



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

[Islamabad]

Before Ashfaq Ahmed Khan, Director (Enf)

Order

In the matter of

M/S. Ayaz Textile Mills Limited

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

Number and date of notice	EMD/Enf-II /215/2004 dated April 06, 2004
Date of hearing	May 04, 2004
Present	Mr. Mazhar Hussain Manager Finance
Date of Order	May 17, 2004

This order shall dispose of the proceedings initiated against M/S Ayaz Textile Mills Limited (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 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 which necessitated action against the Company and its directors in terms of Sub-section (4) of Section 158 of the Ordinance.

3. 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



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Section 476 of the Ordinance may not be imposed upon them for the aforesaid contravention.

4. The company or any of the respondents failed to file any reply to this notice even after the lapse of reasonable time therefore, in order to give an opportunity of hearing the case was fixed on May 04, 2004. On the date of hearing, Mr. Mazhar Hussain, Manager Finance, appeared to plead the case on behalf of all the respondents and also submitted a written reply of Mr. Ayaz Durrani, the Chief Executive of the Company. In his written reply, Mr. Ayaz Durrani submitted that due to cash flow problems and increase in yarn prices the Company was unable to run its cloth production unit, effecting the generation of cash flows. Further, during the year, the parties who were engaged with the Company to convert their yarn into fabric also cancelled their contracts. These factors directly affected the Company's financing position and cash flow and compelled the management to close down the unit and release the staff from their services. Thus the management was not able to finalize its accounts, conduct audit and hold AGM for the year ended September 30, 2003. He further added that non-compliance by the Chief Executive, directors and Chief Accountant with the requirement of the Ordinance was not deliberate but it was forced by the critical circumstances faced by the Company.

5. During the course of hearing, Mr. Mazhar Hussain, submitted that the Company was taken over by Habib Bank Limited in May 1999. However, in the year 2001 management arrived at an agreement with the Bank who allowed the Company to restart its operations. Since then, the management is striving hard for the existence of the Company. The strenuous efforts of the management of the Company have resulted in settlement with Habib Bank Limited, which is its major lender. The management of the Company is hopeful that this crisis will come to an end very soon. He urged that the default was not deliberate/intentional. He requested for a lenient view to provide an opportunity to the management of the Company for improving the adverse conditions being faced by the Company.



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6. 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 carry weight. It is the responsibility of the directors of the Company to timely hold the AGM as this is the only forum which provides opportunity to the shareholders to discuss significant matters relating to the performance of the Company with the management. Further, the holding of AGM once in a calendar year is a mandatory requirement of law and the same must be held in time. 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.

7. Though the default is considered willful, yet, in view of the financial crises being faced by the Company, I am inclined to take a lenient view in the matter and instead of imposing the maximum fine of Rs. 50,000 on every director and a further fine of Rs. 2,000 per day for continuous default, I impose a fine of Rs. 20,000 (Rupees twenty thousand only) on the Chief Executive under Sub-section (4) of Section 158 read with Section 476 of the Ordinance. The other directors are reprimanded to be careful in future in observance of the mandatory requirements of law.

8. 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 17, 2004
ISLAMABAD