

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

In the matter of  
M/s. 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 June 02, 2005 & November 30, 2005
Date of hearing	January 26, 2006
Present	Mr. Khalid Suraj Bajwa, Chief Executive of the Company
Date of Order	May 30, 2006

**Order**

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This Order shall dispose of the proceedings initiated against the directors of M/s. 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 3<sup>rd</sup> quarter ended on March 31, 2005 and 1<sup>st</sup> quarter ended on September 30, 2005 by April 30, 2005 and October 31, 2005 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 June 02, 2005 and November 30, 2005 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 notice dated June 02, 2005, M/s. Sarwar Awan & Co. Chartered Accountants contended on behalf of the directors of the Company vide their letter dated June 10, 2005 that the Company had to stop its business operations in 1994 due to the heavy financial losses suffered at the initial stage owing to the mechanical faults and the worst

market conditions. The directors of the Company tried their best to keep the project alive by putting every effort but they could not change the fate of the sick unit. It was further contended that the directors put huge amounts from their personal resources for survival of the project but the destiny could not be averted. It was further stated that due to shut down of Company's operations for the last ten years there were no funds available to do this job. The reply was not found satisfactory. In order to give an opportunity of personal hearing, the matter was fixed for June 15, 2005. On the date of hearing Mr. Hassan Kildi Bajwa, director and Mr. Shahzad Saleem, chartered accountant, from Sarwar Awan & Co., appeared before me on behalf of the directors of the Company and repeated the same arguments as were furnished in the written reply to the show cause notice.

4. The directors of the Company were also served another show cause notice dated November 30, 2005 for their failure to file the quarterly accounts for the 1<sup>st</sup> quarter ended September 30, 2005. No response was received to the aforesaid notice. In order to provide an opportunity of personal hearing the matter was fixed for December 21, 2005. No one appeared for hearing on the given date and time, instead, a written reply dated December 20, 2005 was received wherein Mr. Hassan Kildi Bajwa, director informed that the Chief Executive is out of town due to some family matters, therefore, he could not get the requisite information to present in the hearing. He requested for adjournment of hearing till January 18, 2006. The matter was again adjourned and re-fixed for January 18, 2006. The Company again requested for a short adjournment till January 25, 2006. To afford last opportunity, the hearing was fixed for January 26, 2006.

5. On the date of hearing, Mr. Khalid Suraj Bajwa, Chief Executive appeared before me to argue the case on behalf of all the directors of the Company. During the course of hearing, Mr. Bajwa, while admitting the default reiterated almost the same arguments as were given in the written reply to the show cause notices dated June 02, 2005 and November 30, 2005. He added that due to shortage of funds the Company was lying closed and there was no staff to prepare the accounts. He contended that he has advanced loans to the Company to keep it going on. He added that they have a revival plan for which they are looking for investors.

6. I have given due consideration to the arguments advanced by Mr. Khalid Suraj Bajwa, however, none of them justify the defaults. The Company was not functioning is not a cogent reason for non submission of quarterly accounts to the shareholders. In the circumstances, described above the directors could have refrained from committing the defaults. It was all the

more easy for the directors when the Company was not in operations, to have prepared and transmitted the quarterly accounts to its shareholders. It is the duty of the directors to ensure compliance with all the statutory requirements. Accordingly, the directors are responsible for timely preparation and submission of quarterly accounts to its members and file the same with the Registrar and the Commission, whereas they have failed to file the same with the Commission till date even after issuance of show cause notices. The Company has also failed to furnish any revival plan as promised by Mr. Kahlid Suraj Bajwa at the time of hearing. This indicates that the directors have no respect for the law and they have intentionally deprived the shareholders of their statutory right to receive the quarterly accounts. The Company has also not been compliant to the statutory provisions of law in the past in submission of quarterly accounts. I am, therefore, constrained to believe that the Company and its directors including the Chief Executive have willfully and deliberately committed the defaults in preparation, circulation and filing of aforesaid quarterly accounts, which is established from record.

7. In view of the above, the defaults under Sub-section (3) of Section 245 are considered willful and deliberate. 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, impose a penalty of Rs.10,000 (Rupees ten 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. The details of the penalties imposed are as follows: -

S#.	Name	Penalty in Rs.		Total
		3rd quarter ended March 31, 2005	1st quarter ended Sept. 30, 2005	
1	Mr. Khalid Suraj Bajwa, Chief Executive	10,000	10,000	20,000
2	Mr. Hassan Kildi Bajwa, Director	10,000	10,000	20,000
3	Mr. Zahid Mahmood Bajwa, Director	10,000	10,000	20,000
4	Mr. Hameed Ali Qureshi, Director	10,000	10,000	20,000
5	Mr. Naeem Ahmed Bajwa, Director	10,000	10,000	20,000
6	Mr. Tahir Mehmood Bajwa, Director	10,000	10,000	20,000
7	Mr. Waseem Anwar Khan, Director	10,000	10,000	20,000
<b>Total</b>		<b>70,000</b>	<b>70,000</b>	<b>140,000</b>

8. The Chief Executive and directors of M/s. Mubarak Dairies Limited are hereby directed to deposit the aforesaid fine aggregating to Rs.140, 000/- (Rupees one hundred & 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.

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