

[Islamabad]

Before, Ali Azeem Ikram, Director Enforcement

In the matter of

M/s Namdar & CO., Chartered Accountants

Under Section 255(3) & (6), Section 253 (3), Section 498 read with Section 476 of the Companies Ordinance 1984

Number and date of notice	No. EMD/233/578/2002 dated September 15, 2006
Date of hearing	February 16, 2007
Present	Mr. Ali Raza Namdar, Partner

ORDER

This order shall dispose of the proceedings initiated against Mr. Ali Raza Namdar of Namdar & Co., Chartered Accountants (“the Auditors”) through show cause notice dated September 15,2006 under Section 255(3) & (6), Section 253 (3), Section 498 read with Section 476 of the Companies Ordinance, 1984 (“the Ordinance”) for not submitting the signed audit reports of Quice Food Industries Limited (the “Company”) for the years 2001,2002 and 2003 (“the Accounts”) as required under Section 255 of the Ordinance and not bringing material facts to the knowledge of the shareholders by making representations in the Annual General Meeting (AGM) .

2. The Auditor is a sole proprietorship firm and Mr. Ali Raza Namdar is the practicing member of the Institute of Chartered Accountants of Pakistan. The Auditor has audited the annual accounts of the Company and have made their audit report to the shareholders for the financial years ending June 30, 2001,June 30,2002 and June 30,2003 respectively.

3. In order to fully appreciate the issues involved in this case brief narration of the background facts is necessary. The Enforcement Department of the Securities and Exchange Commission of Pakistan (“the Commission”) received a complaint dated August 15,2006 from the auditor in which it was informed to the Commission that they had issued an initialed qualified



audit report for the years 2001, 2002 and 2003 which is still not authenticated by them and the management has published the accounts without their authentication. In support of their complaint, Namdar enclosed his letter dated May 6, 2005, addressed to the Chief Executive of the Company, which reads as follows:

“We regret to inform you that accounts for the year ended June 30, 2001, June 30, 2002 and June 30, 2003 are not authorized by us. Henceforth, neither it can be printed nor it can be presented to annual general meeting to be held on May 9, 2005. Presentation, acceptance of accounts by the incoming auditor and by the management is in clear violation of the Companies Ordinance, 1984, directives issued by the SECP and ICAP. Our various reminders in this regard have gone in vain and now we are in process of intimating to appropriate authorities in this regard.”

4. In order to probe the matter, the record of the Commission was perused which revealed that the Company had submitted the annual accounts of the Company for the year ended June 30, 2001, 2002 and 2003, in compliance with the Section 233 of the Ordinance. However, review of the said accounts revealed that the accounts were signed by the Chief Executive and the Director of the Company but the Audit Report attached with the accounts was not signed by the Auditors but was in fact ‘initialed’.

5. The Company presented the aforesaid accounts before the shareholders for their consideration in the 11th, 12th, 13th (Combined) AGM of the Company held on May 9, 2005, the notice of which included among others, the following agenda:

- *“To receive, consider and adopt the audited accounts of the company for the years ended June 30, 2001, June 30, 2002 and June 30, 2003 together with Directors’ and Auditors’ Reports thereon.”*
- *To appoint auditors for the year ended June 30, 2004 and fix their remuneration. M/s Namdar & Co., Chartered Accountants retire and are eligible to offer themselves for re-appointment. One of the shareholders has proposed M/s Kanwar Furqan & Co., Chartered Accountants to be appointed as the auditors for the year ended June 30, 2004 in place of Namdar & Co., Chartered Accountants.*

6. The auditor was aware of the fact that the Company is presenting the accounts in the AGM which were not authorized by him, it was apprehended that despite the aforesaid known fact the auditor had failed to make representations in the aforesaid AGM and bring the fact to the knowledge of the shareholders and the regulatory authorities. In view of the above, a show cause notice dated September 15, 2006 was served on the auditor of the Company to explain as to why fine may not be imposed under Section 498 read with Section 476 of the Ordinance.



7. The auditor was given 14 days time to response to the aforesaid show cause notice, which was replied with a delay of two months on November 6, 2006. The written submissions in the aforesaid reply were made as follows:

- i No notice of AGM was given by the company's management. When contact was made to the company's management they furnished the published accounts for the year 2001,2002,2003 along with the notice of the shareholders before eleven days of holding of AGMs'. No separate notice was given to the retiring auditor.
- ii The representative was sent to attend the meeting but since the factory was closed, the representative handed the copy of the letter dated May 6,2006 to the security guard, which was deemed to be read out in the AGM.

8. In order to provide an opportunity of personal hearing, the case was fixed for February 1,2007 which upon auditor's request was adjourned and re-fixed on February 16,2007.

9. On the date of hearing, Mr.Ali Raza Namdar himself appeared before me and reiterated the same arguments as were given in the written reply. The auditor was asked at the time of hearing to provide the copy of the representations which were to read in the AGM. The same have not been provided to the Commission to date. In the written submissions as well as at the time of hearing, it was repeatedly argued that the auditor have intimated to the Company various times of the legal and professional compulsion and subsequently to the Commission and the other regulatory bodies of the legal formalities by the Company.

10. Here it deems necessary to discuss the responsibilities of the auditors as given in the following provisions of law :

“Section 253(3) of the Ordinance states that where a notice regarding resolution of appointment and removal of auditor is given by the company, the retiring auditor makes a representation in writing and the company sends the copy of the representation to every member of the company to whom notice of the meeting is sent and if a copy of the representation is not sent because it was received too late or because of the company's



default, the auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting.”

“Section 255(3) of the Ordinance provides that the auditor shall make a report to the members of the company on the accounts and books of accounts of the company and on every balance-sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance-sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, which are laid before the company in general meeting during his tenure of office.”

“the proviso of Section 255(6) of the Ordinance provides that the auditor of the listed Company shall be present in the general meeting in which the balance-sheet and profit and loss account and the auditor’s report are to be considered.”

11. Based on the above relevant provisions of law and after careful consideration of the contentions of the Auditor, I am of the view that the arguments put forward are not tenable as the auditor was aware of the fact that the company is presenting the accounts in the annual general meeting being held on May 9, 2005 which were not authorized by him. Further, the letter dated May 6, 2005, contents of which are quoted in Para 2 of this Order was not received by the Commission at the time when the Company was holding its AGM for the said year.

12. Before deciding this case, I deem it necessary to make some observations on the role of Auditors of a Company. The auditors being the ultimate watchdog of the shareholders interest are required to give a report on the accounts and books of account after conducting the audit in accordance with the prescribed procedures and requirements of the Ordinance and Standards. If they found any irregularity, they are required to issue a modified report, if the said irregularity is material to the accounts; otherwise they issue a clean report to the shareholders. The shareholders, therefore, are the ultimate entity to whom the auditors are responsible. They must keep this fact in mind while auditing the books of account and reporting thereon. It is also their responsibility to report to the members and the regulatory authorities of any irregularity noticed during the audit and till the audit report is issued to the members. The auditors should be vigilant in performing their duties with due care.



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13. After careful consideration of the conduct of the auditors of the Company and the circumstances of this case, I am of the view that Mr. Ali Raza Namdar of Namdar & Co., Chartered Accountants, had not signed the annual accounts of the Company for the years ended June 30,2001,2002 and 2003 which the Company had presented in the AGM and got approved from the shareholders.. He had failed to make representations in the AGM and while doing so he ignored his duty towards the shareholders. The auditors had failed to report this fact to this Commission at the time the Company was holding the AGM. However, since the auditor has reported the fact to the Commission subsequently, I taking a lenient view for this time and instead of imposing a maximum penalty of Rs. 50,000 (Rs. Fifty Thousand) under Section 498 of the Ordinance on Mr.Ali Raza Namdar, I impose a nominal fine of Rs. 5,000 (Five Thousand Only) for not submitting the signed audit reports of the Company for the years 2001,2002 and 2003 and not bringing material facts to the knowledge of the shareholders by making representations in the AGM . Mr. Ali Raza Namdar is directed to deposit the above stated penalty/amount in the Bank Account of Securities and Exchange Commission of Pakistan maintained with Habib Bank Limited within 30 days of the date of this Order and furnish the receipted challan to the Securities and Exchange Commission of Pakistan.

14. Moreover, since it is the responsibility of the auditor in terms of Section 255 (3) of the Ordinance to make report to the members of the Company on the accounts and books of accounts of the company and on every balance-sheet and profit and loss account or income and expenditure account and on every other document forming part of the balance-sheet and profit and loss account or income and expenditure account, including notes, statements or schedules appended thereto, Mr. Ali Raza Namdar is directed under the provisions of 473 of the Ordinance to furnish to the Commission and the Company, within 14 days of the date of this Order, signed audit reports given on the accounts of the Company for the years 2001,2002 and 2003.

Ali Azeem Ikram
Director (Enforcement)

Announced:
August 1, 2007