

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

In the matter of

M/s. Sunshine Cotton Mills Limited

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

No. & date of show cause notice	EMD/Enf-II/201/2003-8402-8408, dated February 23, 2006
Date of hearing	April 26, 2006
Present	Mr. Ghulam Murtaza, Authorized representative.
Date of Order	June 14, 2006

Order

This Order shall dispose of the proceedings initiated against the directors of M/s. Sunshine Cotton 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 1st 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 February 23, 2006 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 Chief Executive and other directors, however, did not respond to the said notice.

3. In order to provide an opportunity of personal hearing, the matter was fixed for hearing on March 21, 2006, which was adjourned on the request of the Company and re-fixed for April 26, 2006. On the date of hearing Mr. Ghulam Murtaza of G.M. Associates, appeared before me on behalf of the directors of the Company to argue the case. He also filed power of attorney from all the directors. During the course of hearing, while admitting the default, Mr. Murtaza contended that the Company is lying closed since 2002. He added that there are no funds with the Company for printing accounts and to pay auditor's fee. It was further contended that the Company has suffered heavy losses and now it exists just on papers. He stated that the assets of the Company have been sold to pay liabilities to the banks.

4. I have given due consideration to the arguments advanced by the representative of the directors, however, none of them justify the default. The Company is lying closed, is not a cogent reason to justify the default. 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 them, 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 to defend the default, therefore, the same is considered willful and intentional. Moreover, inspite of issuance of show cause notice dated February 23, 2006, the Company has failed to file the quarterly accounts till date. The track record of the Company with regard to filing of quarterly/half yearly accounts is also unsatisfactory, as it has failed to file the



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accounts within prescribed time since 2001 for which the directors were penalized earlier also.

5. Before proceeding to decide this case, I also consider it necessary to highlight the importance of the strict observance of the 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. Sunshine Cotton 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. 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 1st 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 on the Chief Executive and each director of the Company under Sub-section (3) of Section 245 of the Ordinance:-



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S. No	Name	Penalty (in Rs.)
1.	Mian Aftab A. Sheikh, Chief Executive	10,000
2.	Mrs. Nasreen Aftab, Director	10,000
3.	Mr. Hassan Aftab, Director	10,000
4.	Miss. Aliya Aftab, Director	10,000
5.	Mr. Muhammad Saleem Zia, Director	10,000
6.	Mr. Shahzad Latif , Director	10,000
7.	Mr. Muhammad Azam Waheed, Director	10,000
	Total	70,000

8. The Chief Executive and directors of M/s. Sunshine Cotton Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.70,000/- (Rupees seventy 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)