



Before Tahir Mahmood, Executive Director (Enforcement)

ORDER

In the matter of

AZAM TEXTILE MILLS LIMITED

**UNDER SECTION 244 AND SECTION 246 READ WITH SECTION 476 OF THE
COMPANIES ORDINANCE, 1984**

Number and date of notice	No.EMD/233/90/02 dated May 27, 2009
Date of final hearing:	September 08, 2009
Present:	Mr. Muhammad Shamil, C.F.O, G.M Finance also on behalf of Chief Executive and Secretary of Azam Textile Mills Limited.

This order shall dispose of the proceedings initiated through Show Cause Notice No.EMD/233/90/02 dated May 27, 2009 against the Chief Executive, Secretary and the Chief Accountant of Azam Textile Mills Limited (the "Company") under the provisions of Section 244 and Section 246 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the Company have failed to submit a duly signed copy of annual audited accounts for the year ended June 30, 2008 (the "Accounts") at least one of them by the chief executive and one director and the auditor of the Company in contravention of the requirement of Circular No. 2 of 1999 issued under Section 246 of the Ordinance. Moreover the Company has also failed to annex with the aforesaid accounts submitted to the Commission, under the provisions of Section 233 of the Ordinance, the following reports and statements:

- (a) Notice of Annual General Meeting ("AGM") held on October 31, 2008.
- (b) Directors' Report.
- (c) Auditors' Report
- (d) Statement of compliance of Code of Corporate Governance.
- (e) Pattern of shareholding.
- (f) Form of proxy.



3. Consequently, a show cause notice was served upon the Chief Executive, Secretary and the Chief Accountant of the Company being officer of the company to explain their position in writing as to why penalty as provided under Section 244 and Section 246 read with Section 476 of the Ordinance, may not be imposed on them. A period of 14 days was given to respond to the aforesaid notice. It was further stated in the notice that in case the directors intend to appear in person or through counsel to clarify the queries raised therein they may communicate the same to the Commission.

4. The show cause notice was responded by Mr. Muhammad Shamil, General Manager F&A through letter dated July 08, 2009. It was submitted by the General Manager F&A that the default was just an act of oversight on the part of official staff who forgot to append the annexure comprising the aforesaid reports/statements. It was further stated that the default was not deliberate and therefore the same may be condoned. However, photocopy of accounts attached with the aforementioned letter were again not found duly signed.

5. Hearing in the matter was initially fixed for July 30, 2009 and August 24, 2009 which were adjourned at the request of Mr. Muhammad Shamil, General Manager F&A. The hearing was finally held on September 08, 2009 wherein Mr. Muhammad Shamil, General Manager F&A appeared on behalf of himself and as an authorized representative of the Chief Executive and Secretary and reiterated the same arguments as were submitted earlier through written response. However when he was shown the record relating to financial statements for the past five years on he admitted the default and assured that due care will be exercised in future.

6. Before going ahead, I feel it necessary to advert the following relevant provisions of law:

Section 244 of the Ordinance states the penalty for improper issue, circulation or publication of balance-sheet or profit and loss account. - If any copy of a balance-sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account or income and expenditure account, (ii) any accounts, reports, notes or statements referred therein, (iii) the auditor's report, and (iv) the directors report, the company, and every officer of the company who is knowingly and wilfully in default shall be punishable with fine which may extend to five thousand rupees.

The requirements of Circular No. 2 of 1999 of the Commission, issued under Section 246 of the Ordinance are as follows:



All listed companies shall transmit to the Commission five copies of their published annual reports and accounts of which one copy should be duly signed by the auditors as well as by the Chief Executive and a director of the company.

Sub-Section (2) of Section 246 of the Ordinance provides that:

In the event of a default in complying with the order of the Commission issued under sub-section (1), the company, and every officer of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding one million rupees and to a further fine which may extend to ten thousand rupees for every day during which the default continues.

7. The provision of director's and auditor's report to the shareholders is mandatory. Directors in their report to shareholders are required to provide complete information about the state of affairs of the entity and any other matters which may be material for the stakeholder's attention and the explanations and interpretations of the financial statements. By the report the directors recognize their responsibility of ensuring that the business of the entity is conducted in the best interest of shareholders and requirements of law are complied with. This report normally includes information about the principal activities of the entity, review of business during the year, results and dividend for the year, substantial interests and share holding position and future plans of the management. The auditor's report is intended to advise investors, the government, and other users on whether the auditee's financial statements have been prepared in accordance with International Financial Reporting Standards, whether they are free of material misstatement (e.g. free of important and significant errors), and whether they show a true and fair view of the operating results, financial position and cash flows of the auditee. Moreover the report, not being an evaluation, is an assurance, but not necessarily a legal guarantee, on whether the financial information presented by the auditee is materially correct and trustworthy for making various decisions. Above all the objective of signed accounts is also an effort to enhance the transparency into the affairs of the entity and to maximize the concept of providing authenticated information and the circulation of the same among the stakeholders. In order to stress to the point, the law has required in addition to the copies of the published accounts, the submission of a copy to the regulator, duly signed in original by the chief executive officer and a director or in absence of the chief executive by the two directors and by the external auditor.

8. In order to conclude the matter, I have duly considered the submissions of the authorized representative and appreciate his regret for the default and assurance to exercise exclusive care in future. As the default is established from the record and same has also been admitted however keeping in view the assurance to observe the compliance of law in future, I am inclined to take a lenient view



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Enforcement Department

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of the default and instead of imposing maximum penalty hereby impose penalty on the Chief Executive, Secretary and the Chief Accountant of the Company, in the following manner:

Sr.	Name & Designation	Under Section 244 of the Ordinance	Under Section 246 of the Ordinance
1.	Mr. M. Nassem Saigol Chief Executive	5,000	50,000
2.	Mr. Sultan Ali Secretary	5,000	50,000
3.	Mr. Muhammad Shamil Chief Accountant	5,000	50,000
	Total	15,000	150,000

9. The Chief Executive, Secretary and the Chief Accountant of the Company are directed to deposit the aforementioned total penalty of Rs.165,000/- within thirty days of the receipt of this Order in the Commission's designated bank account with Muslim Commercial Limited and send a copy of the receipt vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated resulting attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive, Secretary and Chief Accountant in their personal capacity therefore they are required to pay the same from their personal resources.

Tahir Mahmood

Executive Director (Enforcement)

Announced

October 08, 2009,
Islamabad