

[Islamabad]

Before Dr. Sajid Quershi, Executive Director (CL)

Order in the matter of

M/s. Mubarak Dairies Limited

Number and date of notice:	No. EMD/233/571/2002- 5015 Dated November 30, 2005
Date of Hearing:	February 22, 2006
Present:	Mr. Khalid Suraj Bajwa Chief Executive Officer

Order

This Order shall dispose of the proceedings initiated against M/s Mubarak Dairies Limited (hereinafter referred to as “the Company”) under the provisions of Section 472 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. In order to fully understand the issues involved in this case a brief narration of the background facts is essential. The Enforcement Department conducted an examination of the financial statements of the Company for the year ended June 30, 2004 to determine whether the audited accounts pertaining to the aforesaid financial year had been made in conformity with the requirements of Section 234 of the Ordinance and present true and fair of the state of affairs of the Company as at that date. The aforesaid examination revealed that the auditors M/s Sarwar Awan & Co., Chartered Accountants, of the Company had qualified their report for the year ended June 30, 2004 due to non – verification of surplus on revaluation of fixed assets, non-verification of loan facilities and bank balances, non-provisioning of markup on loan facilities, non-verification of existence and valuation of fixed assets due to absence of fixed assets register, non- verification of existence and valuation of stores, spares and loose tools, non-verification of debtors and creditors and company’s inability to continue as a going concern. A detailed analysis of the accounts for the year ended June 30, 2004 and qualifications made by the auditors in their report revealed the following:

2.1. Verification of Assets: The existence and valuation of assets amounting to Rs. 239.930 million, which is 99.63% of the total assets, was not verified as reported in the



aforesaid qualifications. These include fixed assets amounting to Rs. 233.994 million, stores, spares and loose tools amounting to Rs.0.315 million, trade debts amounting to Rs. 5.622 million and bank balances amounting to Rs. 0.005 million.

2.2. Verification of Liabilities & Reserves: The correctness of liabilities and reserves amounting to Rs. 363.40 million was not verified by the auditors. The liabilities and reserves whose correctness, existence and valuation was not verified include loans amounting to Rs. 211.044 million, revaluation surplus amounting to Rs. 151.229 million and creditors amounting to Rs. 0.976 million.

2.3. Non-provision for Depreciation: The depreciation was not being charged since 1998 on the ground that the factory remained closed. The treatment was contrary to the requirements of law and Technical Release issued on the subject by the Institute of Chartered Accountants of Pakistan.

2.4. Going concern ability of the Company: The Company is closed since the year 1994, and apparently it was no more a going concern yet the Company was preparing its accounts on going concern basis.

3. The materiality of the aforesaid matters raised serious doubts about the true and fair view of the aforesaid accounts. The matter was taken up with the auditors of the Company who admitted that the accounts of the Company for the aforesaid period did not depict a true and fair view of the state of affairs of the Company as on June 30, 2004. The auditors of the Company were penalized for their incorrect opinion.

4. Further examination of the record and perusal of prior years accounts of the Company revealed that the afore-referred discrepancies were appearing in the accounts of the Company since 1998. It was further observed that the Commission, through its order under Section 309 of the Ordinance, granted sanction to the concerned registrar to file a petition for winding up of the Company due to closure of the unit since 1994 and default in the holding of seven annual general meetings i.e. from 1997 onwards. However, petition under Section 309 of the Ordinance was not filed as the management requested for time for revival of the project and it also held overdue AGMs and submitted annual audited accounts for the periods ended June 30, 1998 to June 30, 2003 to the Commission. The Company also held the annual general meeting for the year ended June 30, 2004 and



submitted the annual audited accounts to the Commission for the said period. However, the Company failed to hold its annual general meeting for the year ended June 30, 2005 to lay therein the annual audited accounts for the said year and to file the quarterly accounts for the first, second and third quarter for the periods ended September 30, 2004, December 31, 2004 and March 31, 2005.

5. In the aforesaid circumstances it was considered necessary to direct the Company to undo the aforesaid defaults. Hence, a notice under Section 472 of the Ordinance dated November 30, 2005 was issued requiring the Company to make good the continuing defaults relating to annual and interim accounts within 30 days. The Company was directed to remove the auditors qualifications and to provide depreciation in the accounts for the year ended June 30, 2005. It was advised that the accounts be prepared such that they depict the true and fair view of the state of affairs of the Company.

6. The Company did not respond to the aforesaid notice. The case was fixed for hearing on February 22, 2006. On the date of hearing Mr. Khalid Suraj Bajwa, the Chief Executive Officer of the Company appeared before the undersigned to argue the case. Mr. Bajwa submitted that the Company had to stop its business in the year 1994 just after a few months of start of its commercial production due to some mechanical problems and marketing crises prevailing at that time. He stated that the management of the Company tried their best to turn the sick unit into a viable project but they could not succeed despite of their best efforts. He further contended that the management is still trying to bring the plant into operation and is looking for some investor who may inject funds for revival of the unit so that they can honor their legal and statutory obligations. Owing to these problems certain defaults occurred in updating the accounting systems which had resulted in auditors qualifications. He further stated that the directors aim to remove the defaults and the process for rectifying the said defaults has been started, however, it need some time to update the whole system and to remove the discrepancies pointed out by the Commission. He requested that time till March 15, 2006 be allowed for rectifying the said defaults.

7. Before proceeding to decide this case, I consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions which are meant for timely provision of accurate information to the investors/shareholders. The protection of the investors/shareholders is one of the key objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. Such persons do not have any direct control over the company apart from that they elect directors for a period of three years and hand over the affairs of the company to them in the expectation that they will manage the company in a prudent manner. In order to protect their interests



Section 233, 234 and 245 of Ordinance requires that timely, adequate, meaningful and *true and fair* information is transmitted to them in the form of annual and interim accounts. They are also provided, under Section 158 of the Ordinance, with an opportunity to discuss, speak and vote on the significant matters, like approval of accounts, appointment of auditors, election of directors and other important issues relating to the performance of the Company, in the annual general meeting. In view of the aforesaid, the violation of the aforesaid mandatory provisions of the Ordinance could not be ignored. Hence, the Commission initiated proceedings against the Company under Section 158 and 245 of the Ordinance. In addition the Company was directed, through a notice under Section 472 of the Ordinance to undo the continuing defaults.

8. It is also deemed necessary to advert to the provisions of law, under which the notice to undo the irregularity was given. Section 472 of the Ordinance, to the extent relevant, is reproduced as follows:

472. Enforcing compliance with provisions of Ordinance

- (1) *If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Authority may, of its own motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.*
- (2) *Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by any officer of the company responsible for the default.*

9. I have carefully considered the circumstances of the case and the submissions of the Chief Executive. In view of the firm commitment of the Chief Executive of the Company for rectifying the aforesaid defaults by March 15, 2006, I, proceed to order the directors of the company as follows:

- (i) To submit to the Commission audited financial statements of the company for the year ended June 30, 2005, prepared in accordance with Section 234 of the Ordinance depicting the *true and fair view of the state of its affairs* as on June 30, 2005, along with the auditors report thereon within 30 days of the date of this order.



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- (ii) To submit to the Commission the quarterly accounts for the first, second and third quarter for the periods ended September 30, 2004, December 31, 2004 and March 31, 2005 within 30 days of the date of this order.
- (iii) To make an application to the Commission under Section 170 of the Ordinance seeking direction from the Commission for holding of the overdue Annual General Meeting for the calendar year 2005 within 7 days of the submission of aforesaid audited annual accounts wherein these financial statements would be approved by the shareholders.
- (iv) To submit a plan for revival of the project within 30 days of the date of this order.

10. In the end it may be emphasized that in case of non-compliance of the above directives, the directors of the Company shall be liable to action under Section 495 of the Ordinance, which provides that where any directive is given or order is issued by the Court, the Officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues. If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

11. It may also be noted that this order is issued without prejudice to any penal action, which may be taken in respect of the aforesaid defaults under Section 158, 233, 245 and 309 of the Companies Ordinance, 1984.

Dr. Sajid Quershi
Executive Director (CL)

Announced:
February 24, 2006
ISLAMABAD