

[Islamabad]

*Before Dr. Sajid Qureshi, Executive Director*

*In the matter of*

**Libaas Textile Limited**

Number and date of notice	EMD/233/265/2002-8959-65 dated March 10, 2006
Date of hearing	May 17, 2006
Present:	Mr. Salman Mahmood Director & Company Secretary

**ORDER**

**UNDER THE PROVISIONS OF SECTION 492 READ WITH SECTION 476 OF  
THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the directors including the Chief Executive of Libaas Textile Limited (the “Company”) under Section 492 of the Companies Ordinance, 1984 (“the Ordinance”).

2. The Company was initially incorporated as a private limited company on August 27, 1991. It was converted into a public company limited by shares on June 13, 1993. Its shares are quoted on the Stock Exchanges of Karachi and Lahore. The principal activity of the Company is to manufacture and sale knitted garments. As per its financial statements for the year ended June 30, 2005, the Company has authorized capital of Rs.50 million and paid up capital of Rs.40 million. The Board of Directors of the Company comprises of:



- i. Mr. Tahir Bashir Khan, Chief Executive
- ii. Mrs. Saira Tahir, Chairman
- iii. Mr. Salman Mahmood, Director
- iv. Mr. Rahat Bashir Khan, Director
- v. Mr. Shahid Bashir Khan, Director
- vi. Mr. Amir Bashir Khan, Director
- vii. Malik Muhammad Yasin, Director

3. The examination of the annual accounts of the Company for the period ended June 30, 2005 (the “accounts”) submitted to the Commission, pursuant to the provisions of Sub-Section (5) of Section 233 of the Ordinance, revealed that the auditors’ report annexed with the aforesaid accounts was not signed by the auditors of the company namely M/s. Avais Hyder Nauman Rizwani, Chartered Accountants, (the “auditors”). It was discovered after further investigation that the auditors had not issued an audit report due to non-availability of approved accounts and information/documents regarding certain significant matters including management plans and assessment regarding going concern, confirmation of liabilities of HBL, confirmation of trade debtors and creditors and maintenance of proper books of accounts. The report annexed with the aforesaid accounts as *auditors’ report* was in effect the initialed report of the auditors; not deemed as an *auditors’ report* in terms of law, which was sent to the board of directors by the auditors along with a request to provide necessary information/documents to enable them to issue their report.

4. The aforesaid revealed that the annual accounts of the Company for the year ended June 30, 2005 dispatched to the Commission on October 9, 2005 in terms of Section 233 of the Ordinance were in fact un-audited as the auditors had not issued their report by that date. However, the directors of the Company in notice of the meeting and the directors’ report attached with the said accounts transmitted to the Commission in terms of Section 158 and 233 of the Ordinance portrayed the aforesaid accounts as audited. The notice of the meeting included an agenda item for consideration of *audited accounts* along with *auditors’ report*:



**Quote**

*“To receive, consider and adopt the **audited accounts** of the Company for the year ended June 30, 2005 together with the directors and **auditors’ report** thereon”*

**Unquote**

The directors, in their report to the members, presented the accounts as audited:

**Quote**

*“Your directors take pleasure in presenting to you the 14<sup>th</sup> annual report of the Company together with the **audited accounts** for the year ended June 30, 2005.”*

**Unquote**

5. It was in the above circumstances that the Enforcement Department of the Commission decided to take appropriate action under the provisions of the Ordinance. Consequently, the Company was directed under Section 472 of the Ordinance to undo the default thereby submitting the audited annual accounts for the year ended June 30, 2005 along with auditors’ report duly signed by the statutory auditors of the company. At the same time proceedings under Section 492 of the Ordinance were initiated against the directors including the Chief Executive of the Company for making a false statement regarding the audit of the accounts of the Company for the year ended June 30, 2005 in the notice of meeting and the directors’ report annexed with the aforesaid accounts.

6. The reply of show cause notice was submitted by all the directors vide their letters dated March 22, 2006. It was averred that the said default occurred due to inadvertent mistake by the staff of the Company. It was requested that the said mistake may be condoned in view of the fact that the Company was in crises and the



management was trying hard for its revival. It was further contended that the auditors have furnished their report and the same has also been submitted to the Commission.

7. On the request of the directors, hearing in the matter was initially fixed for April 18, 2006 which could not be held due to some unavoidable circumstances. The case was re-fixed for May 17, 2006. On the date of hearing, Mr. Salman Mahmood, Director Operations and Company Secretary, appeared before the undersigned on behalf of all the directors to argue the case. Mr. Mahmood put forward similar arguments as were earlier offered in response to the show cause notice. He stressed that the default was neither willful nor intentional but it occurred merely because of negligence of the accountant. He stated that the initialed auditors' report along with financial statements was received on October 06, 2005 and sent for printing on the same day. The accountant forgot to get the report signed by the auditors and inadvertently initialed report was transmitted to the Commission and the shareholders. He confessed that as a Company Secretary/Director he was ultimately liable for the whole affair, however, he emphasized that he could not supervise the matter due to his focus on production and sales which is evident from the fact that the sales of the Company have been increased to Rs. 29.320 million from Rs.4.693 million in 2004. He assured that extra care shall be taken in future and requested for condonation.

8. Having considered all the relevant facts, I do not find myself convinced with the arguments presented by the directors. I have full sympathy with the management for difficulties faced by them and also appreciate their efforts for the revival of the Company. Nevertheless, this is also an admitted fact that the directors have dealt with the whole matter very casually. They cannot take refuge in the argument that the default occurred due to negligence of the accountant or because of engagement of Company Secretary, who is also a director, in production and sales matters. The directors were duty bound, under the provisions of the Ordinance, to provide the required information/documents to the auditors so that they could furnish their report. This unfortunately was not done, until it was directed by the Commission, which shows careless behavior of the directors. As per minutes of BOD meeting furnished by the Company, the directors approved the said accounts in their meeting held on



October 09, 2005 and on the same date the said accounts were dispatched to the Commission along with notice of meeting. Hence, at the time of issuance of accounts and the notice of meeting the directors were aware of the factual position. However, they despite having knowledge of the fact that the auditors had only issued an initialed report the same was presented to the Commission and the Shareholders as the *auditors' report* and the accounts as *audited accounts*. Hence the conduct of the directors substantiates deliberate misstatement.

9. Before proceeding further, I find it relevant to discuss duties of directors. The directors, in addition of day to day running of the company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fines or imprisonment. Hence the directors are held to a higher standard of accountability which requires them to be vigilant and perform their duties and obligations with due care. In the instant case, however, the directors have failed to perform their duties with due care and skill. They did not take necessary steps for finalization of audit within time and also failed to present true state of affair of the Company.

10. In view of the above discussion the default is established. However, considering director's assurance for strict observance of law in future and the fact that the Company has promptly acted on receipt of notice and has already submitted audited accounts along with auditors' report to the commission, I take a lenient view, and instead of imposing maximum fine of Rs. 100,000/- on each director I impose a token fine of Rs.15, 000/- each on Mr. Tahir Bashir Khan, the Chief Executive and Mr. Salman Mahmood, director only. Other directors are reprimanded to be careful in future. I hope that the directors would react positively and would ensure compliance with the requirements of law in letter and spirit.

11. Mr. Tahir Bashir Khan and Mr. Salman Mahmood are hereby directed to deposit the aforesaid fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited or pay



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
*Enforcement Department*

*Continuation Sheet - 5 -*

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 vouchers to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed on the Chief Executive and the director in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

---

**Dr. Sajid Qureshi**  
Executive Director  
(Company Law Division)

**Announced**  
June 07, 2006  
Islamabad