

**Before Ashfaq Ahmad Khan, Director (Enforcement)**

*In the matter of*

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

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

<b>No. and date of show cause notice</b>	EMD/Enf-II/215/2004 Dated February 21, 2005
<b>Date of hearing</b>	April 18, 2005
<b>Present</b>	Mr. Mazhar Hussain, Accounts Officer
<b>Date of Order</b>	April 26, 2005

**Order**

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This Order shall dispose off the proceedings initiated against M/s. Ayaz Textile Mills Limited (hereinafter referred to as 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 facts leading to 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 (the “AGM”) for the year ended September 30, 2004 on or before January 31, 2004. The failure of the Company to comply with the aforesaid mandatory requirement necessitated action against the Company and its Directors in terms of Sub-section (4) of Section 158 of the Ordinance. Consequently, a show cause notice dated February 21, 2005 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 Section 476 of the Ordinance may not be imposed on them. No reply was received to the aforesaid show cause notice.

3. In order to give an opportunity of personal hearing, the case was fixed for hearing on March 21, 2005. However, no one appeared on the date of hearing to plead the case. The hearing was, therefore, re-fixed for April 18, 2005 on which date Mr. Mazhar Hussain, Accounts Officer, appeared for hearing 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 contended that the AGM for the year ended September 30, 2004 could not be held as the Company is lying closed due to huge losses, all the staff has been relieved and the Company is not in operations. During the hearing, Mr. Mazhar Hussain, reiterated almost the same arguments as were advanced by the Chief Executive in his written explanation. He further informed that Habib Bank Limited had taken over the unit and sold all the fixed assets of the Company. He informed that although, the Company exists in papers, but actually it does not exist any more. He requested to allow three to four months to complete books of accounts and to prepare annual accounts for the years ended September 30, 2003 and September 30, 2004 and to hold AGMs. He requested that the Directors of the Company may be provided an opportunity to comply with the legal requirements although it is lying dormant and the management is making arrangements for its liquidation after settlement with its preferential creditors. He pointed out that the management has arrived at a settlement with HBL, NBP and 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 default.

4. 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 default in the holding of AGM. The plea of the representative that the AGM could not be held due to the closure of

company's operations is not a cogent reason for the default. The Company has also defaulted in the past by non- holding of AGM for the year ended September 30, 2003 for which the Chief Executive of the Company was penalized. The Directors have also committed serious defaults by non-submission of quarterly accounts since June 30, 2003 to December 31, 2004 for which penal proceedings have been initiated separately. Accordingly, the Directors of the company are responsible for non-holding of AGM and non- preparation and circulation of annual accounts to its members, the Registrar and the Commission till-date. Even if the Company intends to get liquidated, it remains the Directors' responsibility to prepare annual accounts and hold AGM within prescribed time limit. The default is, therefore, established, which attracts the Provisions of Sub-section (4) of Section 158 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. 50,000/- on every director and a further fine of Rs. 2,000/- per day for the continuous default, I in exercise of the powers conferred upon me under Sub-section (4) of Section 158 read with Section 476 of the Ordinance impose a fine of Rs. 20,000/- (Rupees twenty thousand only) for the aforesaid default on the Chief Executive of the Company. The other Directors are reprimanded to be careful in future in observance of the mandatory requirements of law.

5. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine of Rs20,000/- (Rupees twenty thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited 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 fine 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 amount from his personal resources.

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**Ashfaq Ahmad Khan**  
Director (Enforcement)