

NO. 19(728)/CF/ISS/92
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
State Life Building, 7-Blue Area,
Islamabad

Islamabad, the 14th April, 2000

1. Name of defaulter : National Fibres Ltd.,
Company. Plot No. 16-20, Sector - 22,
Korangi Industrial Area,
Karachi
2. Nature of default : Non-holding of Annual General
Meeting for the years ended
30.06.1997 & 30.06.1998
3. No. and date of : No. 19(728)CF/ISS/92
Show Cause Notice date 17.6.1999
4. Date of Hearing : 27.3.2000
5. Appearance of : None
Hearing
6. Date of Order : 14.4.2000

ORDER UNDER SECTION 158(4) OF THE COMPANIES ORDINANCE, 1984

The annual general meetings of National Fibres Limited (a public limited company) for the years ended 30th June, 1997 and 30th June, 1998 were required to be held by 31st December, 1997 and 31st December, 1998 respectively, but the Chief Executive of the company failed to hold the said meetings within the specified period and thus deprived the members of the company of their legitimate right to know about the facts/accounts of the company.

2. In view of the above default a show cause notice dated 17th June, 1999 was issued to the Chief Executive of the company. In response to the show cause notice the chief executive of the company was being managed under supervision of Court vide Honourable High Court of Sindh order dated December 4, 1997 and hence the AGMs could not be held.

3. On this, attention of management of the company was invited to the statutory requirements of section 158, 233 and 245 of the Companies Ordinance, 1984 through Securities and Exchange Commission of Pakistan's letter dated 11th November, 1999. The management was informed that unless, Honourable Court has otherwise directed, it is the duty of every person in control of the company to comply with the statutory requirements of section 158 and 233 of the Companies Ordinance, 1984. In response to this letter, the Secretary of the company informed that some of financial institutions having 46 percent of the shareholding filed a petition in the Honourable High Court under section 290 of the Companies Ordinance, 1984 and the Court had directed to NDFC, IDB Jeddah and FC & CCL to run the affairs of the company. Further that the Honourable High Court appointed Mr. Saadat Hussain Khan, Ex-Chairman of Federal Chemical & Ceramics Corporation Limited, as Chief Executive of the company vide Court order dated 4th December, 1997. It was also informed that Government has Constituted a Task Force under section 296 of the Companies Ordinance, 1984, declaring the company as sick unit and its rehabilitation was under process. The company again informed that since there is no Board of Directors, AGMs could not be arranged.

4. Since the management of the company appeared to be bent upon not to give the shareholders, the basic right of assembling in a meeting to discuss working and operational results of the company, a meeting was held in the office of the Chairman, Securities and Exchange Commission of Pakistan on December 23, 1999 when the Chief Executive and two other members of the management were duly briefed about the requirements of law with regard to holding the AGM. At this stage they made a commitment that as the draft accounts have already been finalized the AGMs would be held very soon. But the management failed, even after allowing sufficient time to arrange for holding the over due AGMs.

5. To proceed further in the matter, the company's Chief Executive was accorded a chance of being heard under sub-section (3) of section 476 of the Companies Ordinance, 1984 and hearing was fixed on March 27, 2000. But no body appeared on the hearing date. A written explanation was, however, again received from the company in which the Chief Executive repeated the same old arguments that there was no Board of Directors and Honourable High Court of Sindh had appointed a Chief Executive of the company. But he failed to produce any order of the Court in regard to putting the statutory requirements of the Companies Ordinance, 1984 in abeyance.

6. Under sub section (4) of section 158 of the Companies Ordinance, 1984 if default is made in complying with any provision of the said section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable to penalty mentioned

in sub-section (4)(a) of the same Section. The "word " officer" has been defined in sub-section(24) of section 2 of the Companies Ordinance, 1984 which says officer includes any director, chief executive, managing agent, secretary or other executive of the company, howsoever designated, but, save in Sections 205, 220 to 224, 260, 261, 268, 351,352,412, 417, 418, 474 and 482, does not include an auditor.

7. In this case the Honourable High Court on a petition filed under Section 290 of the Companies Ordinance, 1984 appointed a person as Chief Executive of the company. Part - x of the Companies Ordinance, deals with the matter of "Prevention of oppression and mismanagement" and Sections 290 to 296 of the Companies Ordinance, 1984 framed in this part, lay down the procedures and powers of courts to take certain measures for preventing oppression and courts to take certain measures for preventing oppression and mis-management of a company. So the very purpose of the Order of the Honourable High Court was to put an end to the oppression and the mis-management of the company. But I regret to say that contrary to the very objective of Court Order; the Chief Executive of the company appointed by the Court has started depriving of the shareholders of the basic right of assembling, knowing an discussing workings of their company. The very object of an order suspending the management and appointing a person as Chief Executive under section 290 by the Honourable Court is that affairs of the company should be conducted in lawful manner and strictly in accordance with the Memorandum and Article of Association of the company and law. In this case chief executive of the company has in fact continuously avoided

AGM by interpretation the order of High Court in a style suiting him. Even if the company could approach to Honourable Court for appropriate order/clarification which he never did. The Chief Executive of the company is an officer of the company in terms of section 2(24) of the Companies Ordinance, 1984, read with section 158(4) ibid. and can not be allowed to proceed with managing affairs of the company against the spirit of law and the order of the Honourable High Court of Sindh and at back of the shareholders of the company.

8. Taking into consideration, all relevant facts and circumstances of this case, I, hold Mr. Riaz Niazi, Chief Executive of the company reasonable for the default as after the assumption of the post of the Chief Executive of the company on 23rd October, 1998; he should have made arrangements for holding the over due Annual General Meetings and laying therein annual accounts of the company to comply with the statutory requirements of sections 158 and 233 of the Companies Ordinance, 1984. But Mr. Riaz Niazi failed to discharge his responsibilities and make arrangements for holding the over due AGMs.

9. However, taking lenient view, I hereby impose the minimum of the fine prescribed by law with a warning to the Chief Executive of the company that very serious view will be taken for such default if continued any more.

Penalty for the default of the year ended 30.6.1997

Grace period of 6 months (180-days) is allowed after Mr. Riaz Niazi was appointed a Chief Executive of the

company i.e. from 23rd October, 1998; within which he should have made arrangements for holding the Annual General Meeting and accordingly impose a fine of Rs. 10,000/- (Rupees Ten Thousand only) for the first default on the part of Chief Executive of the company under section 4(a) of section 158 of the Companies Ordinance, 1984. A further fine of Rs. 34000/- (Rupees Thirty Four Thousand only) i.e. at the rate of Rs. 100/- (Rupees One Hundred only) for every day after the first during which the default continued is imposed on him under section 158 (c) ibid from the period from 22nd April, 1999 to 27th March, 2000 (340-days) i.e. the date of hearing.

Penalty for the default of the year ended 30.6.1998

I hereby allow a period of 90-days after the AGM for the year ended 30.6.1998 become due i.e. 31st December, 1998 with the presumption that this Commission could have allowed the maximum extension of 90-days permissible under section 158(1) of the Companies Ordinance, 1984; had the company applied for the same. However, to make it compatible with the previous year, I allow further 21-days and impose a penalty w.e.f. 22nd April, 1999. A fine of Rs. 10,000/- (Rupees ten thousand only) is imposed for the first default on the part of Chief Executive of the company under sub-section 4(a) of section 158 of the Companies Ordinance, 1984. A further fine of Rs. 34,000/- (Rupees Thirty Four Thousand only) at the rate of Rs. 100/- (Rupees One Hundred only) for every day after the first during which the default continued is

imposed from 22nd April, 1999 to 27th March, 2000
(340 days) i.e. the date of hearing.

10. Mr. Riaz Niazi is hereby directed to deposit the amount of penalty imposed amounting to Rs. 88,000/- (Rupees Eighty Eight Thousand only) imposed on him from his own resources and deposit the same in the Head of Account No. 10464-6 in Habib Bank Limited Central Branch, 2- Habib Bank Plaza, I.I. Chundrigar Road, Karachi within 30-days of the receipt of this order.

(M. Zafar - ul - Haq Hijazi)
Commissioner (Enforcement)

Copy to:-

1. The Karachi Stock Exchange (Guarantee) Ltd., Karachi
2. The Lahore Stock Exchange (Guarantee) Ltd., Lahore
3. The Joint Registrar, Company Registration Office,
Karachi.
4. PS to Chairman, SECP, Islamabad.

(Riaz Ahmed)
Deputy Chief