



Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division

[Islamabad]

Before Rashid Sadiq, Executive Director

In the matter of
SERVICE FABRICS LIMITED

Number and date of show cause notice	EMD/233/231/2002/1240- 1247Dated August 19, 2002
Date of hearing	October 15, 2002
Present	Mr. Mustafa Ramday, Advocate

ORDER

This order shall dispose of the proceedings initiated against M/S Service Fabrics Limited (the “Company”) for failure to hold Annual General Meeting (the “AGM”) for the Calendar year 2002 within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding AGM as required under the provisions of Sub-section (1) of Section 158 of the Companies Ordinance, 1984 (the “Ordinance”)

2. The relevant facts for disposal of this case are very simple. The Company was required to hold its AGM for the Calendar year 2002 on or before 31st March 2002 i.e., within six months following the close of its financial year on September 30, 2001. The Commission has allowed an extension in time for holding of the



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aforesaid AGM up till June 29, 2002. The Company, however, failed to hold the aforesaid AGM even within the extended time. The failure of the Company to comply with the above-mentioned statutory requirement necessitated action as provided under the Ordinance. Consequently, a notice dated August 19, 2002 was issued to the Company, its Chief Executive and Directors calling upon them to show cause in writing as to why penalty as provided under Clause (a) of Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed for the aforesaid contravention.

3. In order to provide an opportunity of hearing the case was fixed on October 15, 2002. On the date of hearing, Mr. Mustafa Ramday, advocate appeared before me on behalf of the Company, its Chief Executive and Directors and argued the case. He stated that due to non-finalization of audit of the financial statements for the year ended September 30, 2001 the Company was not able to hold its AGM within extended period of time. He also contended that the Company could hold AGM within fifteen months after the holding of its last preceding AGM. He also informed that the Company has already issued notice on September 24, 2002 for holding of AGM on October 23, 2002. He pleaded that a lenient view of the default may be taken.

4. Having heard the arguments of the Learned Counsel for the Company, I am of the opinion that the delay in finalization of accounts is not a valid ground for not holding AGM within the prescribed time. The holding of AGM once a year is a mandatory requirement and the meeting must be convened whether or not the annual accounts, the consideration of which is one of the several agenda items, are ready for presentation before the shareholders. Moreover, holding of AGM and submission of annual accounts are two separate requirements of law. AGM is required to be held under Section 158 of the Ordinance and submission of



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accounts is required under Section 233 of the Ordinance. These two requirements, therefore, cannot be intermixed. The Enforcement and Monitoring Division has also issued a show cause notice for default in preparation, presentation and submission of annual accounts for the year ended September 30, 2001 as per requirements of Section 233 of the Ordinance. The justification for the delay in preparation and submission of annual accounts would be looked into while deciding the said case. It is the duty of the directors to ensure that audit of the accounts is completed timely to be able to hold Board Meeting and AGM within the time frame prescribed under law. In view of the above discussion, this contention of the Learned Counsel for delaying the holding of AGM is not sustainable.

5. I now take up for consideration the next issue raised by the Learned Counsel that the Company could hold the AGM for the Calendar year 2002 within fifteen months from the date of the last AGM, which was held on June 23, 2001. He forcefully averred that the Company was entitled to hold its AGM for the Calendar year 2002 on or before September 22, 2002. This submission of the Learned Counsel requires careful consideration. I have, therefore, given serious thought to the argument and have also examined the relevant provisions of the Ordinance on which reliance has been placed by the Learned Counsel to support his argument. For ease of reference, the said provisions contained in Sub-section (1) of Section 158 of the Ordinance are, to the extent relevant reproduced as follows:

“ Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting.”



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A careful reading of the above-referred provision of law clearly suggests that the date on which the AGM is to be held is determined by the following three factors:

- i) *the meeting should be held once in each calendar year;*
- ii) *the meeting should be held within six months from the close of the financial year;*
- iii) *the meeting should be held within fifteen months from the date of holding of last preceding annual general meeting.*

The combined effect of the above three time factors is that the AGM of a company should be held on the earliest of the aforesaid time limits otherwise there would be breach of one or more conditions. In my considered view, this appears to be the clear intention of the above-referred legal provision. Applying this interpretation to the circumstances of the case in hand, it has been observed that the financial year of the Company was closed on September 30, 2001. The last preceding AGM was held on June 23, 2001 for the Calendar year 2001. For determining as to what should be the last date for holding of AGM for the calendar year 2002, one has to look at each time factor independently. These are:

- i) *the last date of the calendar year, which is **December 31, 2002.***
- ii) *within 15 months from the date of holding of last AGM, June 23, 2002, which is **September 22, 2002.***
- iii) *within six months following the close of its financial year, which is **March 31, 2002.***

The AGM of the Company, therefore, should be held not later than the earliest of the aforesaid relevant dates i.e., *December 31, 2002, September 22, 2002 and March 31, 2002.* Obviously, the earliest date is **March 31, 2002.** After getting extension in time for a period of 90 days, the Company was required to hold its AGM on or before June 29, 2002. In view of whatever has been discussed above, I



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am left with no doubt that the Company was required to hold its AGM on or before June 29, 2002. The argument of the Learned Counsel that the Company could hold its AGM on or before September 22, 2002 i.e., within fifteen months from the date its last preceding AGM, therefore, cannot be accepted.

6. For the foregoing reasons, the default under Sub-section (1) of Section 158 of the Ordinance stands established and thus the Company, its Chief Executive and Directors have rendered themselves liable for an action under Clause (a) of Sub-section (4) of Section 158 of the Ordinance. Considering the circumstances and record of this case and the conclusion drawn as to the legal provisions, there has been serious breach of the mandatory requirements. The Company and its directors and Chief Executive have not been able to give any justifiable excuse for the default. Moreover, nothing has been placed on record to prove that the default was not intentional. The delay in holding of AGM beyond statutory permissible limit indicates negligence and deliberate default on the part of the directors of the Company. It has also been noticed that the Company has been violating the mandatory provisions in this regard in the past also, for which fines were also imposed. The directors, therefore, have shown complete disregard to the mandatory requirements of the Ordinance. Annual General Meeting is the only forum where the shareholders can discuss the affairs of the companies. Breach of the mandatory requirements meant to provide an opportunity to the shareholders once a year to discuss the affairs of the companies, therefore, cannot be encouraged. In the circumstances, I consider the default as a willful and deliberate act on part of the Company, its directors and Chief Executive. However, keeping in view the fact that the Company has held its overdue AGM on 23rd October 2002, I take a lenient view of the default and instead of imposing a maximum fine and further fine for continuous default provided under the law, impose a fine of only Rs 10,000/- (Rupees ten thousand) on the Company, its Chief Executive and



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each of its directors for default in complying with the provisions of Sub-section (1) of Section 158 of the Ordinance with the advise to the directors to ensure timely holding of AGM in future. It is their responsibility to discharge the functions imposed on them in accordance with the requirements of the Ordinance. Any failure to carry out their obligations in this regard in future can result in imposition of maximum penalties as provided under the law.

7. The Company, its Chief Executive and the directors named below are hereby directed to deposit the fine amounting to Rs 80,000/- (eighty thousands only) in the designated branch of Habib Bank Limited in the bank account of the Commission within 30 days of the receipt of this order and submit a copy of the receipted challan to the Commission.

	<i>Rupees</i>
i) <i>M/s Service Fabrics Limited</i>	<i>10,000</i>
ii) <i>Mr. Farooq Hameed, Chief Executive</i>	<i>10,000</i>
iii) <i>Mr. Aamer Hameed, Director</i>	<i>10,000</i>
iv) <i>Mr. Sajjad Saleem Minhas, Director</i>	<i>10,000</i>
v) <i>Mr. Muhammad Tariq Hameed, Director</i>	<i>10,000</i>
vi) <i>Mr. Muhammad Saleem, Director</i>	<i>10,000</i>
vii) <i>Mr. Ijaz Hameed, Director</i>	<i>10,000</i>
viii) <i>Mr. Muhammad Hameed, Director</i>	<i>10,000</i>

RASHID SADIQ
Executive Director (Enforcement and Monitoring)

Announced
November 21, 2002
ISLAMABAD