

Before Tariq Bakhtawar, Director Enforcement

In the matter of

M/s. Sunshine Cotton Mills Limited

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

No. and date of show cause notice	EMD/Enf-II/201/2003-8402-8408, dated January 25, 2006
Date of hearing	April 26, 2006
Present	Mr. Ghulam Murtaza, Authorized representative
Date of Order	June 30, 2006

Order

This Order shall dispose of the proceedings initiated against M/s. Sunshine Cotton Mills 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 aforesaid 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. In response to the show cause notice, the Company Secretary, vide his letter dated February 02, 2006 requested to adjourn the matter till February 23, 2006. Subsequently, Mr. Ghulam Murtaza of G. M. Associates, the authorized representative vide letter dated February 22, 2006, requested to allow them time in submission of written reply to the show cause notice till March 07, 2006. He also filed power of attorney from the directors of the Company allowing him to attend hearing on their behalf.

3. In order to provide an opportunity of personal hearing, the matter was fixed for hearing on March 13, 2006, which was adjourned and re-fixed for March 21, 2006. The hearing was again adjourned on the request of Mr. Ghulam Murtaza, representative of the directors and re-fixed for April 26, 2006. On the date of hearing, Mr. Ghulam Murtaza appeared before me on behalf of the directors to argue the case. 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 the accounts and to pay auditor's fee. He further contended that the Company has suffered heavy losses and now it exists just on papers. He reported 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. 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. Moreover, inspite of issuance of show cause notice dated January 25, 2006, the Company has failed to hold the aforesaid AGM till date. It is very significant to be note that the statute does not provide any situation where the company may not hold AGM and by not holding AGM the fundamental rights of the shareholders have been infringed by the directors.



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. 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. 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 annual accounts of the Company within the prescribed time limit. The responsibility for 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 (4) of Section 158 of the Ordinance regarding non-holding of AGM for the year ended June 30, 2005 stands established.

7. However, instead of imposing the maximum fine of Rs.50,000 on 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 each director of the Company under Sub-section (4) of Section 158 of the Ordinance:-



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - I -

S. No	Name	Penalty (in Rs.)
1.	Mian Aftab A. Sheikh, Chief Executive	20,000
2.	Mrs. Nasreen Aftab, Director	20,000
3.	Mr. Hassan Aftab, Director	20,000
4.	Miss. Aliya Aftab, Director	20,000
5.	Mr. Muhammad Saleem Zia, Director	20,000
6.	Mr. Shahzad Latif , Director	20,000
7.	Mr. Muhammad Azam Waheed, Director	20,000
	Total	140,000

8. The Chief Executive and directors of M/s. Sunshine Cotton Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.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 that are required to pay the said amount from their personal resources.

Tariq Bakhtawar
Director (Enforcement)