company had not transacted any further business in connection to the purchase/book/pay advance for the acquisition of 1/10th portion of office space at ISE tower under construction, consequent to the resolution passed in the AGM held on October 31, 2008.

9. Before proceeding further, it will be pertinent to have a look into the provisions of law. The provision of law contained in Section 160(1)(b) of the Ordinance states that where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting, a statement setting out all material facts concerning such business.

10. The aforesaid provisions of law are quite clear and unambiguous and are mandatory to be followed by every Company.

11. The objective of the annexation of statement of material facts is that all members of the Company must know as to what was the exact nature of the business to be transacted at the meeting so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively. Material facts are those facts, which have a bearing on the business to be transacted and which could influence the shareholders while making a decision of approving the proposed business. In the case in hand, there



was a proposal to authorize CEO to give effect to the resolution and to do or cause to be done all acts, deeds and things that may be necessary or required for the purchase/ booking/payment of advance for the acquisition Company's office comprising of 1/10th portion of office space at ISE tower under construction at Blue Area Islamabad acquired with the financial assistance of the other Bibojee Group companies (associated companies). However, material facts as mentioned in the fourth (4th) para of this Order, for the aforesaid transaction were not provided to the shareholders for their consideration and approval. These facts would have enabled the shareholders to take a decision to attend the meeting and to vote upon this business. The notice of meeting, therefore, did not comply with the provisions of Section 160 of the Ordinance.

12. In view of the foregoing, the default is established and admitted however, keeping in view the fact that the Company has not proceeded with the transaction and on assurance of the authorized representative that the Company will convene a fresh meeting, for the aforesaid business, in which all the material information shall be provided to the shareholders, I am forced to take a lenient view and instead of penalizing the Chief Executive, Directors and Company Secretary of the Company, condone the violation with a stern warning. The directors are hereby further advised to be extra cautious in observing the provisions of the law in future.

Abid Hussain
Director (Enforcement)

Announced:
December 31, 2008
Islamabad.