

Before Abid Hussain, Director (Enforcement)

In the matter of
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 June 21, 2006 & August 11, 2006
Date of hearing	December 27, 2006
Present	Mr. Shafiq Ahmed, Advocate, Nurruddin Sarki & Co.
Date of Order	February 19, 2007

Order

This order shall dispose of the proceedings initiated against the directors of 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 the members and simultaneously file with the Registrar and the Commission its quarterly accounts for the 2nd quarter ended March 31, 2006 and 3rd quarter ended June 30 2006 by May 31, 2006 and July 31, 2006 respectively. The Company failed to circulate and file aforesaid accounts with the Commission within the prescribed time. The failure of the Company to comply with the aforementioned provisions of the Ordinance 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 21, 2006 & August 11, 2006 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 21, 2006 Mr. Khalid Abid M. Shah, one of the Directors of the Company contended vide letter dated June 26, 2006 that finalization of accounts is under process and requested for grant of time of 90 days for submission of quarterly accounts. The reply was not found satisfactory; therefore the matter was fixed for hearing on July 10, 2006. On the date of hearing Mr. Shfiq Ahmad, advocate, Nurruddin Sarki & Co., appeared for hearing on behalf of the directors of the



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 2 -

Company and stated that Mr. Noor Qadir, Chief Executive of the Company remained under arrest with the NAB for about three years as a result of which the entire corporate activity of the Company came to a standstill. Now after his release the management is taking all the steps to meet the requirements of law. He added that the annual accounts were prepared but could not be audited as the auditors had resigned. He requested for adjournment of the matter till October 2006.

4. As regards show cause notice dated August 11, 2006, it was contended that the matter regarding appointment of auditors for the years 2004, 2005 and 2006 is pending with the Commission. Request was also made for an opportunity of personal hearing. Both the cases were fixed for hearing on October 05, 2006 however the same was adjourned on the request of the Company and re-fixed for November 16, 2006. No one appeared on the date of hearing however a written reply dated December 06, 2006 was received wherein request to allow the Company at least 120 days to complete the backlog and prepare accounts was made. Hearing was again fixed for December 21, 2006 but the Company requested for further adjournment which was allowed and finally the matter was fixed for December 27, 2006.

5. On the date of hearing, Mr. Shafiq Ahmad, Advocate from Nurrudin Sarki & Co appeared on behalf of all the directors of the Company and contended the same arguments that Mr. Noor Qadir, Chief Executive of the Company remained under arrest by the NAB, therefore the Company was in halt situation and no activity was carried out due to non- availability of funds. He informed that after release of Mr. Noor Qadir in April 2006, the Company has taken up all the pending matters and Board meeting is scheduled to be held on January 13, 2007 for approval of annual audited accounts for the years 2004, 2005 and 2006 after which the Company will hold its overdue AGM's. He also assured that quarterly accounts for the quarters ended March 31, 2006 and June 30, 2006 will be prepared and presented in the same meeting for approval and these accounts will be circulated immediately after approval of the Board. The counsel of the Company assured that the said quarterly accounts will be submitted by January 15, 2007.

6. I have also gone through the record of the Company and have given due consideration to the written and verbal submissions given by the authorized representative of the directors. However, none of them justify the defaults. The plea that the Chief Executive of the Company remained under arrest with the NAB is not a cogent excuse for non filing and non circulation of quarterly accounts because the other directors are equally responsible to ensure compliance of the statutory provisions of law. It was even



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 3 -

easier for the directors to finalize and circulate the accounts when the Company was not in operations as less effort is required for data compilation. It is the duty of the directors to ensure compliance with all the statutory requirements whereas they have failed to file the aforesaid accounts with the Commission in time. The Directors have deprived the shareholders of their statutory right to receive the quarterly accounts in time. It is also clarified that filing of quarterly accounts is a separate mandatory requirement and therefore these have to be filed within prescribed time even if the annual accounts are not ready for circulation to the shareholders as claimed by the Company. Moreover, Mr. Noor Qadir was released in April 2006 where after, there was sufficient time with the Company for preparation and circulation of quarterly accounts but the directors failed to file the aforesaid accounts with the Commission even after laps of more than 9 months. 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 quarterly accounts, which is established from the track record of the Company. As regards quarterly accounts for the 3rd quarter ended June 30, 2006, it has been noticed from the Company's letter dated January 13, 2007 that the Company has changed its year end from September to June. The change of year end was never communicated to the Commission, hence the year end of the Company was assumed as September while issuing show cause notice under Section 245 dated August 11, 2006 for non-submission of quarterly accounts for the 3rd quarter ended June 30, 2006. Since the Company has changed its year end from September to June, its accounts for the quarter ended June 30, 2006 were not due, instead it was required to file accounts for the 1st quarter ended September 30, 2006 by October 31, 2006. The record of the Company reflects that these accounts were also not filed till date for which separate proceedings are required to be initiated.

7. In view of the foregoing, the default in filing of quarterly accounts for the quarter ended March 31, 2006 is established. I am, however, inclined to take a lenient view in the matter as the Company has made efforts in preparation of its annual accounts and has held its overdue AGMs 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 penalty of Rs.5,000/- (Rupees five thousand only) each, on the following six directors under Sub-section (3) of Section 245 read with Section 476 of the Ordinance:

- i. Mr. Mohammad Zaheeruddin
- ii. Mr. Haroon Shekha
- iii. Mr. Muhammad Yusufuddin
- iv. Syed Tajuddin



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 4 -

- v. Mr. Khalid Abid Mukhtar Shah
- vi. Mr. Taj Muhammad Samo

On the other hand no penalty is imposed on Mr. Noor Qadir, Chief Executive of the Company who was in the custody of NAB during the period of default and keeping in view the fact that after his release the Company has held its overdue AGMs and circulated the annual accounts.

8. The above named directors of the Company are hereby directed to deposit the fines aggregating to Rs.30,000/- (Rupees thirty 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 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 directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

Abid Hussain
Director (Enforcement)