

Before Ali Azeem Ikram, Director (Enforcement)

In the matter of

M/s. Hakkim Textile Mills Limited

(Under Sub-section (4) of Section 158 of the Companies Ordinance, 1984)

No. & date of show cause notice	EMD/Enf-II/217/2005-6576-6582 dated December 21, 2005
Date of hearing	February 06, 2006
Present	Mr. Muhammad Tahir Raza, Manager
Date of Order	July 21, 2006

Order

This Order shall dispose of the proceedings initiated against the directors of M/s. Hakkim Textile Mills Limited (hereinafter referred to as the “Company”) for default made in complying with the provisions of Sub-section (1) of Section 158 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meetings (the “AGMs”) for the years ended September 30, 2003, September 30, 2004 and June 30, 2005 on or before January 31, 2004, January 31, 2005 and October 31, 2005 respectively. The Company failed to hold the aforesaid AGMs within the prescribed time period. The failure of the Company to comply with the aforesaid mandatory requirement necessitated action against the Company and its directors in terms of Sub-section (4) of Section 158 of the Ordinance. Consequently, a show cause notice dated December 21, 2005 was 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 (4) of Section 158 read



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet -3 -

with Section 476 of the Ordinance may not be imposed on them. No reply was received to the aforesaid show cause notice.

3. In order to provide an opportunity of personal hearing, the matter was fixed for hearing on February 06, 2006. On the date of hearing, Mr. Muhammad Tahir Raza, Manager, appeared before me on behalf of the directors of the Company to argue the case. He also filed written explanation duly signed by the Chief Executive of the Company vide letter dated February 06, 2006. In verbal as well as in the written explanation, it was contended that the AGMs of the Company for the years ended September 30, 2003, September 30, 2004 and June 30, 2005 were held on due dates and all the statutory Forms namely Form-A and Form-29 were filed with the respective CRO's. He, however, admitted that no notice of AGM was published in the newspapers. It was further stated that the Company was closed since 1999 due to conflicts with previous owners and financial institutions and at this stage the Company has no employ to maintain the accounts. It was added that they are trying to settle the issues with banks and have also approached Bankers Equity Limited for the settlement of their dues in the light of State Bank of Pakistan Regulation Committee for Settlement of outstanding liabilities.

4. I have given due consideration to the arguments advanced by the representative of the directors and contentions of the Chief Executive in his written reply, however, none of them justify the defaults. As per record of the Commission, the Company has not held AGMs for the aforesaid years because neither any notice of AGM was published in the newspapers nor audited accounts for the aforesaid years were received in the Commission. *As per requirement of Sub-section (3) of Section 158, the notice of AGMs were required to be sent to the shareholders at least twenty one days before the date of AGMs and, in the case of a listed company, such notices, in addition to its being dispatched in the normal course should have been published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language, having circulation in the Province in which the Stock Exchange on which the Company is listed is situated. Moreover, as per requirement of this Commission's Circular No. 5 of 2002 dated March 14, 2002, notice of AGMs were required*



to be faxed to the Commission on the same date on which these were sent to the shareholders and copies of newspapers in which the notices of AGMs were published were required to be sent to the Commission within seven days of their publication. Mr. Tahir was, therefore, directed to furnish documentary evidence in support of his plea that AGMs were held according to the requirements of Section 158 of the Ordinance but he failed to provide the same. In this connection, the Chief Executive of the Company was also advised vide this Commission's letter dated June 09, 2006 to provide the documentary proof regarding holding of AGMs but he failed to furnish the same till date.

5. The reason that the Company is lying closed is also not a cogent reason to justify the default. I am, therefore, of the view that in the circumstances described above, the directors of the Company could have refrained from committing the aforesaid defaults. It was easier for the directors, when the Company was not functioning, to have prepared the annual accounts and hold the AGMs within the prescribed time. It is, therefore, the duty of the directors to ensure compliance with all the statutory requirements. Accordingly, the directors of the Company are responsible for timely holding of AGMs and filing of annual accounts with the Registrar and the Commission within prescribed time. Since the directors have failed to furnish any cogent justification for the defaults, therefore, the same are considered willful and intentional. Moreover, in spite of issuance of show cause notice dated December 21, 2005, the Company has failed to hold the aforesaid AGMs and furnish documentary evidence to this effect till date.

6. Before proceeding to decide this case, I also consider it necessary to highlight the importance of the strict observance of the mandatory provisions of the law. The protection of the investors/shareholders is one of the primary objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. If the interest of the investors is protected, they will save and invest more. Their interest is protected by transmission of timely, adequate and meaningful information to them. It is the annual and interim accounts, which provide information to the investors about the affairs of the companies. Annual General Meeting is a forum where the investors can freely speak, discuss and vote on important



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet -3 -

matters concerning approval of accounts, appointment of auditors, election of directors etc. It has unfortunately been noted that the directors of M/s. Hakkim Textile Mills Limited are not observing these compulsory requirements of law.

7. In view of the above discussion, it can be legitimately inferred that the Chief Executive and directors have failed to protect the interest of the shareholders. The aforesaid state of affairs is a cause of great concern for the Commission. This led me to believe that the directors have no respect for the law and they have deprived the shareholders of their statutory right to receive the annual accounts of the Company within the prescribed time limit. The responsibility for preparation/circulation of annual accounts rests with the directors of the Company and they have to take appropriate action at appropriate time. For the foregoing reasons, the defaults under Sub-section (4) of Section 158 of the Ordinance regarding non-holding of AGMs for the years ended September 30, 2003, September 30, 2004 June 30, 2005 stand established.

8. However, instead of imposing the maximum fine of Rs.50,000 on every director and a further fine of Rs.2,000 per day for the continuous default, I impose the following penalties on the Chief Executive and each director of the Company under Sub-section (4) of Section 158 of the Ordinance:-

S. No	Name	Penalty (Rs.)			
		AGM for the year ended 30-09-03	AGM for the year ended 30-09-04	AGM for the year ended 30-06-05	Total
1.	Mr. Muhammad Athar Malik, Chief Executive	20,000	20,000	20,000	60,000
2.	Mr. Zahid Mahmood, Director	20,000	20,000	20,000	60,000
3.	Mr. Fayyaz Hussain, Director	20,000	20,000	20,000	60,000
4.	Mr. Gulraiz Qaisar, Director	20,000	20,000	20,000	60,000
5.	Mr. Tariq Aman, Director	20,000	20,000	20,000	60,000
6.	Mr. Ameer Abdullah , Director	20,000	20,000	20,000	60,000
7.	Mrs. Sara Nawaz Khan, Director	20,000	20,000	20,000	60,000
Total		140,000	140,000	140,000	420,000



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet -4-

9. The Chief Executive and directors of M/s. Hakkim Textile Mills Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.420,000/- (Rupees four hundred and twenty 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. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity who are required to pay the said amount from their personal resources.

Ali Azeem Ikram
Director (Enforcement)