



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

[Islamabad]

Before Ashfaq Ahmed Khan, Director (Enforcement)

Order

In the matter of

M/S. Hamid Textile Mills Limited

(Under Sub-section (4) of Section 158 of the Companies Ordinance, 1984.)

Number and date of notice	EMD/Enf.II/255/2004-6388-6395 dated April 06, 2004
Date of hearing	April 30, 2004
Present	Mr. Zahid Lateef Company Secretary
Date of Order	May 10, 2004

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

2. The underlying facts of this case, briefly stated are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meeting (AGM) for the year ended September 30, 2003 on or before January 31, 2004. The Company failed to comply with the aforesaid mandatory requirement, by non-holding of its AGM within the stipulated period of time, which necessitated action against the Company and its directors in terms of Sub-section (4) of Section 158 of the Ordinance. Accordingly, a show cause notice dated April 06, 2004 was served on the Company and its directors including the Chief Executive calling upon them to show cause as to why penalties as provided under Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed upon them for late-holding of its AGM by 2 months and 27 days. In response to the



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aforesaid notice, Mr. Zahid Lateef, Company Secretary, on behalf of all the respondents vide his letter dated April 08, 2004 submitted that the annual accounts of the Company for the year ended September 30, 2002 were not finalized within time due to a virus attack which destroyed the hard disc of main server, consequently the AGM for the year 2002 was delayed and was held on December 27, 2003. It was further contended that due to late appointment of auditors in the last AGM, the audit of the accounts for the year ended September 30, 2003 could not be started in time, which was started in the 2nd week of January 2004. He further informed that the aforesaid AGM was being held on April 27, 2004. He, however, regretted the delay in the holding of AGM. As the reply was not found satisfactory, therefore, in order to provide an opportunity of hearing to the directors, the matter was fixed for hearing on April 26, 2004, which was adjourned on the request of the company and was re-fixed on April 30, 2004.

3. On the date of hearing, Mr. Zahid Lateef, Company Secretary appeared before me on behalf of all the respondents to plead the case. During the course of hearing, he, while admitting the default, advanced the same arguments as were earlier submitted by him in his written reply dated April 08, 2004. He averred that due to continuous losses, the operations of the Company specially spinning section was closed down since September, 2002. He further stated that due to extreme financial constraints, all the staff was laid off. He, however, informed that the Company has now settled the financial matters with M/s IDBP and NDFC for further financing and assured that henceforth AGMs of the Company would be held within the stipulated period of time in future. He requested for a lenient view in the matter for this time.

4. I have given due consideration to the submissions of the representative of the directors, however, none of them have been found tenable. The Company and its management had also failed to hold its AGM and to transmit annual accounts for the year ended September 30, 2002 within the prescribed time for which the Chief Executive of the Company was penalized.

5. Considering the circumstances of the case and the submissions of the respondents, I am of the opinion that the contentions of the directors do not justify the default under Section 158 of the Ordinance because the holding of AGM once in a calendar year is not only a mandatory requirement of law but also provides an opportunity to shareholders to discuss the Company's affairs with the management. The track record of the Company with regard to holding of AGM and filing of accounts is not satisfactory. Hence, the default under Section 158 is considered willful and deliberate, which attracts the provisions of Sub-section (4) of Section 158 of the Ordinance.



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6. Though the default is considered willful, yet, keeping in view the fact that the said AGM has already been held on April 27, 2004 and the assurance of the Company's representative to comply with the mandatory requirements of law in future, I am inclined to take a lenient view of the default and instead of imposing the maximum fine of Rs.50, 000/- on every director and a further fine of Rs.2000/- per day for continuous default, I impose a minimum fine of Rs.20, 000/- (Rupees twenty thousand only) under Sub-section (4) of Section 158 read with Section 476 of the Ordinance on the Chief Executive of the Company only. The other directors of the company are, however, reprimanded to be vigilant in future.

7. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine of Rs.20,000/- (Rupees twenty 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 challan to the Commission.

Ashfaq Ahmed Khan
Director (Enforcement)

Announced:
May 10, 2004
ISLAMABAD