

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

*In the matter of*

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

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

No. & date of show cause notice	EMD/Enf-II/217/2005, dated November 25, 2005
Date of hearing	February 06, 2006
Present	Mr. Muhammad Tahir Raza, Manager.
Date of Order	June 09, 2006

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## **Order**

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This Order shall dispose of the proceedings initiated against the directors of M/s. Hakkim Textile Mills Limited (hereinafter referred to as the “Company”) for default made in complying with the provisions 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 Registrar and the Commission its quarterly accounts for the 1<sup>st</sup> quarter ended September 30, 2005 by October 31, 2005. Failure of the Company to comply with the aforesaid mandatory requirements within the prescribed time necessitated action against the responsible directors of the Company in terms of Sub-section (3) of Section 245 of the Ordinance. Consequently, a show cause notice dated November 25, 2005 was served on all the directors including the Chief Executive of the Company calling upon them to show cause 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



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contravention. The aforesaid show cause notice was responded by Mr. Muhammad Athar Malik, Chief Executive of the Company vide his letter dated November 28, 2005 on behalf of all the directors of the Company. The explanation furnished was considered but not found satisfactory.

3. In order to provide an opportunity of personal hearing, the matter was fixed for hearing on February 06, 2006. On the date of hearing Mr. Muhammad Tahir Raza, Manager/the authorized representative appeared before me on behalf of the directors of the Company to argue the case. During the course of hearing, while admitting the default Mr. Tahir also filed written explanation vide letter dated February 06, 2006 from the Chief Executive of the Company. In the written as well as in the verbal submissions it was contended that the quarterly accounts could not be filed due to the closure of the Company since 1999 and due to the conflicts with the previous owners and financial institutions. It was further stated that the Company has recently approached BEL in the light of SBP-Committee's decision under SBP Circular No. 29 for settlement of outstanding liabilities.

4. I have given due consideration to the written submissions of the Chief Executive of the Company contained in his letter dated February 06, 2006 and the arguments advanced by the representative of the directors at the time of hearing; however, none of them justify the default. The Company was not functioning, is not a cogent excuse for non submission of quarterly accounts to the shareholders. I am, therefore, of the view that in the circumstances described above, the directors of the Company could have refrained from committing the aforesaid default. It was all the more easy for the directors when the Company was not functioning, to have prepared and transmitted the quarterly accounts to the shareholders. It is, therefore, the duty of the directors to ensure compliance with all the statutory requirements. Accordingly, the directors of the Company are responsible for timely preparation and submission of quarterly accounts to its members and file the same with the Registrar and the Commission within prescribed time. Since the respondents have failed to furnish any cogent justification for the default, therefore, the same is considered willful and intentional.



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Moreover, inspite of issuance of show cause notice dated November 25, 2005, the Company has failed to file the aforesaid quarterly accounts till date. The track record of the Company with regard to filing of quarterly accounts is also unsatisfactory, as the Company has failed to file quarterly accounts since December 31, 2001.

5. Before proceeding to decide this case, I also consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions of the law. The protection of the investors/shareholders is one of the primary objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. If the interest of the investors is protected, they will save and invest more. Their interest is protected by transmission of timely, adequate and meaningful information to them. It is the annual and interim accounts, which provide information to the investors about the affairs of the companies. It has unfortunately been noted that the directors of M/s. Hakkim Textile Mills Limited are not observing these compulsory requirements of law.

6. In view of the above discussion, it can be legitimately inferred that the Chief Executive and directors have failed to protect the interest of the shareholders. The aforesaid state of affairs is a cause of great concern for the Commission. This led me to believe that the directors have no respect for the law and they have deprived the shareholders of their statutory right to receive the quarterly accounts of the Company within the prescribed time limit. The responsibility for preparation/circulation of quarterly accounts rests with the directors of the Company and they have to take appropriate action at appropriate time. The repetition of default clearly shows that the Company is not making any serious efforts to comply with the provisions of the law. For the foregoing reasons, the default under Sub-section (1) of Section 245 of the Ordinance regarding non-submission of quarterly accounts for the 1<sup>st</sup> quarter ended on September 30, 2005 stands established.

7. 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 impose the following penalties



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on the Chief Executive and each director of the Company under Sub-section (3) of Section 245 of the Ordinance:-

S. No	Name	Penalty (in Rs.)
1.	Mr. Muhammad Athar Malik, Chief Executive	20,000
2.	Mr. Zahid Mahmood, Director	20,000
3.	Mr. Fayyaz Hussain, Director	20,000
4.	Mr. Gulraiz Qaisar, Director	20,000
5.	Mr. Tariq Aman, Director	20,000
6.	Mr. Ameer Abdullah , Director	20,000
7.	Mrs. Sarah Nawaz Khan, Director	20,000
	<b>Total</b>	<b>140,000</b>

8. The Chief Executive and directors of M/s. Hakkim Textile Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.140,000/- (Rupees one hundred and forty thousand only) 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 receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of 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 movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity who are required to pay the said amount from their personal resources.

**Dr. Sajid Qureshi**  
Executive Director (CLD)