

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Adjudication Department –II
Lahore.

Through Courier

NO. ADJ-II/LHR/ 2146

March 11, 2024

The Chief Executive/Director,
M/S. Excel Cotton (Private) Limited,
09-K.M. Bhotatian Chowk, Defence Road
Lahore.

**SUBJECT: ORDER IN RESPECT OF SHOW CAUSE NOTICE SCN NO./AO-LHR/1589
DATED FEBRUARY 20, 2024 IN THE MATTER OF M/S. EXCEL COTTON
(PRIVATE) LIMITED.**

Dear Sir/Madam,

Please find enclosed herewith copy of the final "Order", in the title matter for proceedings under section (s) 233 read with section 479 of the Companies Act, 2017, for your record and necessary action.



Mohsin Syed
Additional Registrar/Adjudication Officer,
Adjudication Department-II, Lahore.

Cc: Incharge Corporate Registry Department, Lahore



Securities and Exchange Commission
Adjudication Department –II, Adjudication Division, 3rd & 4th Floor,
7- Edgerton Road, Lahore. www.secp.gov.pk



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
ADJUDICATION DEPARTMENT –II

LAHORE

Through Courier

**BEFORE MOHSIN SYED, ADDITIONAL REGISTRAR /ADJUDICATION OFFICER,
ADJUDICATION DEPARTMENT –II, LAHORE.**

In the matter of
M/S. EXCEL COTTON (PRIVATE) LIMITED

Number and date of SCN: SCN No. /AO-LHR/1589 dated February 20, 2024
Dates of Hearing: February 29, 2024 and March 11, 2024
Present: Mr. Arqum Naveed, authorized person of the company,
representing all the respondent(s).

ORDER
UNDER SECTION 233 READ WITH SECTION 479
OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings against M/S. Excel Cotton (Private) Limited (*“the company”*) and its directors including the chief executive (*“the Respondents”*), initiated through Show Cause Notice (*“the SCN”*) dated February 20, 2024 issued under the provisions of Section 233 read with Section 479 of the Companies Act, 2017 (*“the Act”*).

2. Brief facts of the case are, that *“the company”* had failed to file its audited financial statement(s) for the year ended 2023 with the *“Registrar”* within the stipulated timeline, pursuant to Section(s) 233 of *“the Act”*. Without any prejudice, the company had contravened the aforesaid provisions of *“the Act”* and rendered the company liable to a penalty of level-1 on the standard scale, as provided under Section 233(4) read with Section 479 of *“the Act”*.

3. Consequently, the aforesaid SCN dated February 20, 2024 was issued to *“the respondents”* to show cause in writing as to why penal action as enunciated under Section 233 (4) read with Section 479 may not be taken against *“the company”* for failing to conform to the provisions of Section(s) 233 of *“the Act”*, *ibid.*

4. In the matter of aforesaid SCN, initial opportunity of hearing was provided to *“the company”* by fixing hearing on February 29, 2024 by serving the Show Cause notice on February 20, 2024 at the registered office of the company, however, both the company and its chief executive/director(s) had failed to appear personally or through an authorized representative on the scheduled date and time of the said hearing. Thereafter, another opportunity of hearing was provided to the company, through its chief executive/director(s) by fixing the hearing for March 11, 2024, vide hearing notice bearing NO. AO-LHR/2011 sent at the registered office of the company and in response, Mr. Arqum Naveed, an authorized representative of the company had appeared on March 11, 2024 in person from CRO, Lahore, on the behalf of all the respondent(s) and argued the case. Mr. Naveed pleaded that the delay occurred due to finalization of the company’s financial statements for the year ended 2023, owing to which these financial statements were overlooked for filing by the concerned dealing staff with the *“Registrar”* and within the stipulated time frame as enunciated under Section 233 of *“the Act”*. The undersigned had raised serious



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11/3/2024



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concerns over the said response of the learned representative and also provided him another opportunity to explain and file the requisite audited financial statements for the year 2023 during the adjudication proceedings as his contention was not cogent, however, he had failed to substantiate the said non-compliance and reiterated the same reasons with a request to condone or impose the minimum penalty, in the instant case. All the arguments and reasons tendered by the representative of "the company" were duly heard, considered and found not cogent and hence, were disallowed by the undersigned seeing the nature of default of "the company".

5. Before proceeding further, it is necessary to advert to the relevant provisions of the law and Section 233 of the Companies Act, 2017 which unambiguously stipulates that:

Sub-section (1) of Section 233 "Without prejudice to the provisions of sub-section (5) of section 223, after the audited financial statements have been laid before the company at the annual general meeting and duly adopted, a copy of such financial statements together with reports and documents required to be annexed to the same, duly signed in the manner provided by sections 226, 232 and 251, shall be filed by the company with the registrar within thirty days from the date of such meeting in case of a listed company and within fifteen days in case of any other company."...

Sub-section (4) of Section 233 provides: that Any contravention or default in complying with requirements of this section shall be an offence liable—

- a) in case of a listed company, to a penalty of level 2 on the standard scale; and*
- (b) in case of any other company, to a penalty of level 1 on the standard scale*

6. It is clear from the abovementioned scripts of the law that "the company" was in default of Section 233 (1) of "the Act" as it had failed to file the annual audited financial statements for the year ended 2023, with the "Registrar" and within the timeline provided, therein. The nature, seriousness and impact of the breach shows that the act of "the company" was deliberate and the violation has raised serious concerns over the systemic weaknesses of the management systems and internal controls of the company necessitating the need to take serious cognizance and stern action by the Commission by seeing the nature and gravity of the default in the instant case.

7. In terms of the Commission's Notification S.R.O. 1546 (I)/2019 dated December 06, 2019, the powers to adjudicate cases under Section 233 of "the Act" have been delegated to the undersigned as Adjudication Officer, Adjudication Department- II, Lahore.

8. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of "the Act" and have also heard arguments of the representative, and let me state the fact that the afore-mentioned provisions of the law are unambiguous and explicit and the fact that timing is essence of accounts and, the disclosure requirements of these accounts have been kept to a bare minimum. Financial statements and other returns prepared accurately and in a timely manner provide to its users a reliable source of information regarding a company's financial position and performance, besides illustrating the results of the management's stewardship of resources entrusted on to it. In order to ensure transparency, all companies must meticulously adhere to the relevant law(s) for preparation and circulation of financial statements. Directors are obligated to ensure that such mechanisms are in place, and appropriate actions be taken, whereby financial and operational reporting of the company is timely achieved, whilst ensuring due compliance of the law.



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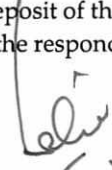


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9. Considering the facts of the case, proceedings and other record presented before the undersigned, I am compelled to infer and decide that the case as "the company" has failed to comply with mandatory requirements of Section 233 of "the Act", by non-filing of the annual audited financial statements for the year ended 2023, with the "Registrar" and within the stipulated time frame as prescribed by the "Act". Before proceeding with the decision, I would also like to highlight that directors of the company are required to exercise the utmost care in making business decisions in order to fulfill their fiduciary duties. Duty of care requires directors to make business decision after considering all available information, requirements of laws/regulations with regard to operations of the company and then act in a judicious manner while promoting the company's best interest. However, I have gone through the facts of the case as the company has failed to comply with the requirements of Section 233 of "the Act", therefore, I, while exercising the powers delegated vide S.R.O. 1546 (I)/2019 dated December 06, 2019 under section 233 read with section 479 of the "Act", hereby impose a penalty of Rs. 15,000/- upon the company, to conclude ("the SCN") proceedings.

10. This order is being issued without prejudice to any other action, that the Commission may initiate against the company in accordance with law/s on matters **subsequently, investigated or otherwise brought to the knowledge of the Commission.** The chief executive of the Company is advised to deposit the aforementioned penalty in the designated bank account maintained with MCB Bank Limited or UBL Bank Limited in the name of the **Securities and Exchange Commission of Pakistan**, within thirty days from the receipt of this Order, and original receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fines, proceedings for recovery of the same shall be initiated against the company and the respondent(s) to this show cause notice.


11/23/2024.
Mohsin Syed
Additional Registrar/ Adjudication Officer,
Adjudication Department-II, Lahore.

Announced:
March 11, 2024,
Lahore.

The Chief Executive,
M/S. Excel Cotton (Private) Limited,
09-K.M. Bhotatian Chowk,
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