



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

Before  
**Shahzad Afzal Khan - Director**  
**Head of Department**  
**Adjudication Department-I**

*In the matter of*

**Balochistan Glass Limited**

Show Cause Notice No. & Date: No. CSD/ARN/94/2015-288 dated September 26, 2023

Date of hearing: October 23, 2023 and November 1, 2023

Hearing attended by: Mr. Rashid Sadiq as Authorized Representative

#### ORDER

#### Under Section 218 of the Companies Act, 2017 and Sections 219 and 479 thereof

This order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/94/2015-288 dated September 26, 2023 (the SCN) issued under Section 218 of the Companies Act, 2017 (the Act) and Sections 219, 479 thereof against Balochistan Glass Limited (the Company) through its Chief Executive, hereinafter referred to as the Respondent.

2. The brief facts of the case are that the review of annual audited financial statements of the Company for the year ended June 30, 2022 (the Accounts), *inter alia*, transpired that the Company has maintained employees provident fund trust (EPFT), which was registered on December 23, 2020. The Securities and Exchange Commission of Pakistan (the Commission) through letter dated February 28, 2023 required the Company to submit a schedule of contributions paid on account of the EPFT. The Company through its reply dated April 7, 2023 submitted a payment schedule which showed that the contributions of EPFT were payable as provided hereunder:

S. No.	Date of deduction	Due Date	PF Contribution to be Deposited in Rs.
1	31-Jul-2021	15-Aug-2021	290,174
2	31-Aug-2021	15-Sep-2021	287,396
3	30-Sep-2021	15-Oct-2021	280,626
4	31-Oct-2021	15-Nov-2021	278,058
5	30-Nov-2021	15-Dec-2021	333,292
6	31-Dec-2021	15-Jan-2022	406,510
7	31-Jan-2022	15-Feb-2022	435,000
8	28-Feb-2022	15-Mar-2022	458,640
9	31-Mar-2022	15-Apr-2022	468,156
10	30-Apr-2022	15-May-2022	459,310
11	31-May-2022	15-Jun-2022	442,584
12	30-Jun-2022	15-Jul-2022	210,820



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The Company in its aforesaid reply also stated that "the Company was facing serious challenges including working capital issues during the year, which could not allow the company to make timely payments to the fund". The detail of payments made in EPFT bank account are as follows:

Sr. No	Date of Payment	Amount in Rupees	Remarks
1	16-Aug-2021	57,260	This is adjusted with employee's final settlement
2	11-Apr-2022	805,250	No Comments available
3	18-Jul-2022	452,886	
4	1-Aug-2022	845,600	

3. The above transpires that three payments in EPFT bank accounts were paid with significant delays. Further, the Company was having outstanding payable balance of Rs. 2.4 million at June 30, 2023 which was required to be deposited within 15 days of deduction. The Company, therefore, failed to deposit/pay within the stipulated time, the provident fund (PF) contributions, into the bank account maintained for the purpose, *prima facie*, in violation of Section 218 of the Act. Hence, the proceedings were initiated against the Respondent through the SCN.

4. In this regard, through a reply dated October 14, 2023 it was, *inter alia*, submitted that:

- (a) The provision of Section 218 of the Act requires that the Company shall collect contributions of its employees and pay the same along with its own contributions to the trustees, within fifteen days from the date of collection. With regard to little delays pointed out in para 4 of the SCN in payment of monthly contributions to the trustees in terms of Section 218(3) of the Act, the same is nominal delay caused by the deteriorating financial position of the Company. The Company has to face serious challenges including working capital issues during the year, which could not allow the Company to make timely payments to the trust. The Company has closed down and laid off/released its employees including members of the provident fund at the end of the year 2022 and their outstanding dues were fully settled by the Company. As of September 30, 2023, there are no outstanding payable to the trustees.
- (b) The SCN is liable to be withdrawn in order to maintain uniformity and equality in the exercise of powers entrusted to the SECP in cases having similar circumstances as required under Article 25 of the Constitution and Section 20(6)(c) of the SECP Act 1997. These two principles form the basis of every decision in the interest of justice, impartiality and fair play. Article 25 of the Constitution guarantees every person equality before law and equal protection of the law. Any order/ judgement passed by an administrative forum which may be regarded as arbitrary, discriminatory or unequal violates the provisions of Article 25.
- (c) Precedents of the Commission indicate that no fine was imposed by the Commission where companies have taken corrective measures.
- (d) Penalizing the Appellant for a perceived violation of Section 218 of the Act, would be an apparent and drastic deviation from the precedent developed by the SECP in the matter. A different treatment, in relation to the matter at hand, from the precedents of the Commission abovementioned relating to similar matters, would amount to unfair, unjust and discriminatory treatment and would contravene the letter and spirit of the scheme envisaged under Section 20(6)(c) of the SECP Act and Article 25 of the Constitution of Pakistan.



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- (e) The precedents of the Commission are binding in terms of SECP's rulings in the matter of ANS Capital (Private) Limited, 2017 CLD 686, Paramount Spinning Mills Limited (Appeal No. 29 of 2016) and rulings of the superior courts.
- (f) The reliance is also placed on principle of binding precedents laid down by Supreme Court in the case reported as PLD 2021 SC 581 & 2021 SCP 91.
- (g) The principles governing the interpretation of penalizing law favor the subject and the Commission has acknowledged this position where, in the past, it has considered remedial measures, corrective behavior and subsequent compliance, amongst other factors, to be reason enough to allow leniency and condonation of defaults.
- (h) In light of the instructions of the superior judiciary and the Commission's own determination in similar circumstances, application of the law has to be done in a consistent manner ensuring uniformity and fairness.
- (i) The fine can be imposed only after substantial finding of guilt as specifically instructed by Supreme Court of Pakistan in the matter of SECP vs. First Capital Securities Company Limited reported as 2011 PLD 778.
- (j) It is prayed that the SECP may withdraw the SCN without any adverse consequences for the Company.

5. In order to provide opportunity of personal representation, hearing in the matter was fixed for October 23, 2023. However, no one appeared. The matter was again fixed for November 01, 2023. On the date of hearing, Mr. Rashid Sadiq, being the Authorized Representative, appeared before me and reiterated stance as was given through reply dated October 10, 2023. He further stated that the date of deduction mentioned in the SCN is not correct as it needs to be the date of collection. He assured to submit a post hearing reply.

6. Subsequent to the reply, the Authorized Representative through reply dated November 14, 2023, *inter alia*, submitted that:

- (a) The outstanding amount of Rs. 2,474,510 as of June 30, 2023 was fully paid by the Company. (Payments through cheques dated from July 1, 2022 to September 30, 2023 were made). The above amount also includes contributions relating to subsequent period till September 2023 amounting to Rs. 658,452.
- (b) The date of deduction and due dates have been mentioned in the SCN. These should be date of collection as mentioned in Section 218(3) of the Act and fifteen days time is to be calculated from the date of collection.
- (c) The delay in payment of contribution to trustees of the trust was due to deteriorating financial position as the Company's operations were closed down, staff laid off, however, all employees were paid their outstanding dues relating to provident fund and there is no complaint from any employee.
- (d) The outstanding dues of the aforesaid employees were fully settled by the Company. As of September 30, 2023, there are no outstanding payable to the trustees.
- (e) The submissions on principles of uniformity and equality, as embodied in Constitution of Pakistan as well SECP Act, 1997, were delineated in the reply dated October 14, 2023 to the show cause notice dated September 26, 2023 and the same are reiterated.
- (f) Appellate Bench of the SECP has emphasized time again on principle of uniformity and equality. The Court and SECP cases relied are mentioned in para number 8 of the reply.
- (g) The binding precedent of the SECP needs to be followed for consistency and certainty. In this regard, it was relied on a recent judgement of the Supreme Court of Pakistan reported as PLD 2021 SC 581/2021 SCP 91.



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- (h) The mechanical application of law is not to be made and substantial findings of guilt is required in terms of the Supreme Court judgement reported as 2011 PLD 778 in the case of First Capital Securities Corporation Limited vs SECP.
- (i) The precedents of the SECP as mentioned are relied where the SECP has condoned the delay on subsequent rectification and in some of such cases allowed payment in installments and no fine was imposed.
- (j) Section 479(3) of the Act empowers both the Registrar and the Commission concurrently for the purpose of adjudication and imposition of penalties. The delegation notification does not provide which cases will be heard by the Registrar and which cases by the Commission and its delegatee. As there are two forums for adjudication of cases, the Registrar and the Commission, the delegation without any statutory guidance for division of cases between Registrar and the Commission is not lawful and violates the fundamental right to equality under law provided through Article 25 of the Constitution.
- (k) The Authorized Representative highlighted and assured that in future, the Company would abide the requirement without any lapse.

7. I have gone through the facts of the case, and considered the written submissions made by the Company, the Respondents through their Representatives and the arguments made during the hearing, in light of the aforesaid legal provisions and the record placed before me and state as under:

- (i) **Whether it is the Company's obligation to collect the contributions of employees' provident fund:**

At the outset, I am of the view that sub-section (3) of Section 218 of the Act requires that the company shall be bound to collect the contribution of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection. The aforesaid legal provision is applicable in case of the Company as "BGL Officer's Provident Fund Trust" was registered on December 23, 2020. It was noticed that the total PF contributions for the financial year 2022 were of the amounts of Rs. 4,350,566/, whereas an amount of Rs. 2,400,000 was outstanding to be paid to EPFT. During the course of instant proceedings, it was informed that the contributions of PF were paid and there was no outstanding contribution as on September 30, 2023. In view of the aforesaid, the Respondent failed to discharge its obligation in terms of Section 218(3) of the Act and the amounts of the contributions of the PF for the financial year 2022 were paid with significant delays.

- (ii) **Is timely payment of contributions of employees' provident fund of essence:**

The objective of these provisions of Section 218 of the Act is to collect the amounts as contributions for the benefits of the employees and the said amounts are in the nature of trust moneys in the hand of the Company, the same must be paid or deposited within stipulated time.



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(iii) **Whether the collections of the contributions were made during the year or subsequent to the year end June 30, 2022:**

The Respondent through reply dated November 14, 2023 has provided that collections of the contributions were made through cheques and relevant dates of the cheques clearly indicate that such collections of outstanding amounts were mainly made subsequent to the financial year end 2022. Moreover, as per the bank statement annexed with the aforesaid reply transpires that payments to the bank account of the EPFT were also made subsequent to the year end June 30, 2022. Hence, I am of the view that the Respondent has violated the requirements of Section 218 of the Act as amounts of contributions of the provident fund were not paid within the stipulated time period of 15 days.

(iv) **Whether the Company's financial situation is deteriorating:**

The argument that such delays were due to deteriorating financial position of the Company and its operations were closed down, however, the said argument is not tenable as during the financial year 2022 the Company reported Sales (net) of Rs. 1,346 million and it was an operational company. In view of the fact that the Company reported significant sales during the financial year 2022, therefore, the delays in payment of the contribution amounts, as stated in para 2 above, does not hold ground.

(v) **Whether the delays are admitted:**

Non-compliances to the said provisions of the Act was admitted by the Company in its reply dated April 7, 2023 by stating that the Company could not make timely payments to the fund, *inter alia*, due to working capital challenges. The default of the provisions of Section 218 of the Act persisted in the year 2022. Accordingly, subsequent payments made in financial year 2023 of the amounts of the contributions of PF do not exonerate the Respondent Company of the statutory requirements of Section 218 of the Act and, therefore, the Respondent is liable to be penalized under Section 219 of the Act.

(vi) **Whether there is impugned order passed in the matter of instant proceedings:**

It has been requested through letter dated October 14, 2023 that on the basis of the arguments, the impugned order is liable to be withdrawn. In this regard, I am of the view that the said argument is not cogent owing to the fact that no order has been passed in the matter of the instant proceedings and the instant SCN cannot be withdrawn.

(vii) **Delegation of powers and jurisdiction of the matter:**

Section 479 has to be read in totality and in reference to the Section providing imposition of penalty on the standard scale. The powers to take cognizance of the violations of the requirements of Section 218 of the Act has been duly delegated to the undersigned vide



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SRO No. 1545(I)/2019 dated December 6, 2019 (the SRO) to impose a penalty under Section 219 of the Act. The SRO also specifically authorized and empowered the undersigned to invoke the powers of Section 479 of the Act. The Commission has delegated its powers through Section 10 of the SECP Act, 1997 and to bring such delegation into public domain and knowledge, the delegation was notified through the SRO. The Respondent has also misconceived Section 479(3) of the Act. In view of the applicable provision i.e. Section 479(3) of the Act, the Registrar and the Commission have concurrent powers to impose penalties, therefore, the Commission has delegated its powers to take cognizance of the violation of Section 218 of the Act by imposing penalty provided under Section 219 of the Act read with Section 479 of the Act. Therefore, I hereby categorically reject the Respondent's assertion that under Section 479(3) of the Act, only the Registrar was competent to impose penalties. In view thereof, delegation of powers under Sections 219 and 479 of the Act does not suffer any irregularity or illegality.

8. Taking cognizance of the aforesaid contraventions/ non-compliances, I, in exercise of the powers conferred under Section 219 of the Act read with Section 218 thereof, hereby impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only) on the Respondent i.e. Balochistan Glass Limited.**

9. The Respondent is hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the *Securities and Exchange Commission of Pakistan* with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission for information and record. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

10. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondents in respect of any default, omission or violation thereof.

**Shahzad Afzal Khan**  
Head of Department  
Adjudication Department-I

**Announced:**  
Dated: November 30, 2023  
**Islamabad**