



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Bawany Air Products Limited

Number and date of notice: No. CSD/ARN/152/2015 -814-20 dated November 21, 2017

Date of hearing: February 28, 2018

Present: Mr. M. Hanif Y. Bawany, Chief Executive
Bawany Air Products Limited

ORDER

Under Section 227 read with Section 229 and 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against the following directors including chief executive (*the "Respondents"*) of Bawany Air Products Limited of (*the "Company"*) through show cause notice dated November 21, 2017 (*the "SCN"*) issued under the provisions of Section 227 read with Section 229 and 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

- 1 Mr. Muhammad Ashraf
- 2 Mr. M. Hanif Y. Bawany
- 3 Mrs. Mominza Hanif Bawany
- 4 Mr. Vali Muhammad M. Yahya
- 5 Mr. Wazir Ahmed Jogezi
- 6 Mr. Zakaria A. Ghaffar
- 7 Mr. Siraj A. Kadir

2. Brief facts of the case the annual audited accounts for the year ended June 30, 2016 (*the "Accounts"*) of the Company revealed that the Company is not timely transferring contributions to the employees provident account, contrary to the requirements of Section 227 of the Ordinance. The Commission through letter dated May 2, 2017 inquired regarding payables to the provident



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fund. The Company submitted that it has not made payments to employee provident fund account for the last two years due to severe financial crisis.

3. Subsequently, the SCN was issued to directors of the Company including the chief executive wherein the respondents were called upon to show cause in writing as to why penal action may not be taken against them in light of the provision of section 229 of the Ordinance. In response, Mr. M. Hanif Y. Bawany, Chief Executive (*the "Authorized Representative"*) submitted reply vide letter dated December 27, 2017 on behalf of the respondents. The following are the summarized points submitted in the reply:

- i. The Company remained compliant with the provisions of section 227 of the Ordinance till June 30, 2014.
- ii. Owing to financial difficulties faced by the Company since past few years, the Company had to opt for an alternative considered best by the board of directors ("*BOD*") while ensuring the employees suffer no loss.
- iii. The employees who left the Company in the past three years were paid their contribution to the provident along with the Company's contribution and interest at rates higher than the bank deposits for the relevant periods.
- iv. The Company desired to become compliant with the requirement of section 227 as soon as it is practically possible.
- v. The Company and its management request your kind authority not to impose any penalty under the current circumstances.

4. In order to provide a hearing opportunity, the matter was fixed on February 28, 2018. Mr. M. Hanif Y. Bawany, the Chief Executive attended the hearing and reiterated the written submissions already provided. He further submitted that the Company is not laying off any old employees and is paying provident fund to all employees leaving the Company. He stressed that the Company is accruing interest on the amount payable to provident fund. He requested that the Company may be allowed till June 30, 2018 to show progress in this regard.

5. The Commission vide letter dated April 25, 2018 inquired about the progress made regarding payments made to provident fund. The Chief Executive through his letter dated



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May 30, 2018 informed that Rs.185,032 have been deposited in the provident fund. He submitted that constant payments will be made to the provident fund in future.

6. Before proceeding further, it is necessary to revert to the following relevant provisions of section 227 and section 229 of the Ordinance:

Sub-section (2) of section 227 of the Ordinance provides that *where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such funds, whether by the company or by the employees, or received or accruing by way of interest, profit or otherwise from the date of contribution, receipt or accrual, as the case may be, shall either —*

(a) *be deposited—*

- (i) *in a National Savings Scheme;*
- (ii) *in a special account to be opened by the company for the purpose in a scheduled bank; or*
- (iii) *where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in any other scheduled bank; or*

(b) *be invested in Government securities; or*

(c) *in bonds, redeemable capital, debt securities or instruments issued by Pakistan Water and Power Development Commission and in listed securities subject to the conditions as may be prescribed by the Commission].”*

Sub-section 3 of section 227 of the Ordinance provides that *where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions 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, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.*

Section 229 of the Ordinance provides that *whoever contravenes or authorizes or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also liable to pay the loss suffered by the depositor of security or the employee on account of such contravention.*



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7. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 229 have been delegated to the Executive Director (Corporate Supervision Department).

8. I have analyzed the facts of the case, provisions of Sections 227 of the Ordinance and arguments put forth in writing and during the hearing by the Chief Executive, the authorized representative of the respondents. As per the submissions made by the authorized representative, the Company is going through difficult financial circumstances and has made regular payments in the past and intends to regularize the payments to provident fund after it achieves financial stability. It has also been submitted that an interest rate higher than ones offered by bank deposits in the relevant periods are being accrued on the amounts payable to the provident fund. I have observed that the Company is accruing interest on the amount payable to the provident fund and has also assured to pay all retiring/ resigning employees in full. Nevertheless, it is abundantly clear that the Company has violated the requirements of the section 227 of the Ordinance and the default is continuing. The section 227 of the Ordinance provides that all moneys of the provident fund must be paid within the prescribed time and no such money be used by the Company even if interest is charged. The default has been committed and is continuing as of June 30, 2018. I am constrained to impose the maximum penalty provided in section 229 of the Ordinance on the directors of the Company on whom the SCN was served. The details of the penalties imposed is as follows:

S.No.	Name of Respondent	Penalty (Rs.)
1	Mr. Muhammad Ashraf	5,000
2	Mr. M. Hanif Y. Bawany	5,000
3	Mrs. Mominza Hanif Bawany	5,000
4	Mr. Vali Muhammad M. Yahya	5,000
5	Mr. Wazir Ahmed Jogezi	5,000
6	Mr. Zakaria A. Ghaffar	5,000
7	Mr. Siraj A. Kadir	5,000
	Total	35,000

9. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited 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.

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In case of non-deposit of fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on the Respondent in their personal capacity; therefore, they are required to pay the said amount from personal resources.

10. Before parting with the order, the directors are hereby directed in terms of provision of section 473 of the Ordinance, now section 475 of the Companies Act, 2017 to make good the default by depositing the outstanding amount of provident fund within six months of the date of this order i.e. by May 19, 2019 and submit evidence of compliance of direction, failing which necessary proceedings as provided in the law shall be initiated.

Abid Hussain
Executive Director

Announced:
November 19, 2018
Islamabad

