



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## *Enforcement Department*

*Before Javed K. Siddiqui, Executive Director (CL)*

*In the matter of*

**M/s. Ayaz Textile Mills Limited**

*(Under Sub-section (3) of Section 245 of the Companies Ordinance, 1984)*

<b>No. and date of show cause notices</b>	EMD/Enf-II/215/2004 Dated April 08, 2004, July 05, 2004 September 21, 2004 and April 01, 2005
<b>Date of hearing</b>	April 18, 2005
<b>Present</b>	Mr. Mazhar Hussain, Accounts Officer
<b>Date of Order</b>	April 21, 2005

### **Order**

---

This Order shall dispose of the proceedings initiated against the directors of M/s. Ayaz Textile Mills Limited (hereinafter referred to as the "Company"), for default made in complying with the provisions of Sub-section (1) of Section 245 of the Companies Ordinance, 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Section 245 of the Ordinance, the Company was required to prepare and transmit to the members and simultaneously file with the Registrar and the Commission, its quarterly accounts for the 3<sup>rd</sup> Quarter ended June 30, 2003, 1<sup>st</sup> quarter ended December 31, 2003, 2<sup>nd</sup> quarter ended March 31, 2004, 3<sup>rd</sup> Quarter ended June 30, 2004 and 1<sup>st</sup> quarter ended December 31, 2004 by July 31, 2003, January 31, 2004, May 31, 2004, July 31, 2004 and January 31, 2005 respectively. The Company failed to file the accounts for the aforesaid quarters. The failure of the Company to comply with the aforesaid requirements necessitated action against the Directors of the Company in terms of Sub-section (3) of Section 245 of the Ordinance.

3. Consequently, show cause notices dated April 08, 2004, July 05, 2004 and September 21, 2004 were served on all the Directors including the Chief Executive of the Company calling upon them to show cause as to why penalties as provided under Sub-section (3) of Section 245 read with Section 476 of the Ordinance may not be imposed on them. In response to the show cause notice dated April 08, 2004, the Chief Executive of the Company contended vide letter dated May



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## *Enforcement Department*

04, 2004 that the accounts for the 3<sup>rd</sup> quarter ended June 30, 2003 were already filed. He also filed a copy of acknowledgement receipt as proof of filing of the accounts. On examination it was observed that these accounts were filed with the Company Registration Office, Lahore, whereas, no accounts were filed with the Commission, which is a separate mandatory requirement of law. As regards accounts for the 1<sup>st</sup> quarter ended December 31, 2003, it was contended that the same could not be prepared as the annual audit of accounts for the year ended September 30, 2003 could not be conducted because the management of the Company was facing severe challenge to continue the existence of the Company. It was further stated that they are negotiating with HBL for settlement of liabilities. No reply was, however, received to the show cause notices dated July 05, 2004, September 21, 2004 and April 01, 2005.

4. In order to give an opportunity of personal hearing, the cases were fixed for hearing on May 04, 2004. No one appeared on the date of hearing to plead the case. However, a written reply was received vide letter dated May 04, 2004 which was examined and not found cogent. The hearing was, therefore, re-fixed for July 28, 2004 which was adjourned on the request of the Company and re-fixed on October 26, 2004, March 09, 2005 and finally on March 21, 2005 but neither any body attended the hearing nor any written reply was received. However, on April 18, 2005, Mr. Mazhar Hussain, Accounts Officer, who came to attend a separate hearing under Section 158 fixed before Director (Enforcement), also appeared before me to plead the case under Section 245, on behalf of all the Directors. He also filed a written reply from Mr. Ayaz Durrani, the Chief Executive of the Company. In the written reply, Mr. Durrani had contended that due to huge losses, the Company has been closed, all the staff has left and the Company is not in operations. It was further submitted that Habib Bank Limited had taken over the unit and now the Bank has sold all the fixed assets of the Company. Although, the Company exists in the books of accounts, but actually it is not in operations. He requested to allow three to four months to complete books of accounts for the years ended September 30, 2003 and September 30, 2004. It was added that they may be provided the opportunity to comply with the legal requirements although the Company was dormant and the management was making arrangements for its liquidation after settlement of its preferential creditors. During the hearing, Mr. Mazhar Hussain, reiterated almost the same arguments as were advanced by the Chief Executive in his written explanation. He submitted that the management has arrived at a settlement with HBL, NBP and



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## *Enforcement Department*

NDFC and now it is going for the winding up of the Company. He urged that the default was not deliberate/intentional. He requested for a lenient view and to condone the defaults.

5. I have given due consideration to the written submissions of the Chief Executive as well as the arguments advanced by the representative of the directors at the time of hearing but none of them justify the defaults in filing of quarterly accounts. The plea of the representative that the accounts could not be prepared due to the closure of Company's operations is not a cogent reason because the same has no relationship with the preparation and filing of accounts. The Company has committed serious defaults by non-submission of quarterly accounts since June 30, 2003 to December 31, 2004 and the same are still continuing even after issuance of show cause notices by the Commission. The Directors of the Company did not bother to appear for hearing fixed several times. It is the duty of the Directors to ensure compliance with all the statutory requirements. Accordingly, the Directors of the company are responsible for timely preparation and submission of quarterly accounts to its members and file the same with the Registrar and the Commission within prescribed time for which they have failed. Even if the Company intends to get liquidated, it remains the Directors' responsibility to prepare and transmit quarterly accounts within prescribed time limit. The default is, therefore, established, which attracts the Provisions of Sub-section (3) of Section 245 of the Ordinance. However, in view of the financial crises faced by the Company and the intention of the Directors to liquidate the Company, I am inclined to take a lenient view in the matter and instead of imposing the maximum fine of Rs. 100,000/- on every Director and a further fine of Rs.1,000 per day for the continuous default, I in exercise of powers conferred upon me under Sub-section (3) of Section 245 of the Ordinance, impose a fine of Rs. 10,000/- (Rupees ten thousand only) for each quarter on the Chief Executive of the Company totaling to Rs. 40,000/- (Rupees forty thousand only). However, no penalty is imposed for default pertaining to the quarter ended June 30, 2003 as the accounts for the same were filed by the Company with the Registrar Office within prescribed time limit. Other Directors are reprimanded to be careful in future in observance of the mandatory requirements of law.

6. The Chief Executive of the Company is hereby directed to deposit the aforesaid fines aggregating to Rs. 40,000/- (Rupees forty thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## *Enforcement Department*

Limited or through DD/Pay order issued in the name of Securities and Exchange Commission of Pakistan within thirty days from the receipt of this Order and furnish copy of the receipt to the Commission failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed on the Chief Executive in his personal capacity, therefore, he is required to pay the said amounts from his personal resources.

**Javed K. Siddiqui**  
Executive Director (CL)