



**SECURITIES AND EXCHANGE COMMISSION  
OF PAKISTAN**  
[Islamabad]

*Before Tahir Mahmood, Commissioner (CLD)*

**In the matter of**

**Nazir Cotton Mills Limited**

Number and date of notice:

No. EMD/233/163/02-977-83  
December 21, 2009

Date of Hearing:

September 23, 2010

Present:

Mr. Fazal Mahmood, FCA  
Authorized Representative

Order

**Under Section 492 read with Section 476 of the Companies Ordinance, 1984**

This order shall dispose of the show cause proceedings initiated against directors of Nazir Cotton Mills Limited (the "Company") through show cause notice dated December 21, 2009 under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the "Ordinance") for presenting, before the members, contradictory information in the directors' report and notes to the accounts for the year ended June 30, 2009.

2. The facts leading to this case, briefly stated, are that examination of annual accounts of the Company for the year ended June 30, 2009 (Accounts) revealed that Company auditors had expressed that the accounts do not give a true and fair view of the state of affairs of the Company due to various issues, including; inappropriate going concern assumption, non-provision of mark up on loans, unverified account balances, non-charging of depreciation, wrong classification of liabilities and incorrect reversal of frozen mark-up on loans. The respective notes to the Accounts explicitly stated the management justification for non-provisioning of interests on loans, reversal of frozen mark-up on loans, wrong classification of bank liabilities and non-charging of depreciation. However, the directors' report at para (f) containing explanation to audit qualifications paradoxically stated that the management was willing to rectify the issues giving rise to qualifications however owing to non-submission of management letter by the auditors they were constrained from rectifying the accounts. Given the indisputable fact that the accounts and their preparation are the exclusive legal responsibility of Company directors, the aforesaid situation raised serious concerns about the authenticity of the contents of directors' report, as well as about the reliability of the Accounts as a whole.

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3. In view of above, a show cause notice was issued to the directors of the Company highlighting the violations of Section 492 of the Ordinance and calling upon them to explain as to why penal action may not be taken against them for contravention of the said provisions of the Ordinance. No reply was submitted by the respondents to the notice despite reminders; however, verbal request was made by the Company Secretary for allowing personal hearing of the case. Hearing of the case was finally held on September 23, 2010 after a series of adjournments allowed to the Company in respect of hearings fixed on July 23, 2010, August 12, 2010, August 27, 2010, and September 14, 2010. Mr. Fazal Mahmood, FCA from M/s Fazal Mahmood and Company, Chartered Accountants appeared on behalf of the respondents to argue the case as their authorized representative.

4. Mr. Fazal Mahmood primarily accepted the violation of law committed by the directors and requested for a compassionate hearing by drawing attention to the fact that the existing situation as well as the prospects of textile sector in the country is generally very bleak. He also stated that the Company is not in operations and has no employees of its own, an employee of another group company prepared accounts of the Company, and the Chief Executive signed the directors' report without due scrutiny since there was no operation and hence financial results were more or less identical to those of last year. He also added that the then auditors did not give an opportunity to the management for revising the accounts after submission of their report on first draft accounts. He therefore emphasized that a lenient view of this default may be taken by the Commission.

5. I have duly considered submissions made by the Authorized Representative of respondents and appreciate the fact that violation has been accepted. I would however, like to point out that the justification submitted before me do not carry merits and they neither lessen the gravity of default committed by the respondents. Before deciding the case, I would like to emphasize that preparation of accounts is the exclusive responsibility of Company directors and they testify that they are aware of it at the time of their appointment and also acknowledge this fact in the directors' report in compliance with the Code of Corporate Governance. It is unfortunate that in the instant case the directors have chosen to carelessly perform the responsibility devolved upon them by the law. Directors' negligence can not be an excuse for such irresponsible statements given in their report addressed to the members. The argument that ample opportunity was not given by the auditors for rectification of accounts is also not cogent. Perusal of previous years' financial statements revealed that the auditors' qualifications have been of recurring nature and were also mentioned in entirety in the audit report on accounts for the year ended June 30, 2009. Therefore, it is blatantly incorrect an argument that auditors did not provide an opportunity to the management to pass necessary rectification entries. The same was accepted during hearing by the representative of the

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respondents. It is imperative here to advert to the provisions of Section 492 of the Ordinance provides that *whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees.*

It is hence evident that the subject directors' report contained misstatements with respect to the comments on auditors' qualifications which is an act attracting penal provisions contained in Section 492 of the Ordinance. It is infact sad that the directors have demonstrated such a level of unprofessional and irresponsible attitude by resorting to submission of false information while discharging their statutory obligations.

6. Although the default under Section 492 of the Ordinance is established, however, considering the remorseful attitude expressed before me instead of imposing maximum penalty of Rs.500,000/- on each director impose token penalty of Rs. 620,000 as follows:

Director	Penalty imposed (Rs.)
Mian Shahzad Aslam, Chief Executive	500,000
Mian Farrukh Naseem, Director	20,000
Mian Aamir Naseem, Director	20,000
Mr. Maqbool Hussain Bhutta, Director	20,000
Syed Arif Husain, Director	20,000
Mr. Khurram Abbas, Director	20,000
Mr. Nadeem Anjum, Director	20,000

7. The Chief Executive and directors of the Company are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or pay through a demand draft in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive and directors in their personal capacity; therefore, the same is payable from their personal resources.

  
**Tahir Mahmood**  
Commissioner (CLD)

**Announced**  
October 01, 2010