

Before Ali Azeem Ikram, Director (Enforcement)

In the matter of

Usman Textile Mills Limited

UNDER SECTION 186 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

Number and date of notice	No.EMD/233/289/2002-445-451 dated July 19, 2006
Date of hearing	December 27, 2006
Present	Mr. Shafiq Ahmed Counsel

ORDER

This order shall dispose of the proceedings initiated against the directors of Usman Textile Mills Limited (Company) under Section 186 of the Companies Ordinance, 1984 (Ordinance) for non-holding of election of directors of the Company as required under Section 177 of the Ordinance.

2. In order to fully appreciate the issue in hand, it is necessary to have a glance into the relevant background facts of the case. The Commission while examining the record of the Company observed that the last election of directors of the Company was held on March 26, 2002 to elect directors for a period of 3 years which expired on March 26, 2005. The directors of the Company were required to hold fresh election of directors on or before March 26, 2005. However, the continuing directors, not only, failed to hold elections within the prescribed period but also failed to report the impediments to the Registrar of Companies within fifteen days as required under Section 177 of the Ordinance. Consequently, a notice dated July 19, 2006 was served upon the directors of the Company to show cause as to why penalty as provided under Section 186 read with Section 476 of the Ordinance, may not be imposed and as to why they may not be debarred from continuing or becoming the director of the Company for a period not exceeding three years as provided in Section 186 of the Ordinance for the aforesaid contravention. The directors of the Company failed to respond to the show cause notice.

3. In order to provide an opportunity of hearing to the directors of the Company the case was initially fixed for hearing on November 21, 2006. No one appeared on the date of hearing instead a letter was received from Mr. Shafiq Ahmed, the Counsel for the directors, requesting for adjournment of hearing. The request was acceded to and the matter was re-fixed on December 11, 2006 which was again

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 1 -

adjourned on the request of the Counsel and was re-fixed on December 27, 2006. On the date of hearing, Mr. Shafiq Ahmed appeared before the undersigned to argue the case. He, however, did not bring along the power of attorney. He was therefore advised to provide the power of attorney which was submitted on February 07, 2007.

4. During the course of hearing, Mr. Ahmed admitted the fact that the election of the directors were not held within the prescribed time and also that the directors failed to report any impediment to the Registrar of the Companies in this regard. He, however, averred that the election of directors could not be held due to the circumstances which were beyond the control of the Company. He stated that Mr. Noor Qadir, the Chief Executive of the Company who also holds controlling shares of the Company, was in the custody of National Accountability Bureau (NAB) since 2003 and was released in the start of 2006 while other directors did not have sufficient funds for holding election of directors. He argued that in view of the peculiar circumstances of the Company the Commission should take a lenient view of the default and should not debar the directors from continuing or becoming the directors of the Company for a period not exceeding three years. He further submitted that the Company has finalized its annual audited accounts for the last three years and has planed to hold its overdue annual general meetings (AGMs) in January 2007. I, therefore, suggested to Mr. Ahmed to advise the Company to hold its election of directors in the coming AGM.

5. I have taken into consideration the submissions made by the Counsel of the directors and have also perused the relevant legal provisions applicable in this case. The default is established and admitted. It was the duty of all the directors to take immediate steps to hold election of directors of the Company and in case of any impediments they should report the circumstances to the Registrar of Companies as required under the Ordinance however they failed to do so. However, considering the fact that the directors have now held elections in AGM held on February 12, 2007, I am inclined to take a lenient view of the default and instead of imposing maximum penalty of Rs. 10,000 on each director and debarring them from continuing or becoming the director of the Company for a period of 3 years, impose a *token* penalty of Rs. 10,000/- only on Mr. Haroon Shekha, Director, who is also Company Secretary of the Company. All other directors are advised to remain careful in future in ensuring compliance with the mandatory requirements of the statute.

6. Mr. Haroon Shekha is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with Habib Bank Limited or pay through a demand draft in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank voucher to the

Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on Mr. Haroom Shekha in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

Ali Azeem Ikram
Director (Enforcement)

Announced
February 20, 2007
Islamabad.