

**Before Tariq Bakhtawar, Director Enforcement**

**In the matter of**

**M/s. Frontier Ceramics Limited**

**(Under Sub-section (4) of Section 158 of the Companies Ordinance, 1984)**

Number and date of Show cause notice	EMD/Enf-II/584/2006-7645-52 Dated January 25, 2006
Date of hearing	March 21, 2006
Present	Mr. Muhammad Noor Khan, Officer Corporate Affairs
Date of Order	June 30, 2006

**Order**

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This Order shall dispose of the proceedings initiated against M/s. Frontier Ceramics Limited (hereinafter referred to as the “Company”) and its directors for default made in complying with the provisions of Sub-section (1) of Section 158 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meeting (the “AGM”) for the year ended June 30, 2005 on or before October 31, 2005. The Company failed to hold the AGM within the prescribed time period. The failure of the Company to comply with the aforesaid mandatory requirement necessitated action against the Company and its directors in terms of Sub-section (4) of Section 158 of the Ordinance. Consequently, a show cause notice dated January 25, 2006 was served on the Company and its directors including the Chief Executive calling upon them to show cause as to why penalties as provided under Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed on them.

3. In response to the show cause notice, the Company contended vide its letter dated February 10, 2006, that ;



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- As per requirement of law AGM was required to be held within a period of not more than fifteen months after holding of its last preceding AGM. The Company held its last AGM on December 30, 2004; hence they were liable to hold the next AGM by March, 2006.
- Due to the closure of the Company for the last two years, there was no staff available to facilitate the auditors to conduct audit resulting that the accounts for the year ended June 30, 2005 could not be finalized and AGM could not be held.
- The Company has now taken initiatives to restart under a new management and the matters including annual accounts for the year ended June 30, 2005 have been finalized. The Company has requested to condone the default.

4. The explanation furnished by the Company was not found satisfactory. In order to provide an opportunity of personal hearing the matter was fixed for March 01, 2006. No one appeared on the date of hearing to plead the case. However, a written reply dated March 01, 2006 was received from the Company, whereby request was made to adjourn hearing till March 15, 2006. The case was, therefore, fixed for March 13, 2006. On the date of hearing Mr. Muhammad Noor Khan, Officer Corporate Affairs appeared before me to argue the case along with power of attorney from Mr. Fayyaz Khan, one of the directors of the Company. When asked for power of attorney from other directors, Mr. Noor Khan requested to give him time for submission of the same in the next week and the proceedings were adjourned and re-fixed for March 21, 2006.

5. On the date of hearing, Mr. Noor Khan, again appeared on behalf of all the directors and reiterated the facts mentioned in the reply of the Company. During the course of hearing, Mr. Noor, while admitting the default, contended that the non- holding of AGM for the year ended June 30, 2005 was neither willful nor intentional but due to the closure of the factory. He added that there was no staff available to facilitate the auditors to carry out audit, therefore, they could not finalize the annual accounts and arrange for holding of AGM. He contended that now the new management has taken over who wish to settle all the outstanding issues including the corporate matters. He requested for grant of an extension of time up to May 15, 2005 for holding the AGM for which the Company has already deposited Rs.15000 as an extension fee.

6. I have given due consideration to the arguments advanced by the director's Counsel, however, none of them justify the default. Evaluations of the arguments advanced by the Company are as follow;



- The plea of the Company that they were liable to hold AGM within a period of not more than fifteen months after the holding of its last preceding AGM is not correct because Sub-section (1) of Section 158 of the Ordinance provides that,

*“Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting”*

A careful reading of the above-referred provision of law clearly suggests that the date on which the AGM is to be held is determined by the following three factors:

- i) the meeting should be held once in each calendar year;*
- ii) the meeting should be held within four months from the close of the financial year;*
- iii) the meeting should be held within fifteen months from the date of holding of last preceding annual general meeting.*

The AGM of a company should be held so that compliance with all the reference points in the time frame, provided above, is made and breach of one or more conditions in the time lines stated above would result in failure to meet statutory limits. The last preceding AGM was held on December 30, 2004. For determining as to what should be the last date for holding of AGM for the calendar year 2005, one has to look at each time factor independently. These are:

- i) the last date of the calendar year, which is **December 31, 2005.***
- ii) within 15 months from the date of holding of last AGM, December 30, 2004 which is **March 31, 2006.***
- iii) within four months following the close of its financial year, which is **October 31, 2005.***

The AGM of the Company, therefore, should be held not later than the earliest of the aforesaid relevant dates and in the present situation date is **October 31, 2005.** The Company was required to hold its AGM on or before October 31, 2005. In view of whatever has been discussed above, I am left with no doubt that the Company was required to hold its AGM on or before October 31, 2005. The argument of the Learned Counsel that the Company could hold its AGM within fifteen months from the date of its last preceding AGM, therefore, cannot be accepted.



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- The Company applied for extension in time to hold its AGM after October 31, 2005 on October 03, 2005 and was received October 11, 2005. The application of extension was examined in light of the relevant provisions of Rule 14 and 30 of the Companies (General Provisions and Forms) Rules, 1985 (“Rules”) and it was observed that the application was not received within prescribed time mentioned in Rule 14 and the Company has not complied with in Rule 30 of the Rules. The reason provided by the Company for extension was not found cogent. The last AGM of the company was also held in the extended time and was held on December 31, 2005. Therefore request for grant of extension in time for holding Annual General Meeting of the Company for the year 2005 was not acceded to. It is also to be mentioned that under the law the Company could be allowed maximum extension of sixty days i.e upto December 31, 2005, whereas the Company has failed to hold the AGM till May 2006.
- The argument that the Company could not hold AGM, because it was closed for the last two years, is unfounded. This is a public listed company and providing accounts to shareholders and holding AGM on time are prime responsibilities of the directors toward the shareholders. The argument, that the Company is lying closed, cannot be taken as a cogent reason to justify the default. It is the duty of the directors to ensure compliance with all the statutory requirements. Accordingly, the directors of the Company are responsible for timely holding of AGM and filing of annual accounts 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. The management of a company and all powers relating thereto are vested exclusively in the Board of Directors and the Board is therefore collectively responsible for that management. The directors of the company cannot be allowed to escape the performance of their duties under the Companies Act by the mere plea that they had no real control over the affairs of the company and therefore they did not willfully permit the default. It is their duty not to be mere passive spectators of what is going on but to see and make the necessary attempt that the statutory requirements are carried out, and where this has not been done, the courts can and would legitimately infer that the defaults though not expressly authorized were willfully permitted.
- I have also given careful consideration to the other submissions advanced for delay in holding of AGM within the mandatory time period; however, none of them justify the delay in holding of AGM. Besides, the past record of the Company in compliance of this statutory requirement is also quite unsatisfactory. Since the representative of the directors has failed to furnish any cogent reason to justify the default, therefore, the default is considered willful and deliberate.



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7. Before proceeding to decide this case, I 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. 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. Annual General Meeting is a forum where the investors can freely speak, discuss and vote on important matters concerning approval of accounts, appointment of auditors, election of directors etc. It has unfortunately been noted that the directors of M/s. Frontier Ceramics Limited have not observed these compulsory requirements of law.

8. 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. The Company has also committed defaults in filing of half yearly and quarterly accounts in the past but the defaults were ignored by the Commission. This led me to believe that the directors have no respect for the law and they have again deprived the shareholders of their statutory right to receive the annual accounts of the Company. The responsibility for holding AGMs and preparation/circulation of annual accounts rests with the directors of the Company and they have to take appropriate action at appropriate time. For the foregoing reasons, the default under Sub-section (1) of Section 158 of the Ordinance regarding non-holding of AGM for the year ended on June 30, 2005 even after issuance of show cause notice dated January 25, 2006 stands established.

9. However, instead of imposing the maximum fine of Rs.50,000 on the Company and every director and a further fine of Rs.2,000 per day for the continuous default, I impose the following penalties on the Chief Executive and the directors of the Company under Sub-section (4) of Section 158 of the Ordinance:-



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S. No	Name	Penalty (in Rs.)
1.	Mr. Hafeez Akhtar Randhawa, Chief Executive	10,000
2.	Mr. Shams-ul-Hassan, Director	10,000
3.	Mr. Noman Ghani, Director	10,000
4.	Mr. Iftikhar Ahmad Khan, Director	10,000
5.	Mr. Muhammad Fayyaz Khan, Director	10,000
6.	Mr. Muhammad Iqbal, Director	10,000
7.	Mr. Hukam Khan Badshah, Director	10,000
	<b>Total</b>	<b>70,000</b>

10. The Chief Executive and directors of M/s. Frontier Ceramics 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.

**Tariq Bakhtawar**  
Director Enforcement