

Before Abid Hussain, Director (Enforcement)

In the matter of
Mubarik Dairies Limited

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

Number and date of Show cause notices	EMD/Enf-II/571/2003 Dated May 05, 2006 & May 16,2006
Date of hearing	May 09, 2007
Present	No one appeared
Date of Order	June 13, 2007

Order

This Order shall dispose of the proceedings initiated against the directors of Mubarik Dairies 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 2nd quarter ended on December 31, 2005 and 3rd quarter ended on March 31, 2006 by February 28, 2006 and April 30, 2006 respectively. The Company failed to file the aforesaid accounts with the Commission within the prescribed time. The failure of the Company to comply with the aforesaid requirements necessitated action against the directors of the Company in terms of Sub-section (3) of Section 245 of the Ordinance. Consequently, show cause notices dated May 05, 2006 and May 16, 2006 were 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.

3. In response to the show cause notices the Company Secretary contended vide his letters dated May 12, 2006 and May 30, 2006 that the external audit of the Company for the year ended June 30, 2005 is in progress in the light of opinion given by ICAP. He further stated that accounts for the aforesaid quarters cannot be finalized prior to completion of annual accounts as the corresponding balances and comparative figures for the prior year’s accounts are required to be disclosed in the accounts. He also requested to keep the matter pending till finalization of annual accounts.



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4. In order to give an opportunity of personal hearing, the matter was fixed for October 03, 2006, November 17, 2006 and December 20, 2006 however no one appeared to attend the hearing. Another opportunity of hearing was given on February 02, 2007 on the request of the Company but instead of attending the hearing, the Company Secretary contended vide letter dated February 02, 2007 that they are in financial crises and have now managed to arrange funds from the directors and associates to update the pending matters. It was further submitted that they have also finalized quarterly accounts for the quarters ended December 31, 2005 and March 31, 2006. Request was also made to drop the show cause proceedings against the directors of the Company. In order to provide a final opportunity the matter was fixed for May 09, 2007 but again no one appeared to argue the case. However, the Company Secretary, vide his letter dated May 09, 2007 contended the same arguments as were given vide letter dated February 02, 2007.

5. From the foregoing, it has been observed that the Chief Executive and directors of the Company have avoided appearance in the hearing despite they were given five opportunities. Therefore, I proceed to adjudicate this case on the basis of written explanation furnished by the Company Secretary. The plea of the Company Secretary that the quarterly accounts cannot be finalized prior to completion of annual accounts is not a cogent reason to justify the default. Preparation and circulation of annual and quarterly accounts are two distinct and separate requirements of law. The management of the Company should have made necessary arrangements to provide financial information in time to the shareholders and file the same with the Registrar and the Commission within prescribed time. The plea of the Company that accounts could not be prepared /filed due to financial crises is also not a compelling argument to justify the non compliance with the legal requirements. Non compliance with the mandatory requirements is considered willful and deliberate default in the eyes of law. The preparation and circulation of quarterly accounts is one of the mandatory requirement of law and directors are supposed to make serious efforts to ensure the compliance of the relevant provisions of law. However, the Company could not submit any document/arguments, which evidenced that they had done earnest efforts to avoid the said defaults. The past record of the Company shows that the directors have also failed to hold its AGMs in time during the years 1998 to 2005 and failed to file half yearly and quarterly accounts since December 2001 onward. The requisite quarterly accounts for the quarters ended December 31, 2005 and March 31, 2006 have however been filed with the Commission on January 31, 2007 i.e. with a delay of 11 months and 9 months respectively.



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6. In view of the above, the default under Sub-section (3) of Section 245 of the Ordinance is considered willful and deliberate. However, as the Company has filed the aforesaid quarterly accounts, I, 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, impose a token penalty of Rs.5,000 (Rupees five thousand only) for each default under Sub-section (3) of Section 245 read with Section 476 of the Ordinance on the Chief Executive and each of the directors of the Company except Mr. Hameed Ali Qureshi, Nominee Director (ADB). The details of the penalties imposed are as follows: -

S#	Name	Penalty in Rs.		Total
		2 nd quarter ended December 31, 2005	3 rd quarter ended March 31, 2006	
1	Mr. Khalid Suraj Bajwa, Chief Executive	5,000	5,000	10,000
2	Mr. Hassan Khildi Bajwa, Director	5,000	5,000	10,000
3	Mr. Zahid Mahmood Bajwa, Director	5,000	5,000	10,000
4	Mr. Naeem Ahmed Bajwa, Director	5,000	5,000	10,000
5	Mr. Tahir Mehmood Bajwa, Director	5,000	5,000	10,000
6	Mr. Waseem Anwar Khan, Director	5,000	5,000	10,000
Total		30,000	30,000	60,000

7. The Chief Executive and directors of Mubarik Dairies Limited are hereby directed to deposit the aforesaid fine aggregating to Rs.60,000/- (Rupees Sixty 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 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 should also be noted that the said penalty is imposed on the Chief Executive and the directors in their personal capacity; therefore, they are required to pay the said amounts from their personal resources.

Abid Hussain

Director (Enforcement)