



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

[Islamabad]

Before Ejaz Ishaq Khan, Executive Director

Order

In the matter of

M/s. Usman Textile Mills Limited

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

Number and date of notice	EMD/Enf-II /289/2003 dated April 13, 2004
Date of hearing	July 28, 2004
Present	Mr. M. Farooq Akhtar Advocate High Court
Date of Order	August 03, 2004

This is a case of violation of the provisions of Section 245 of the Companies Ordinance, 1984 (the “Ordinance”) by M/s. Usman Textile Mills Limited (the “Company”).

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 Commission its quarterly accounts for the 1st quarter ended December 31, 2003 by January 31, 2004, whereas the Company failed to file the aforesaid accounts with the Commission within the prescribed time. Consequently, a notice dated April 13, 2004 was 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.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

3. The Chief Executive and directors of the Company failed to respond to the aforesaid notice. In order to give an opportunity of hearing the case was fixed on June 25, 2004 which was adjourned and re-fixed on July 28, 2004. On the date of hearing, Mr. M. Farooq Akhtar, Advocate High Court, appeared as Attorney before me to argue the case on behalf of the following directors:-

- 1) Mr. Noor Qadir
- 2) Syed Tajuddin
- 3) Mr. Muhammad Zaheeruddin
- 4) Mr. Haroon Sheikha.

No one appeared on behalf of Mr. Masud A. Naqvi, Mr. Muhammed Sualeh Faruqui and Mr. Muhammed Amin. Mr. Farooq also filed a written reply along with a copy of quarterly accounts for the period ended December 31, 2003. In the written as well as in the verbal submissions, he submitted that the previous management of the Company intended to go for voluntary winding up, therefore, it disposed off old plant and obsolete Mills of the Company and paid out dividend @ 300% out of the sales proceeds thereof. However, the shareholders of the Company declined to accord approval for winding up of the Company. The old management, not being interested in the revival of the Company, transferred the Company to the new management. When the present management took over the charge of the Company in May 2003, the accounting records of the Company were in complete shambles. Proper books of accounts, records and documents were not being managed by the previous management. Even the rudimentary accounting records were not properly handed over to present management. In addition, the auditors of Company resigned, which also added to the worries of the management. He argued that in spite of such critical circumstances, the management, continued its efforts to streamline the affairs of the Company, and appointed an experienced banker, Mr. Masud A. Naqvi, as the Chief Executive of the Company, who was held responsible for supervising all the accounting matters which he failed to do, and on insistence of the directors he resigned from the office of the Chief Executive on 29.04.04. He further



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

argued that during this period, other directors (excluding Mr. Noor Qadir who was in custody of the NAB) were preoccupied in arranging finances, negotiating with different parties for either purchase of new textile Mills or establishment of a new project. He emphasized that there is no “Mens Rea” or evil intention involved because none of the directors knowingly caused delay in preparation and circulation of the said accounts but the transitional period through which the Company is going, has caused delay in preparation and circulation of aforesaid quarterly accounts. He however stated that, if the responsibility of the default is to be fixed it will be the then CEO, Mr. Masud A. Naqvi, who was responsible for supervising all the accounting matters. He argued that the Company has already paid dividend at three times of their investment to the shareholders and therefore there is no grievance or complaint from them. He requested for a lenient view of the default on the ground that all the directors are innocent in the matter and they deserve a lenient attitude.

4. Having considered the written as well as verbal submissions, I am of the opinion that the arguments furnished by the representative of the directors do not justify the default. His contention that all the directors are innocent in the matter and only the Ex-Chief Executive is responsible for the default is without merit because the directors of a Company are jointly and severely responsible for their statutory obligations and they cannot escape from their statutory responsibilities merely on the plea that one person was made responsible for compliance with regard to the specific requirement of law. Accordingly, the preparation and circulation of quarterly accounts is one of the statutory obligations of all the directors of a Company for which they are required to ensure that the accounts are prepared and circulated to the shareholders and transmitted to the Stock Exchange, Registrar and the Commission within the time period prescribed in the Ordinance. The directors of the Company have failed to take necessary steps to ensure compliance with the provisions of Section 245 of the Ordinance. The plea that the Company has paid dividend at three times of the investment to the shareholders and that



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

there is no grievance or complaint from the shareholders is also not tenable because the payment of dividend does not mean that the shareholders do not need the financial information which is required to be provided to them through annual and interim accounts, especially, in the circumstances when the Company is in such a critical stage, it becomes more important for the shareholders that timely information about the affairs of the Company is provided to them. It is also relevant to mention here that the Company has not filed its annual accounts for the period ended September 30, 2003 with the Commission. The accounts for the 2nd quarter ended March 31, 2004 have also not been submitted till date. Further, the copy of quarterly accounts furnished at the time of hearing is not authenticated as required under Section 241 of the Ordinance and this fact was brought to the notice of Mr. Farooq who promised to furnish a signed copy of accounts within two days.

5. Although the default is established, yet, keeping in view the assurance given by the representative of the directors for timely compliance in future and the fact that the management is striving for revival of the Company, I 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, impose a token fine @ Rs. 1000/- on each director including the Ex-Chief Executive of the Company under Sub-section (3) of Section 245 of the Ordinance as per detail given hereunder:-

	Name	Penalty (Rupees)
1.	Syed Masud A. Naqvi, Ex-Chief Executive	1000
2.	Mr. Muhammed Zaheeruddin, Director	1000
3.	Mr. Haroon Shekha, Director	1000
4.	Mr. Noor Qadir, Director	1000
5.	Syed Tajuddin, Director	1000
6.	Mr. Muhammed Sualeh Farooqui, Director	1000
7.	Mr. Muhammad Amin, Director	1000
	Total	7,000



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

6. The Ex-Chief Executive and the directors of the Company are hereby directed to deposit the aforesaid fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challans to the Commission, failing which proceedings for recovery of the fines as arrears of land revenue will be initiated. It should also be noted that the said penalties are imposed on the Ex-Chief Executive and the directors in their personal capacity and they are required to pay the said amounts from their personal resources.

Ejaz Ishaq Khan
Executive Director

Announced:
August 03, 2004
ISLAMABAD