

*Before Rashid Sadiq, Executive Director*

*In the matter of*  
**ADIL POLYPROPYLENE PRODUCTS LIMITED**

Number and date of show cause notice	EMD/233/298/2002 dated May 23, 2002
Date of hearing	June 12, 2002
Present	None

*Order*

This order will dispose of the proceedings initiated against M/s Adil Polypropylene Products Limited (the "Company") for violating the provisions of Sub-section (1) and (3) of Section 230 and Sub-section (1) of Section 234 of the Companies Ordinance, 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that the examination of the audit report attached to the balance sheet and profit and loss account of the Company for the year ended June 30, 2001 revealed that the auditors of the Company namely M/S Nazir Chaudhri & Co., Chartered Accountants have expressed disclaimer of opinion on the aforesaid accounts in the following manner:-

- a) *We could not observe the physical verification of stock, work in process and stores due to lack of arrangement by the management as at 30 June 2001. Owing to nature of the Company's record we were unable to apply the adequate alternative auditing procedure to confirm the physical balance as on that date.*
- b) *The balance of debtors, advances, other receivables, creditors and all the banks remained unconfirmed in the absence of balance confirmation from the respective parties/banks.*

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c) *The books of the company have not been prepared in a proper and organized form.*

*In view of the significance of the aforesaid matters, we are unable to express our opinion on these financial statements.”*

3. The Director’s Report attached to the aforesaid accounts under Section 236 of the Ordinance gave following information and explanation in regard to aforesaid disclaimer of opinion of the auditors.

**QUOTE**

(a) *The physical verification of stock could not be possible due to the fact that the same is pledged with NDFC (Now National Bank of Pakistan Tariq Road Karachi) and National Bank of Pakistan Peshawar City, the Company is under litigation with these branches.*

(b) *Sine the Company is closed, enough staff is not available, all the banks have filed recovery suits as such they have not provided the balance confirmation. The other parties have also taken least interest in responding the auditors confirmation letters.*

(c) *As explained there were no commercial activity of the Company during the period under review, limited staff is working in Company’s head office, as such books could not be maintained in organized form up to the expectation of Auditors.*

**UNQUOTE**

4. The aforesaid explanation in the Directors’ Report categorically and unequivocally admitted that the Company has not kept proper books of account. The directors, however, failed to comment on the disclaimer of opinion given by the auditors.

5. In view of the above, the Commission felt concerned about the affairs of the Company particularly because of the following reasons:

- i. the balance sheet of the Company did not give true and fair view of the state of the Company’s affairs as at June 30, 2001 and profit and loss account did not give a true and fair view of the profit and loss account for the year ended June 30, 2001 as required under Sub-section (1) of Section 234 of the Ordinance.
- ii. the Company has not kept proper books of account as required under Sub-section (1) of Section 230 of the Ordinance.
- iii. the balance sheet and profit and loss accounts have not been drawn up in conformity with the requirements of the Ordinance.
- iv. the balance sheet and profit and loss account do not conform with approved International Accounting Standards.

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6. The aforesaid circumstances suggested that the Company has, *prima facie*, violated the provisions of Sub-section (1) of Section 234 and Sub-section (1) and (3) of Section 230 of the Ordinance. This necessitated a detailed examination of this matter.

7. Consequently, a show cause notice dated May 23, 2002 was issued to the directors and Chief Executive of the Company to show cause in writing as to why a complaint may not be filed against them in the Court of Session under Sub-section (7) of Section 230 of the Ordinance.

8. The Chief Executive and directors of the Company did not respond to the aforesaid show cause notice. In order to give an opportunity of personal hearing, the case was fixed on June 03, 2002. Since no one entered appearance, therefore, in order to give another opportunity, the case was again fixed on June 12, 2002. Once again no one appeared on the date of hearing. This indicates that the Chief Executive and directors are intentionally and deliberately avoiding appearance before me. This also suggested that they have nothing to state in their defence. This leaves me with no option except to proceed on the merits of this case.

9. Before proceeding further, I deem it necessary to advert to the provisions of the Ordinance, which, *prima facie*, have been violated by the Company. These provisions of the Ordinance are, to the extent relevant, reproduced below:-

**Sub-Section (1) Section 234**

*“every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year and every profit and loss account shall give true and fair view of the profit and loss of the company for the financial year”*

**Sub-Section (1) of Section 230**

*“Every company shall keep at its registered office proper books of account with respect to:*

- a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;*
- b) all sales and purchases of goods by the company;*
- c) all assets of the company;*
- d) all liabilities of the company”*

**Sub-Section (3) of Section 230**

*“for the purposes of Sub-Sections (1), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company and to explain its transactions”*

10. The aforesaid provisions of the law are unambiguous and clear. These are mandatory provisions, which require every company to keep proper books of account. These provisions further require that every balance sheet of a company shall give a true and fair view of the state

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of affairs of the company as at the end of its financial year, and every profit and loss of the company shall give a true and fair view of the profit or loss for the financial year. In this regard the provisions of Sub-section (2) of Section 416 are also relevant. This provision requires that proper books of accounts constitute such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of a company, including books containing entries from day to day in sufficient detail of all cash received and cash paid. Moreover, where the business of the company involves dealing in goods, statements of the annual stock taking and of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, should also be maintained. The objective of these provisions is to give real position of assets and liabilities and profit and loss of a company to its stakeholders. The balance sheet and profit and loss account must be audited and signed by an auditor. If a company fails to keep proper books of account, the objective of these provisions would be defeated. The opinion of auditors and admission in the directors' report that the books of accounts were not maintained in a proper and organized form indicate failure of the Company and its directors to comply with the mandatory provisions of the Ordinance. This violation is very serious and calls for action in terms of Sub-section (7) of Section 230 of the Ordinance.

11. It has been noticed from the audit report on the accounts of the Company that the books of accounts of the Company were not prepared in a proper and organized form. Moreover, the management has not made arrangements for the physical verification of the stocks; work in process and store as on June 30, 2001. The auditors have been unable to apply other alternative audit procedure owing to the nature of the Company's record. The disclaimer of opinion of the auditors indicates that the Company has not maintained proper books of account. It further indicates that the balance sheet and profit and loss account of the Company do not give a true and fair view as required by Sub-section (1) of Section 234 of the Ordinance. It is the duty of the directors to keep proper books of accounts, which give true and fair state of affairs of the company. It is also their responsibility that the balance sheet and profit and loss account must give a true and fair position. The directors of the Company have failed to comply with the provisions of law and have signed a false and misleading accounts, which is substantiated from the disclaimer of opinion by the auditors of the Company. It has also been noticed that the lenders of the Company have filed suit for recovery of their loans; production of the Company is suspended and the Company has declared no dividend for the last four years. In these circumstances, the directors seem little interested in the affairs of the company. They have failed to take reasonable steps to secure the compliance of the above-discussed provisions of law. The reason that there was no commercial activity during the year is not a valid reason for not maintaining proper books of account by the Company.

12. In view of the foregoing and after perusing the record particularly the latest balance sheet, profit and loss account and the directors and auditors reports, I am convinced that sufficient material is available on record, which indicates that the Company has violated the provisions of Sub-section (1) and (3) of Section 230 and Sub-section (1) of Section 234 of the Ordinance. I am also convinced that sufficient opportunity was given to the Company and its directors including its Chief Executive to present their case, however, they have disregarded the

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show cause and hearings notices, which indicates that the default was committed intentionally and deliberately. In view of the above and after due consideration of all the facts and circumstances of the case, I am of the view that the Company has violated with the provisions of Section 234 of the Ordinance, which attracts the penal provisions of Sub-Section (7) of Section 234 read with Sub-section (7) of Section 230 of the Ordinance. Moreover, I am also of the view that the Company has failed to comply with the requirements of Sub-section (1) of Section 230 with regard to keeping of proper books of account. This also attracts the penal provision of Sub-section (7) of Section 230 of the Ordinance, which state that if a Company fails to comply with of any of the requirements of this section, every director including Chief Executive of the Company who has knowingly by his act or omission being the cause of such default shall, in case of a listed company, be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than ten thousand rupees nor more than twenty thousand rupees, and with a further fine which may extend to two thousand rupees for every day after the first during which the default continues. It may be noted that in addition to the penalties prescribed for violation of Sub-section (1) and (3) of Section 230 and Sub-section (1) of Section 234 of the Ordinance, in the case of a winding up of a company, Section 416 provides severe punishment of imprisonment, which may extend to two years for not keeping proper books of account. In addition Section 417 provides punishment for falsification of books of account. The directors can also be made liable for prosecution for signing false balance sheet and profit and loss account of the Company in terms of Section 492 of the Ordinance.

13. In conclusion, I authorize the Joint Registrar, Companies Registration Office, Peshawar to file a complaint under Sub-section (7) of Section 230 read with Section 492 of the Ordinance in the Court of Session against all the directors including the Chief Executive of the Company who have knowingly been the cause of the aforesaid violations of the Ordinance.

***Rashid Sadiq***

Executive Director (Enforcement and Monitoring)

**Announced**  
**June 19, 2002**  
**ISLAMABAD**