



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Board of Trustees of the Provident Fund-Fauji Cement Company Limited

Number and date of notice: CSD/ARN/420/2017-2691-95 dated February 9, 2017
Date of hearing: April 11, 2017
Present: Mr. Muhammad Farooq Butt
Authorized Representatives

ORDER

**UNDER SECTION 227 READ WITH SECTION 229 & 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against board of trustees of the provident fund (the "respondents") of Fauji Cement Company Limited (the "Company"). These proceedings were initiated through show cause notice ("SCN") dated February 9, 2017 under Section 227 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that review of annual audited financial statements for the year ended on June 30, 2016 ("Accounts") of Company and financial statements of the Employees Provident Fund ("Fund Account") for the year ended June 30, 2015 and 2016 revealed the following;

- 1) The Fund has made investment in TDRs of Trust Investment Bank as follows; which is not a schedule bank but is a NBFC registered with SECP.

Trust investment bank	2016 (Rs.)	2015 (Rs.)	2014 (Rs.)
Investment in TDRs	3,400,000	4,600,000	6,000,000

- 2) The Fund has made investment in unlisted TFC of Bank A-Habib Limited as follows;

Bank Al-Habib	2016 (Rs.)	2015 (Rs.)	2014 (Rs.)
Investment in TFCs	-	16,748,532	16,754,534

3. It has been observed that provision of Rs. 3 million has been created on investment of TDRs of Trust Investment Bank as auditors issued adverse opinion on their financial statements including going concern.

4. 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 —*



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- (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.*

5. The respondents, prima facie, made aforementioned investments in contravention with the provisions of Section 227 of the Ordinance. Consequently, the SCN was issued to the respondents requiring them to show cause in writing as to why penal action may not be taken against them.

6. In response to the Company submitted reply vide letter dated February 28, 2017. A brief of the reply relevant to the contents of the SCN is given below:

- The investment in NBFC (trust bank) instead of scheduled bank as per provident fund rules was made inadvertently on the pretext that the NBFC's are also regulated by State Bank of Pakistan like DFI's & Micro Finance Banks. The matter was however misunderstood.
- The provision of Rs. 3 million created against the said TDRs on the recommendations of the statutory auditors of the provident fund.

7. In order to provide opportunity of personal hearing; the case was fixed before the undersigned on April 11, 2017, the authorized representatives, Mr. Muhammad Farooq Butt, on behalf of respondents appeared, and reiterated the submissions made in the written reply and further submitted the following;



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- The amount of Rs. 7.1million has already been received back out of total investment of Rs. 10 million with Trust Bank and they are paying back the remaining/outstanding amount.
- The investment in Bank Al Habib TFC's was matured and received back with profit in June-2016 and amount was transferred in Fauji Cement Co. Ltd. provident fund bank account.
- By giving consideration to the above mentioned clarification, the respondents requested to withdraw the notice on inadvertent overlook. Utmost care would be exercised in future for compliance of the applicable rules.

8. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under SRO 634(I)/2014 dated July 10, 2014 read with section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

9. Having gone through the facts of the case, provisions of the law and submissions of the authorized representative, it has been observed that the respondents contravened the provisions of Section 227 of the Ordinance. However, keeping in view submissions made by the respondents and efforts made to rectify the default, I hereby, conclude the case with a warning to the respondents to ensure future compliance of applicable legal provisions.



Amina Aziz
Director

Announced:
June 1, 2017
Islamabad

