



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Islamabad

Before Tariq Bakhtawar, Director Enforcement

In the matter of M/s Usman Textile Mills Limited
for non-compliance with certain provisions of the Companies Ordinance 1984

Number and date of notice	EMD/248/289/2004-841 dated August 3, 2004
Date of final hearing	November 23, 2004
Present	Hearing was fixed and adjourned on various occasions but no one appeared on behalf of the Company
Date of Order	December 23, 2004

ORDER

This order shall dispose of the proceedings initiated against the ex-directors of M/s Usman Textile Mills Limited (the "Company") under sub-Section 2 of Section 248 read with Section 498 of the Companies Ordinance, 1984 (the "Ordinance") through show cause notice dated August 3, 2004.

2. The Company was incorporated as a public company limited by shares in the year 1947. The shares of the Company are listed on the Karachi Stock Exchange. The paid up share capital of the Company is Rs.37.262 million divided into 3.726 million ordinary shares of Rs.10 each. The Company is principally engaged in the production and sale of cotton yarn and cotton fabrics and after partial disposal of its plant and machinery in September 2002 the Company also undertook licensing of warehouse service. The Company has 1,538 shareholders comprising individuals, insurance corporations, financial institutions and etc and as per pattern of shareholding annexed to the Directors' Report on the accounts for the year September 30, 2002, associated companies, directors, their spouses and minor children hold 65.21% of the total shareholding which indicates that there is still a considerable public interest in the shares of the Company. The Board of Directors of the Company as per its annual report for the year ended September 30, 2002 comprises of as follows:



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1. Mr. M Kasim Hasham, Ex-Chairman
2. Mr. M. Hussain Hasham, Ex Director
3. Mr. M. Ebrahim Hasham, Ex Director
4. Mr. Muhammad Amin, Ex Director
5. Mr. Khurram Kasim, Ex Director
6. Mr. Ahmed Ebrahim, Ex Director
7. Mr. A. Ghani A. Sattar, Ex Director

3. In order to fully appreciate the issue in hand, it is necessary to have a glance at the relevant background facts of this case. The facts leading to this case, briefly stated, are that quarterly profit and loss accounts and balance sheet of the Company for the 1st quarter ended December 31, 2002 filed with the Commission under Section 245 of the Ordinance revealed that the Company had paid dividend of 300% out of the sale proceeds of its fixed assets. It is also pertinent to mention here that the Company had closed its operation since 1998 and its annual accounts for the year ended September 30, 2002 were not prepared on going concern basis nor submitted its annual accounts for the year ended September 30, 2003.

4. Consequently, a notice dated August 3, 2004 under the provisions of Sections 248 read with Section 498 of the Ordinance was served on all the ex-directors of the Company calling upon them to show-cause and to explain as to why penalty may not be imposed for the contravention of the mandatory provision of the Ordinance. According to the explanation, provided on behalf of the former directors of the Company, it ceased to carry on its business activities in August 1998. It was also informed that on May 05, 1999 an extra ordinary general meeting was held in which a special resolution was passed by its members to dispose off the undertaking of the Company. The proceeds from the sale of almost all major assets were realized by December 31, 2002 and all accumulated losses (Rs5,091,058 as on September 30, 2001) and operating loss of Rs.800,311 for the period ended on December 31, 2002 were fully offset against aforesaid sale proceeds of the assets of the Company in accordance with the provisions of Sub-section (2) of Section 248 of the Ordinance and as a result the Company was left with a profit available for appropriation of Rs.114,403,192 for the period ended December 31, 2002 for which a dividend @ 300% was declared for the benefit of the then existing shareholders of the Company consuming Rs.111,788,640 out of the available distributable profit of the Company.



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5. The explanations of the Company have been considered and have not been found satisfactory. Sub -section (2) of Section 248 of the Ordinance provides that;

“No dividend shall be declared or paid by a company for any financial year out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking or any of the undertaking of the company, unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.”

6. Section 249 of the Ordinance also clearly provides that;

“No dividend shall be paid by a company otherwise than out of profits of the company.”

7. The said provision of subsection (2) of section 248 of the Ordinance for offsetting of proceeds from disposal of immovable property and assets of capital nature is applicable only in case of a company whose business consists whether wholly or partly of selling and purchasing such assets. In the instant case, the principle object of the company is sale and manufacture of cotton yarn and cotton fabric and after partial disposal of its plant and machinery in September 2002 the declaration of dividend out of such proceeds was illegal according to aforesaid statutory provisions

8. In order to provide an opportunity of personal hearing, a number of dates were fixed, details of which are summarized as under:

S. No.	Notice of Hearing Date	Remarks
1.	September 13, 2004	No one appeared, adjourned and hearing fixed for next date.
2.	September 23, 2004	Request for adjournment received, adjourned and hearing fixed for next date.
3.	October 12, 2004	No one appeared, adjourned and hearing fixed for next date.
4.	November 12, 2004	No one appeared, adjourned and hearing fixed for next date.
5.	November 23, 2004	No one appeared.



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9. It was the fundamental responsibility of the Company and its directors to comply with the statutory requirements in managing the affairs of the company. Payment of dividends out of capital is a breach of trust and the company may require the directors to replace the capital. There are well known cases where fictitious profits were created and distributed as dividends. The Company and its directors were held liable. Since the dividend was paid in violation of the legal provisions, a default under Section 248 (2) of the Ordinance has been committed. I therefore, in exercise of powers conferred on me under section 498 of the Companies Ordinance 1984, impose a fine of Rs. 50,000 on each director who was on the Company's Board on the date of default. Details of the same are as under:

S. No.	Name	Penalty (Rupees)
1.	Mr. M Kasim Hasham, Ex Chairman	50,000
2.	Mr. M. Hussain Hasham, Ex Director	50,000
3.	Mr. M. Ebrahim Hasham, Ex Director	50,000
4.	Mr. Muhammad Amin, Ex Director	50,000
5.	Mr. Khurram Kasim, Ex Director	50,000
6.	Mr. Ahmed Ebrahim, Ex Director	50,000
7.	Mr. A. Ghani A. Sattar, Ex Director	50,000
	Total	350,000

10. The ex-Chief Executive and the ex-directors of the Company (as indicated above) 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 date 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 capacities and they are required to pay the said amounts from their personal resources.

Tariq Bakhtawar
Director Enforcement

Announced:
December 23, 2004
ISLAMABAD