

[Islamabad]

**Before Ali Azeem Ikram, Director (Enforcement)**

Order in the matter of

**M/s. Zahur Cotton Mills Limited**

(Under Section 160 and Section 246 read with Section 476 of the Companies Ordinance, 1984)

Number and date of notice:	No. EMD/233/290/02 January 19,2007
Date of Hearing:	May 16, 2007
Present:	Mr.Javed Zahur Chief Executive Officer
Date of Order:	June 6, 2007

### **Order**

This order shall dispose off the proceedings initiated against the Chief Executive and Directors of M/s Zahur Cotton Mills Limited (hereinafter referred to as “the Company”) under the provisions of Section 160 and Section 246 read with Section 476 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. For understanding of the case the necessity of narrating the case background cannot be overlooked. The Enforcement Department of the Commission (hereinafter referred to as “the Commission”) noticed from the notice of 16<sup>th</sup> Annual General Meeting (AGM) annexed with the annual audited accounts of the Company for the year ended June 30, 2006 (accounts) that the Company held its AGM on October 31, 2006. Moreover, the record of the Commission revealed that the Company had neither submitted to the Commission the aforesaid notice of meeting nor submitted the copies of the news papers in which the aforesaid notice was published, had therefore, failed to comply with the requirements of the Commission’s Circular No. 2 of 1999 and Circular No.5 of 2002 issued in exercise of power under Section 246 of the Ordinance. Further, examination of the notice revealed that the Company was transacting the following ‘Special Businesses’ in terms of Section 160(1)(b) of the Ordinance and that a statement of material facts was not annexed to the aforesaid notice of AGM:

“4. *RESOLVED THAT sub-clause I of Clause III of Memorandum of Association of Company be added with following para:*



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*“Also manufacture, trade, store, sell the Fabrics, Allied Textiles or any other Products”*

5. *RESOLVED THAT to authorize CEO to negotiate & sell asset/part asset of company to pay off liabilities or to lease/ rent part/ whole asset to the Company.”*

3. Consequently, a show cause notice dated January 19, 2007 was issued to the Chief Executive and Directors of the Company to show cause as to why fine may not be imposed on them as provided under Section 160(8)(a) of the Ordinance and another fine under Section 246(2) of the Ordinance for the aforesaid contraventions.

4. In order to provide an adequate opportunity of hearing, the case was fixed on March 15, 2007 before the undersigned. Mr. Javed Zahur, Chief Executive represented the Directors of the Company in the said proceedings. He also filed written reply to the show cause notice on February 24, 2007. His main contentions in the written reply and at the time of hearing can be summarized as under:

- i) The notice of AGM was faxed to the Stock Exchange and the Commission and also dispatched with the copies of the financial statements. However, as per the record of the Commission, the Company had not provided the notice of meeting. Mr. Javed Zahur presented the copies of the newspapers in which the notice of the AGM was published at the time of hearing with the assurance that the Company will be careful in future.
- ii) Mr. Javed submitted that the Special Resolution passed in the AGM is of the authoritative nature and was passed to give the Chief Executive certain authority mentioned in the Notice. He has concluded that the separate Statement, therefore, was not given/required.
- iii) Mr. Javed, while admitting the default requested for condonation of default on the grounds that it was an inadvertent mistake. He added that 28(non operational) looms have been sold to pay off the bank liabilities.
- iv) It was also submitted that the change in memorandum was due to the fact that the company was already doing the business and change was made in memorandum to bring in line. Mr. Javed was advised to provide the certified copies of the minutes of AGM along with the attendance sheets. The examination of the same revealed that the meeting was attended by only the Directors and Company Secretary of the Company.

5. It came to our knowledge through the aforesaid hearing and from the Company’s subsequent submissions that the company had transacted the following business in consequent to the resolution passed in the said AGM:



- a) Sold 28 looms (non operational) at Rs. 10 million mutually agreed with Prime bank vide adjustment of part long term liability vide adjustment of long term liability.
- b) Leased Weaving Mill with Part building to Visiontex /Shahzad Siddique (Pvt) Limited vide Rental leased Agreement executed on November 15, 2006.

6. Before dealing the matter, it is relevant to have a look into the provisions of law which deal with issue. The relevant provision of law contained in Section 160(1)(b) of the Ordinance states that where any special business is to be to be transacted at a general meeting, there shall be annexed to the notice of the meeting, a statement setting out all material facts concerning such business.

The Commission's another notification No. SRO 1227/2005 dated December 12, 2005 relevant to the case in hand has been reproduced as under:

*"... a company listed on a stock exchange in Pakistan and any subsidiary of such company shall, while issuing notice of its general meeting where a special business relating to sale, lease or disposal of the undertaking or sizeable part thereof, is to be transacted under Section 196(3) (a) of the said Ordinance, annex a statement, pursuant to Section 160(1)(b) of that Ordinance, detailing, as minimum, the following information, namely :-*

*1. In case of sale, lease or disposal of sizeable part of undertaking:*

- (i) Detail of assets to be disposed of i.e. its description, cost, revalued amount (if available), book value and approximate current market price/fair value .In case of disposal of land location and area proposed to be sold shall be disclosed.*
- (ii) The proposed manner of disposal of the said assets.*
- (iii) Reasons for the sale, lease or disposal of assets and the benefits expected to accrue to the shareholders there from.*

Moreover, Commission's Circular No.5 of 2002 issued in pursuance of Circular No.2 of 1999 requires:

- (i) Notice of AGM or EOGM must be faxed to the Commission along with statement under section 160 of the Ordinance in case of a special resolution, as essential on the same date on which it is sent to the shareholders;*
- (ii) Copies of the Newspapers in which the notices of AGM or EOGM are published may be sent to the Commission within 7 days of their publication*

7. The aforesaid provisions of law are quite clear and unambiguous and are mandatory to be followed by every Company.

8. The objective of the annexation of statement of material facts is that all members of the Company must know as to what was the exact nature of the business to be transacted at the meeting so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively. Material facts are those facts, which have a bearing on the business to be transacted and which could influence the shareholders while making



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a decision of approving the proposed business. In the case in hand, there was a proposal to authorize CEO to negotiate & sell asset/part asset of company to pay off liabilities or to lease/ rent part/ whole asset to the Company. However, no details for the aforesaid transaction were provided to the shareholders for their consideration and approval. These facts would have enabled the shareholders to take a decision to attend the meeting and to vote upon this business. The notice of meeting, therefore, did not comply with the provisions of Section 160 of the Ordinance.

9. Thereafter, to bring the matters to the notice of the authorized representative of the Company and to provide another opportunity to advance the arguments in support of its contentions raised in the show cause notice and in the previous hearing, the case was finally fixed on May 16, 2007. Mr. Javed Zahoor, CEO along with Mr. Ayub, Nominee Director (NIT) appeared at the time of the hearing and took a plea that it was an inadvertent mistake, and assured that the Company will take fresh approval from the shareholders for sale of further assets in future and all mandatory provisions of the law will be followed.

10. In view of the foregoing, although the default is established and admitted however, keeping in view the assurance of the Authorized Representative that the requirements of law shall be complied with in future. Mr. Ayub, nominee Director of NIT in the Company requested to condone the default as has he was not involved at the time of resolution. I am inclined to take a lenient view of the default and instead of imposing a maximum penalty of Rs. 50,000/- (Rupees Fifty Thousand Only); I impose a penalty of Rs. 15,000/-only (Rupees Fifteen Thousand Only) in total on the Chief Executive of the Company. The other directors of the company are reprimanded to be careful in future.

11. Mr. Javed Zahoor, the Chief Executive of the Company is hereby directed to deposit the aforesaid fine 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 challan to the Commission. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

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**Ali Azeem Ikram**  
Director (CL)

**Announced:**  
June 6, 2007  
ISLAMABAD