

Before Ali Azeem Ikram, Director (Enforcement)

In the matter of
M/s. Usman Textile Mills Limited
(Under Sub-section (4) of Section 158 of the Companies Ordinance, 1984)

| | |
|--------------------------------------|---|
| Number and date of show cause notice | EMD/Enf-II/289/2003 dated January 27, 2006 |
| Date of hearing | March 02, 2006 |
| Present | Mr. Shahab Sarki, Advocate, Nuruddin Sarki & Co. |
| Date of Order | May 26, 2006 |

Order

This Order shall dispose of the proceedings initiated against M/s. Usman Textile Mills Limited (hereinafter referred to as the “Company”) and its directors for default made in complying with the provisions of Sub-section (1) of Section 158 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance and consequent upon change of financial year from September to June for “Cotton Textiles” by the Central Board of Revenue vide its SRO No. 684 (1)/2004 dated August 10, 2004 and clarification issued by this Commission vide Circular No. 29 dated November 05, 2004, the Company was required to prepare its annual accounts for nine months ending on June 30, 2005 and to hold its Annual General Meeting (the “AGM”) for the year ended June 30, 2005 on or before October 31, 2005. The Company failed to hold the said AGM within the prescribed time period. The failure of the Company to comply with the aforesaid mandatory requirement necessitated action against the Company and its directors in terms of Sub-section (4) of Section 158 of the Ordinance. Consequently, a show cause cum hearing notice dated January 27, 2006 was served on the directors of the Company including its Chief Executive calling upon them to show cause as to why penalties



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet1-2-

as provided under Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed on them. The matter was also fixed for hearing on February 13, 2006. In response to the show cause/hearing notice, M/s. Nuruddin Sarki & Co. requested on behalf of the directors of the Company vide their letter dated February 07, 2006 for adjournment of hearing till February 15, 2006. Hearing was, therefore, adjourned and re-fixed for February 15, 2006 on which date Mr. Shahab Sarki, Advocate, appeared and again requested to adjourn the hearing as a last chance.

3. In order to provide last opportunity, the matter was finally fixed for March 02, 2006. On the aforesaid date, Mr. Shahab Sarki, advocate, Nuruddin Sarki & Co., appeared before me on behalf of the directors of the Company to argue the case. During the course of hearing, while admitting the default, Mr. Shahab contended that the AGM could not be held due to non-finalization of annual accounts because during the period under review, the management of the Company remained involved in litigations with the banks regarding settlement of their loans. He informed that the banks filed suit against the Company with the NAB which also resulted in the arrest of Mr. Noor Qadir, the Chief Executive of the Company. He added that during this period the operations of the Company remained suspended and there was no staff to prepare the accounts. He added that the Company has now cleared all the liabilities to the banks and for the last two months, the Chief Executive has been allowed to operate other associated Companies. Mr. Shahab contended that the default in the holding of AGM was neither willful nor deliberate, hence be condoned.

4. I have given due consideration to the arguments advanced by the director's Counsel, however, none of them justify the default. The Company was not functioning, is not a cogent excuse for non holding of AGM and non circulation of annual accounts to the shareholders. I am, therefore, of the view that in the circumstances, described above, the directors of the Company could have refrained from committing the aforesaid default. It was all the more easy for the directors when the Company was not functioning, to have prepared the annual accounts and held the AGM within prescribed time. It was, however, confirmed that the Company did not change its financial year from September to June; therefore, it was required to hold its AGM for the year 2005 by January 31, 2006 in which it has failed till date.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet1-2-

Accordingly, the directors of the Company are responsible for timely holding of AGM. Since the representative of the directors has failed to furnish any cogent reason to justify the default, therefore, the same is considered willful and deliberate.

5. However, before proceeding to decide this case, I consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions of the law. The protection of the investors/shareholders is one of the primary objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. If the interest of the investors is protected, they will save and invest more. Their interest is protected by transmission of timely, adequate and meaningful information to them. It is the annual and interim accounts, which provide information to the investors about the affairs of the companies. Annual General Meeting is a forum where the investors can freely speak, discuss and vote on important matters concerning approval of accounts, appointment of auditors, election of directors etc. It has unfortunately been noted that the directors of M/s. Usman Textile Mills Limited are not observing these compulsory requirements of law.

6. In view of the foregoing, the default in the holding of AGM for the year 2005 stands established. However, instead of imposing the maximum fine of Rs.50,000 on the Company and every director and a further fine of Rs.2,000 per day for the continuous default, I impose the following penalties on the Chief Executive and the directors of the Company under Sub-section (4) of Section 158 of the Ordinance:-

| S. No. | Name | Penalty in Rs. |
|--------|--|----------------|
| 1 | Mr. Noor A. Qadir, Chief Executive | 20,000 |
| 2 | Mr. Mohammad Zaheeruddin, Director | 20,000 |
| 3 | Mr. Haroon Shekha, Director | 20,000 |
| 4 | Mr. Muhammad Yusufuddin, Director | 20,000 |
| 5 | Syed Tajuddin, Director | 20,000 |
| 6 | Mr. Khalid Abid Mukhtar Shah, Director | 20,000 |
| 7 | Mr. Taj Muhammad Samo, Director | 20,000 |
| | Total | 140,000 |



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet1-2-

7. The Chief Executive and directors of M/s. Usman Textile Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.140,000/- (Rupees one hundred and forty thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of Commission for information and record, failing which proceedings under the Land Revenue Act,1967 will be initiated which may result in the attachment and sale of movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

Ali Azeem Ikram
Director (Enforcement)