

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

In the matter of  
**M/s. Usman Textile Mills Limited**  
(Under Sub-section (3) of Section 245 of the Companies Ordinance, 1984)

Number and date of show cause notices	EMD/Enf-II/289/2003 dated July 25, 2005 and January 27, 2006
Date of hearing	March 02, 2006
Present	Mr. Shahab Sarki, Advocate, Nuruddin Sarki & Co.
Date of Order	May 18, 2006

## **Order**

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This Order shall dispose of the proceedings initiated against the Directors of M/s. Usman Textile Mills Limited (hereinafter referred to as the “Company”), for defaults 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 its members and simultaneously file with the Registrar and the Commission its quarterly accounts for the 2<sup>nd</sup> quarter ended March 31, 2005 and 1<sup>st</sup> quarter of 2005. The Company failed to file the aforesaid accounts with the Commission. Consequently, a show cause notice dated July 25, 2005 was issued to the directors of the Company for their failure to file the quarterly accounts for the 2<sup>nd</sup> quarter ended March 31, 2005. The said notice was, however, received back undelivered with the remarks “Office closed”. The notice was again served at new available address but no response was received to the same. To afford an opportunity of personal hearing, the matter was fixed for hearing on October 24, 2005. In response to the hearing notice, M/s Nuruddin Sarki & Co., Advocates and Legal Counselors requested, on behalf of the directors of the Company vide their letter dated October 24, 2005 for adjournment of hearing. To facilitate the directors, the hearing was adjourned and re-fixed at Karachi on November 22, 2005. On the date of hearing Mr. Shafiq Ahmad, Advocate from Nuruddin Sarki & Co. appeared and contended that it was for the first time that they are attending hearing so they are not prepared for the



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same as no instructions were given to them in the matter by the concerned directors. He requested to adjourn the hearing to some other date.

3. The request of the representative of the directors was considered and not found cogent because neither the directors of the Company nor their representative were taking the matter seriously. It was further noticed that there had been some changes in the Board of Directors of the Company during the period under review. Moreover, the Company had also failed to file the quarterly account for the 1<sup>st</sup> quarter of 2005. In view of the foregoing, fresh show cause notice dated January 27, 2006 was served on the responsible directors 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 their failure to file quarterly accounts for the 2<sup>nd</sup> quarter ended March 31, 2005 and 1<sup>st</sup> quarter of 2005. The case was also fixed for hearing on February 13, 2006. In response to the aforesaid notice, M/s. Nuruddin Sarki & Co. again requested on behalf of the directors of the Company for adjournment of hearing till February 15, 2006.

4. In order to provide last opportunity, the matter was finally fixed for March 02, 2006. On the date of hearing Mr. Shahab Sarki, the authorized representative of the directors appeared before me to argue the case. During the course of hearing, while admitting the default, Mr. Shahab contended that the quarterly accounts could not be prepared because during the period under review, the management of the Company remained involved in litigations with the banks for settlement of their loans. He informed that the banks filed suit against the Company with the NAB which resulted in the arrest of Mr. Noor Qadir, the Chief Executive of the Company. He added that during this period the operations of the Company remained suspended and there was no staff to prepare the quarterly accounts. He contended that the Company has now cleared all the liabilities to the banks and for the last two months, the Chief Executive has been allowed to operate other associated Companies. He stated that the default in filing of accounts is neither willful nor deliberate, hence be condoned.

5. I have given due consideration to the arguments advanced by the director's Counsel, however, none of them justify the defaults. The Company was not functioning, is not a cogent excuse for non submission of quarterly accounts to the shareholders. I am, therefore, of the view that in the circumstances, described above, the directors of the Company could have refrained from committing the aforesaid defaults. It was all the more easy for the directors when the Company was not functioning, to have prepared and transmitted the quarterly accounts to its shareholders. Accordingly, the directors of the Company are responsible for timely preparation and submission of quarterly



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accounts to its members and file the same with the Registrar and the Commission within prescribed time period. Since the representative of the directors has failed to furnish any cogent reason to justify the defaults, therefore, the defaults are considered willful and deliberate. The track record of the Company with regard to filing of quarterly accounts is also not satisfactory as the directors were also imposed penalty in the past. Moreover, in spite of issuance of show cause notices dated July 25, 2005 and January 27, 2006 the Company has failed to file the aforesaid quarterly accounts till date. This led me to believe that the directors have no respect for law and they have intentionally deprived the shareholders of their statutory right to receive the quarterly accounts. Had there been serious efforts on the part of the directors to manage the timely finalization of accounts, there would have been no default in preparation/circulation of these accounts. The responsibility for preparation and circulation of accounts rests with the directors of the Company and in case they do not take appropriate action at appropriate time the default is considered willful and deliberate.

6. In view of the foregoing, the defaults in filing of quarterly accounts are established. I am, however, inclined to take a lenient view in the matter and instead of imposing 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 on the Chief Executive and the directors of the Company, the following penalties under Sub-section (3) of Section 245 of the Ordinance:-

S#.	Name	Penalty in Rs.		Total
		2 <sup>nd</sup> quarter ended March 31, 2005	1st quarter of 2005	
1	Mr. Noor A. Qadir, Chief Executive	15,000	15,000	30,000
2	Mr. Mohammad Zaheeruddin, Director	15,000	15,000	30,000
3	Mr. Haroon Shekha, Director	15,000	15,000	30,000
4	Mr. Muhammad Yusufuddin, Director	15,000	15,000	30,000
5	Syed Tajuddin, Director	15,000	15,000	30,000
6	Mr. Khalid Abid Mukhtar Shah, Director	15,000	15,000	30,000
7	Mr. Taj Muhammad Samo, Director	15,000	15,000	30,000
<b>Total</b>		<b>105,000</b>	<b>105,000</b>	<b>210,000</b>



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7. The Chief Executive and directors of M/s. Usman Textile Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.210,000/- (Rupees two hundred and ten 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, therefore, they are required to pay the said amount from their personal resources.

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**Dr. Sajid Qureshi**  
Executive Director (CLD)