

Before Tahir Mahmood, Executive Director (Enforcement)

**In the matter of
Kashmir Polytex Limited**

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

Number and date of show cause notice	EMD/Enf-II/307/2005- dated March 30, 2007
Date of hearing	May 07, 2007
Present	Mr. Tanveer Ahmed, Authorized Representative
Date of Order	May 22, 2007

Order

This Order shall dispose of the proceedings initiated against Kashmir Polytex 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, 2006 on or before October 31, 2006. The Company failed to hold the aforesaid AGM within the prescribed time period. The failure of the Company to comply with the aforesaid mandatory requirements 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 March 30, 2007 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. No response was received to the aforesaid notice.



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3. In order to provide an opportunity of personal hearing, the matter was fixed for May 07, 2007. On the date of hearing, Mr. Tanveer Ahmed, Financial Advisor/ authorized representative, appeared before me to argue the case on behalf of all the directors of the Company. During the course of hearing, Mr. Tanveer contended that the Company is registered in Azad Jammu & Kashmir; therefore, the Commission does not have Jurisdiction over the Company. He further submitted that during the period under review, the Company faced financial constraints, however, now they are in the revival process and have paid all liabilities to PICIC. He informed that the Company has also started exports. Request was also made for a lenient view in the matter and assured to be compliant in future.

4. I have given due consideration to the arguments advanced by the representative of the directors at the time of hearing but none of them justify the default in the holding of AGM. The plea of the Company that being registered in Azad Jammu & Kashmir, the Company does not fall within the Jurisdiction of the Commission is not a cogent excuse for non holding of AGM and non circulation of annual accounts to the shareholders. As per requirement of Section 158 of the Ordinance, every listed Company is required to hold annual general meeting, 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. The Company however failed to hold the AGM within the prescribed time and the same has been held on April 14, 2007 involving a delay of 5 months and 13 days. Since the representative of the directors has failed to furnish any cogent reason to justify the default, therefore, the same is considered willful and deliberate.

5. However, 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. 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. AGM is a forum where the investors can freely discuss, speak 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 the Company are not observing these compulsory requirements of law.



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6. In view of the foregoing, the default/delay regarding holding of AGM for the year ended June 30, 2006 stands established. 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 penalty of Rs. 30,000/- (Rupees thirty thousand only) on the Chief Executive and each of the directors of the Company under Sub-section (4) of Section 158 of the Ordinance in the following manner: -

S. #	Name	Penalty in Rs
1	Mr. Muhammad Ashraf Kahn, Chief	30,000
2	Mr. Mushtaq Ahmed, Director	30,000
3	Dr. Mrs. Yasmin Ashraf, Director	30,000
4	Mr. Muhammad Younus Khan, Director	30,000
5	Mrs. Hareem Ara Hashmi, Director	30,000
6	Mr. Muhammad Shehzad Akram, Director	30,000
	Total:	180,000

7. However, no penalty is imposed on Mr. Shahid Mahmood, director (Nominee ICP). The Chief Executive and directors of Kashmir Polytex Limited are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fine aggregating to Rs.180,000/- (Rupees one hundred and eighty thousand only) in the Commission's designated bank account No. 10464-6, Habib Bank Limited, Central Branch, 2-Habib Bank Plaza, I.I. Chundrigar Road, Karachi and send a copy of the receipted vouchers to the 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 their 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.

Tahir Mahmood
Executive Director (Enforcement)



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Before Tahir Mahmood, Executive Director (Enforcement)

In the matter of
Kashmir Polytex Limited

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

Number and date of show cause notice	EMD/Enf-II/307/2005- dated March 30, 2007
Date of hearing	May 07, 2007
Present	Mr. Tanveer Ahmed, Authorized Representative
Date of Order	May 16, 2007

ORDER



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This Order shall dispose off the proceedings initiated against the directors of Kashmir Polytex 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 Commission, its quarterly accounts for the 1st quarter ended September 30, 2006 and 2nd quarter ended December 31, 2006 required to be filed by October 31, 2006 and February 28, 2007 respectively. The Company, however, failed to file the requisite accounts with the Commission within the prescribed time period. Failure of the directors to comply with the aforesaid requirement necessitated action against them as provided under the law. A notice dated March 30, 2007 was, therefore, served on the Chief Executive and directors of the Company calling upon them to explain 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 contravention. No response was received to the aforesaid notice.

3. In order to provide an opportunity of personal hearing, the matter was fixed for May 07, 2007. On the date of hearing, Mr. Tanveer Ahmed, Financial Advisor/ the authorized representative, appeared before me to argue the case on behalf of all the directors of the Company. During the course of hearing, Mr. Tanveer contended that the Company is registered in Azad Jammu & Kashmir, therefore, the Commission does not have Jurisdiction over the Company. He further submitted that during the period under review, the Company faced financial constraints, however, now they are in the revival process and have paid all liabilities to PICIC. He informed that the Company has also started exports. Request was also made to allow one month time for preparation and filing of quarterly accounts. Mr. Tanveer prayed for a lenient view in the matter and assured to be compliant in future.

4. I have given due consideration to the arguments advanced by the representative of the directors at the time of hearing but none of them justify the default in filing of quarterly accounts. The plea of the Company that being registered in Azad Jammu & Kashmir, it is not required to file accounts with the Commission is not correct. As per requirement of Section 245 of the Ordinance,



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every Company listed on Stock Exchanges, is required to transmit quarterly accounts to its members and the stock exchanges at which the shares of the Company are listed and simultaneously file the same with the Registrar and the Commission. Since Kashmir Polytex Limited is listed on the Karachi and Lahore Stock Exchanges, therefore, Section 245 of the Ordinance is applicable to the Company and its directors. Accordingly, the directors of the Company are responsible for submission of quarterly accounts to the Commission. The Company has, however, failed to file requisite accounts with the Commission within prescribed time and the same have not been filed till date even after issuance of show cause notice dated March 30, 2007. Moreover, the track record of the Company with regard to filing of annual, half yearly and quarterly accounts is also not satisfactory. The Company has defaulted in submission of annual and quarterly accounts in the past for which the directors were penalized earlier also. The repetition of default shows that the management of the Company does not take the provisions of Law seriously. Accordingly, the default under Section 245 of the Ordinance is established, which attracts the penal provisions of Sub section (3) of Section 245 of the Ordinance.

5. In view of the above, it appears that the directors of the Company do not assign due importance in complying with the requirements of the law. 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, in exercise of powers conferred upon me under Section 245 read with Section 476 of the Ordinance, impose a fine of Rs. 30,000/- (Rupees thirty thousand only) on the Chief Executive and each of the directors of the Company responsible for the defaults for the quarters ended September 30, 2006 and December 31, 2006, in the following manner: -

S. #	Name	Penalty (Rupees)
1	Mr. Muhammad Ashraf Kahn, Chief Executive	30,000
2	Mr. Mushtaq Ahmed, Director	30,000
3	Dr. Mrs. Yasmin Ashraf, Director	30,000
4	Mr. Muhammad Younus Khan, Director	30,000
5	Mrs. Hareem Ara Hashmi, Director	30,000
6	Mr. Muhammad Akram, Director	30,000
	Total:	180,000

6. However, no penalty is imposed on Mr. Shahid Mahmood, director (Nominee ICP). The Chief Executive and directors of Kashmir Polytex Limited are hereby directed to deposit within thirty days



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of the date of receipt of this Order the aforesaid fine aggregating to Rs.180,000/- (Rupees one hundred and eighty thousand only) in the Commission's designated bank account No. 10464-6, Habib Bank Limited, Central Branch, 2-Habib Bank Plaza, I.I. Chundrigar Road, Karachi and send a copy of the receipted vouchers to the 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 their 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.

Tahir Mahmood
Executive Director (Enforcem