

**Before Dr. Sajid Qureshi, Executive Director (Company Law)**

**In the matter of**

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

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

Number and date of show cause notice	EMD/Enf-II /291/2004 dated July 14, 2005
Date of hearing	December 01, 2005
Present	Mr. Ejaz-ul-Haque, Company Secretary
Date of Order	December 23, 2005

## **Order**

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This Order shall dispose of the proceedings initiated against the Directors of M/s. Zahur Textile Mills Limited (hereinafter referred to as the “Company”) for defaults made in complying with the requirements of Sub-section (1) of Section 245 of the Companies Ordinance, 1984 (the “Ordinance”).

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 2<sup>nd</sup> quarter ended March 31, 2005 by May 31, 2005. The Company failed to file the aforesaid accounts with the Commission within the prescribed time period. Consequently, a show cause notice dated July 14, 2005 was served on the Chief Executive and other directors calling upon them to explain 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 for the aforesaid contravention. The Chief Executive and directors failed to respond the aforesaid notice.



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3. In order to provide an opportunity of personal hearing, the matter was fixed for November 10, 2005 but no one appeared for hearing on the given date and time. To afford another opportunity, the case was re-fixed for December 01, 2005. On the date of hearing, Mr. Ejaz-ul-Haque, Company Secretary appeared before me to argue the case on behalf of the Chief Executive and other directors. He admitted the default and also filed written explanation vide letter dated December 01, 2005. In the written submissions as well as in the arguments advanced verbally at the time of hearing, Mr. Ejaz contended that the quarterly accounts could not be filed in time due to change of financial year. He stated that the annual accounts for the current year were closed on June 30, 2005 due to which AGM of the Company was delayed and the entire schedule was disturbed. He contended that the Company remained in crises since 1997 and the previous staff was also casual. He informed that the management has now controlled the affairs of the Company and there is improvement in compliance of the statutory provisions of law. Mr. Ejaz also intimated that the annual accounts for the aforesaid period have been finalized and AGM has been scheduled for December 31, 2005 after which the quarterly accounts will be filed. He regretted for the default and requested for a lenient view and assured strict compliance of the provisions of the Ordinance by the directors of the Company in future.

4. Having considered the written as well as verbal submissions, I am of the opinion that the contentions of the respondents do not carry any merit. Late finalization of the annual accounts is not a justifiable excuse for default in the circulation and filing of quarterly accounts which is a separate mandatory requirement under Section 245 of the Ordinance. For the foregoing reasons, the default under Sub-section (1) of Section 245 is considered willful and deliberate which attracts the penal provisions of Sub-section (3) of Section 245 of the Ordinance. Considering the circumstances of the case and submissions of the representative of the directors, I am of the opinion that the contentions of the representative of the directors do not justify the default under Section 245 of the Ordinance. Preparation and circulation of quarterly accounts is one of the statutory obligations of the directors and they are supposed to make serious efforts to ensure the compliance of the relevant provisions of law. Default on



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one count can not be accepted as a justification for violation of other provisions of law. The respondents have, therefore, failed to offer justifiable excuse for such an inordinate delay in filing of the quarterly accounts. The track record of the Company with regard to filing of quarterly accounts and holding of AGMs is also highly deplorable and there are continuous defaults of Sections 245 and 158 despite penal actions taken against the directors of the Company on various occasions. In the circumstances, the repetition of default by the directors of the Company is considered willful and deliberate, which attracts penal provisions of Sub-section (3) of Section 245 of the Ordinance.

5. In view of the above, it appears that the directors of the Company do not assign due importance in complying with the requirements of the law. However, 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, I, in exercise of powers conferred upon me under Section 245 read with Section 476 of the Ordinance, impose a fine of Rs. 50,000/- (Rupees fifty thousand only) on the Chief Executive and each of the directors of the Company in the following manner: -

S. #	Name	Penalty (Rupees)
		<b>For the quarter ended 31-12-2004</b>
1	Mr. Mohsin Zahur, Chief Executive	50,000
2	Mr. Arif Zahur, Chairman/ Director	50,000
3	Mr. Ejaz-ul-Haque, Director	50,000
4	Mr. Haroon Zahur, Director	50,000
5	Mr. Raza Arif, Director	50,000
6	Mr. Sajid Ali, Director	50,000
7	Mr. Shaukat Ali, Director	50,000
	<b>Total:</b>	<b>350,000</b>

6. The Chief Executive and directors of M/s. Zahur Textile Mills Limited are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fine aggregating to Rs.350,000/- (Rupees three hundred and fifty thousand only) in the



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Commission's designated bank account No. 75010-6 maintained at Central Branch, 102/103, Upper Mall, Lahore or by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the directors in their personal capacity, therefore, they are required to pay the said amounts from their personal resources.

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**Dr. Sajid Qureshi**  
Executive Director (Company Law)