

**Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad.**

Aug 07, 2001

**Before Rashid Sadiq, Executive Director
In the matter of**

M/S ESSA CEMENT INDUSTRIES LIMITED

Number and date of show cause notice 19(537)CF/ISS/89-2001

dated
May 08, 2001

Date of hearings
July 02, 2001

Appearance:

Mr. Nadeem Safdar,
Manager Audit,
M. Yousaf Adil Saleem & Co.

**ORDER UNDER CLAUSE (B) OF SUB SECTION (1) OF SECTION 245 READ
WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984.)**

The facts of this case are that M/s Essa Cement Industries Limited (the "Company") was required to prepare and transmit to the members within two months of the close of the first half of its year of account, the profit and loss account and the balance sheet (the "half yearly accounts") as at the end of that year under clause (a) of Sub-Section (1) of Section 245 of the Companies Ordinance (the "Ordinance"). The Company was also required to file with the Registrar and the Commission three copies of such half yearly accounts and balance sheet simultaneously with the transmission to the members.

2. The Company failed to transmit the half yearly accounts for the period ended December 31, 2000 to the members and file the same with the Commission within the, prescribed time. The half yearly accounts were received in the Commission on May 04,

2001 with a delay of two months and four days. A show cause notice dated May 08, 2001 was, therefore, served on the Company, its directors including Chief Executive of the Company calling upon them to "show cause in writing within 14 days of the receipt of this notice as to why penalty as provided in Sub-section (3) of Section 245 of the Ordinance may not be imposed for the aforesaid contravention."

3. In response to the afore-said show cause notice, M/s Yousaf Adil Saleem & Co. Chartered Accountants, vide their letter dated May 24, 2001 representing on behalf of the Company, its Chief Executive and directors stated the following reasons for the default:

- a) The death of Mr. Jawad Aziz Essa, Director and Secretary of the Company, who was also Incharge of all the administrative and financial matters.
- b) Delay in preparation of annual accounts
- c) Electric load shedding, which has hampered and delayed the maintaining and finalization of accounts.
- d) Hard disk of the computer was corrupted/washed on account of virus and electricity fluctuations.

It was also stated that the delay in filing was unwilful, inadvertent and beyond the control of directors.

4. In view of the unsatisfactory explanations offered by the Company, its directors and Chief Executive for delay in transmission / submission of the half yearly accounts, a hearing in this case was fixed on June 13, 2001 at Karachi, which at the request of the company was re-fixed on July 02, 2001 to be held at Islamabad. On the date of hearing, Mr. Nadeem Safdar, Manager Audit, M/s Yousuf Adil Saleem & Co. Chartered Accountants, appeared on behalf of the Company, its Chief Executive and directors. He reiterated the same reasons for the default as were already submitted in the written reply to the show cause notices. He also requested to condone the delay as a special case, keeping in view past clean record of the Company. He also assured that the Company would fulfill all statutory obligations within the prescribed period in future.

5. The management of the Company is responsible for the timely preparation, circulation and filing of half yearly accounts. The reasons stated for the default are unsatisfactory and, therefore, are not sustainable. It could not be proved that it was beyond the control of directors to comply with the requirement of the provisions of the Sub-section (1) of Section 245 of the Ordinance. The directors should have made a serious attempt for preparation, circulation and filing of half yearly accounts within prescribed time.

6. In view of the above discussion and taking into consideration all the relevant facts, the default is considered wilful; which attracts the provisions of Sub-section (3) of Section 245 of the Ordinance. However, on the assurance that the Company would

comply with its statutory obligations in future within prescribed time, I take a lenient view of the default and, instead of imposing a fine of Rs.100,000/- on every director including the Chief Executive of the Company, hereby impose a fine of Rs.25,000/- (Rupees Twenty five thousand) only on the Chief Executive of the Company under Sub-section (3) of Section 245 of the Ordinance read with Section 476 of the Ordinance.

7. The Chief Executive of the Company is directed to deposit the fine 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 date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan.

RASHID SADIQ

(Executive Director (Enforcement and Monitoring))

Announced

August 07, 2001

ISLAMABAD