

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Enforcement & Monitoring Division  
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad

**Before Rashid Sadiq, Executive Director**

In the matter of  
M/s Essa Cement Industries Limited

Number and date of notice	EMD/C.O.258/17/2002 dated June 11, 2002
Date of hearing	June 25, 2002
Present	Mr. Mohammad Zaheer

**ORDER**

This is a case of failure of M/s Essa Cement Industries Limited (the Company) to get cost accounting records audited even after seeking approval of Securities and Exchange Commission of Pakistan (the “Commission”) for appointment of Cost Auditors for the years ended June 30, 1998, June 30, 2000 and June 30, 2001 as required under Sub-rule (1) of rule 3 of the Companies (Audit of Cost Accounts) Rules, 1998 (the Rules).

2. The relevant facts for the disposal of this case are that the company submitted an application dated August 15, 2001 vide its letter dated August 21, 2001 for approval of the Commission for appointment of cost auditors for the year ended June 30, 2001 in terms of Sub-rule (2) of Rule 3 of the Rules. The Commission accorded its approval vide letter dated September 28, 2001 for appointment of M/s. Avais Hyder Zaman Rizwani, Chartered Accountants, as cost auditors of the company. The Cost Audit Report was required to be submitted by the Cost Auditors before November 27, 2001 as required under Sub-rule (3) of Rule 4 of the Companies (Audit of Cost Accounts) Rules, 1998. The cost auditors, however, failed to send the Cost Audit Report to the Commission.

3. Consequently, a notice dated January 31, 2002 was served upon the Cost Auditors to show cause as to why fine may not be imposed for non-submission of Cost Audit Report to the Commission. The show cause notice was responded by the Cost Auditors vide their letter dated February 6, 2002. It was stated that the management of the Company had put various problems and could not allow audit of cost records. It was, therefore, not possible to take up the audit and furnish the report. After considerable time, a reminder dated March 21, 2002 was issued to the cost auditors, which remained un-replied.

4. Subsequently, the matter was taken up with the Company and the Chief Executive of the Company was asked to comment on the letter of the Cost Auditors. No response was received from the Company to the aforesaid letter. A reminder was also issued on May 21, 2002, which also remained un-responded. The past history of the Company towards compliance of Cost Audit Rules has also found to be unsatisfactory. The Company got approvals for appointment of Cost Auditors for the years ended June 30, 1998 and June 30, 2000, however, Cost Audit Reports were not submitted to the Commission for these years. In the circumstances, it appeared that the company had failed to keep cost accounting records as per Paragraph 2 of the Cement Industry (Cost Accounting Records) Order, 1994 and also failed to get cost accounting records audited for the aforesaid years even after seeking approval for appointment of Cost Auditors under Sub-rule (2) of Rule 3 of the Companies (Audit of Cost Accounts) Rules, 1998.

5. Consequently, a notice dated June 11, 2002 was served upon the Chief Executive and directors of the company to show cause as to why action under Sub-section (7) of Section 230 of the Companies Ordinance, 1984 (the Ordinance) and Rule 5 of the Rules read with Section 476 of the Ordinance may not be taken against them for the aforesaid contraventions. In order to provide an opportunity of personal hearing, the case was fixed on June 20, 2002. Instead of entering appearance, the Company sought extension for one month on the ground that majority of the directors of the Company were either out of country or not present in Karachi. As the company did not give any valid reason for extension, therefore, another notice for hearing was served upon the directors including the Chief Executive were asked to appear before me on June 26, 2002.

6. Before the date fixed for hearing, Mr. Mohammad Zaheer, Manager Tax/Administration, M. Yousuf Adil Saleem & Co., Chartered Accountants appeared before me on June 25, 2002 and argued the case. In the written submission as well as verbal arguments at the time of hearing, it was contended that the Chief Executive of the Company was sick and he was not attending the office. Moreover, some of the Directors were also out of Karachi due to some unavoidable assignments. It was also stated that the preparation of accounts and its audit used to be dealt with by Mr. Javed Aziz Essa, Director who has died. Preparation of Annual and Half Yearly Accounts were also delayed, causing delay in preparation and audit of cost accounts. It was stated that preparation of Annual and Half Yearly Accounts have almost been streamlined. Cost Audit Accounts were yet to be updated. It was averred that the management was confident to file overdue Cost Audit Reports by the end of August 2002.

7. After considering the relevant facts and circumstances of this case, I am of the view that the illness of the Chief Executive and other reasons given by the company are not valid and justified excuse for this default, which is considered as deliberate on the part of directors and Chief Executive of the company. The provisions of Sub-rule (1) of rule 3 of the Rules have been violated by the Company and the directors have, therefore, made themselves liable for the aforesaid default. Mohammad Zaheer, however, has promised to file overdue Cost Audit Accounts for the years 1998 to 2001 by the last week of August 2002. I, therefore, give an opportunity to the directors and Chief Executive to rectify the irregularity by getting the overdue Cost Accounts Audited and filing of overdue Cost Audit Reports by the last week of August 2002. In view of the aforesaid, a lenient view of the default is taken, and a fine of Rs. 2000/- (Rupees two thousand only) is imposed on each of the directors including Chief Executive of the Company under rule 5 of the Rules. In case the directors and Chief Executive of the company failed to honour their commitment, they shall individually be liable for per day fine @ Rs. 100/- under the Rules. In case of non-compliance, the Commission will also consider initiating prosecution proceedings under Sub-section (7) of Section 230 of the Ordinance against the directors and Chief Executive for not maintaining the cost accounting records as required under Paragraph 2 of the Cement Industry (Cost Accounting Records) Order, 1994.

8. The directors and Chief Executive of the Company are hereby directed to deposit the fine amounting in aggregate to Rs.14,000/- (Rupees fourteen thousand only) in the designated bank account of Securities & Exchange Commission of Pakistan maintained with Habib Bank Limited within 30 days of the date of this order and furnish a receipted challan to this Commission.

**RASHID SADIQ**

Executive Director (Enforcement and Monitoring)

**Announced**  
**June 28, 2002**  
**ISLAMABAD**