

Before Tariq Bakhtawar, Director Enforcement

In the matter of

M/s. EMCO Industries Limited

(Under Sub-Section(2) and (3) of Section 227 read with Section 229 and 476 Of the Companies Ordinance, 1984)

No. and date of show cause notice	EMD/233/583/2002-4422-4430 Dated November 08, 2005
Date of final hearing	November 25, 2005
Present:	Mr. Mansoor Jamal Butt, Chief Financial Officer Mr.Imran Anjum, Advocate
Date of Order	December 27, 2005

Order

The case before me pertains to the proceedings initiated against EMCO Industries Limited (“Company”) and its present directors under Sub-section (2) and (3) of Section 227 read with Section 229 and 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that it has been noticed from the examination of annual accounts of M/s EMCO Industries Limited (“Company”) for the year ended June 30, 2004 that an amount of Rs. 4,004,550 is payable to Provident Fund Trust (“Fund”) by the Company. The payable to the fund is provided under the head of Creditors, Accrued and Other Liabilities. The Company in its financial statements for the year ended June 30, 2004 (note 2.1) disclosed that;

“Contribution to Provident Fund amounting to Rs.4 million in respect of current year is overdue”

3. The aforesaid note categorically pointed out that the Company has not made payments to the Provident Fund Trust (“Fund”) as required under the law and has contravene the provisions of Section 227 of the Ordinance.



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4. In view of the facts and circumstances narrated in the preceding paragraphs, the Enforcement Department viewed that the Company is in contravention of the mandatory requirements of Section 227 of the Ordinance. It was, therefore, considered necessary to ascertain the extent of violations committed by the Company and loss sustained in consequence of violations of Section 227 of the Ordinance.

5. Consequently, a show cause notice dated September 19, 2005 (the "SCN") was issued under Sub-sections (2) and (3) of Section 227 and 229 read with Section 476 of the Ordinance to the following persons, who prima facie had authorized and permitted the contravention of the provisions of Section 227 of the Ordinance:

- | | | |
|----|-----------------------------|-----------------|
| 1. | Mr. S. A. Mannan, | Chairman |
| 2. | Mr. Tariq Rehman, | Chief Executive |
| 3. | Mr. Haris Noorani, | Director |
| 4. | Mr. Sohail Mannan, | Director |
| 5. | Mr. Iqbal Shafiq, | Director |
| 6. | Ms. Maha Rehman, | Director |
| 7. | Ms. Ayesha Noorani, | Director |
| 8. | Mr. Ahsan Suhail Mannan, | Director |
| 9. | M/s EMCO Industries Limited | |

6. In response to the Show cause notice, the Company submitted that;

- It is a 50 years old Company and was listed on stock exchange in 1983. The Company initially did well however, due to extreme recession in the last decade, the Company suffered huge losses from 1997 to the year 2002.
- Due to continued support of directors, who injected an interest free loan to the Company, the operations remained continued. In these years when the Company suffered accumulated losses up to Rs. 586 million, the Company stopped making payment to the Provident Fund Trust and also took loan from the said trust. The Company also accrued interest on the total outstanding amount payable to the trust as per requirement of the Ordinance.



- This resulted in initiation of proceedings by the SECP and a detailed correspondence was exchanged, as well as hearings were conducted in this regard. In the context of considerate understanding of SECP, the Company schemed a repayment plan which included the principal amount as well as accrued mark-up, for the Trust; the same was graciously endorsed by SECP. As on January 1, 2003 the total amount payable to the Fund is as under:

Workmen	Rs. 90.959 million
Non-Workmen	Rs. 42.019 million

- With consent, non-workmen balance was transferred to non-fund base gratuity scheme account. The remaining amount of Rs. 90.959 million was Payable to Provident Fund Trust.
- Accordingly against the liability of Rs.90.959 million as on January 1, 2003, as per schedule submitted to SECP, payment is being made by the Company to the Trust for Workmen Under the submitted schedule, EMCO was to pay Rs. 38.01 million up to June 30, 2005. This amount has been paid to the trust and the Company is performing its commitment as made with SECP.
- It would be appreciated that the Company has suffered huge losses but is now making a successful turn around with ambitious expansion plan. However, during the intervening period, it occasionally faces cash flow problems which lately resulted in a temporary inability to pay employees/employer current contribution along with markup which is appearing in the balance sheet as on June 30 , 2005 as at Rs. 12.127 million (in Note 14).
- However, with the cash flow problem resolved, the Company has immediately paid not only the agreed amount according to the committed schedule, as submitted to SECP in the earlier proceedings, but is now also up to date with its current contributions. There does not exit any default now in performance of its agreed obligations.



7. Hearing in the matter was fixed on November 25, 2005. Mr. Mansoor Jamal Butt, Chief Financial Officer and Mr. Imran Anjum, Advocate represented the case on behalf of the Company and its directors. The learned counsel reiterated the facts mentioned in the written submission. They pleaded that the entire amount has been paid to the fund as on the date of hearing. Moreover, no single employee has complaint to the Commission for non payment of dues and the Company is paying mark up at the rate of 10%, which is more than market rate of return. The learned counsel stated that the intention of the Company is not mala fide.

8. Before proceeding further, it is necessary to advert to the provision of law, which has been violated by the Company, and its directors. These provisions are contained in Section 227 of the Ordinance and are, to the extent relevant, reproduced as follows:

“227. Employees’ provident funds and securities:

(2) *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 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.*

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

(3) *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 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, 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.”*



9. The aforesaid provisions of the law are clear and unambiguous. The objective of these provisions is to secure the amounts collected from the employees of the company as contributions to a Provident Fund for the benefits of the employees of the Company through the mechanism of trustees. The law requires that all moneys contributed by the employees as well as the company's contributions, if any, including the profit thereon must be deposited within fifteen days of the contributions shall be invested in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. When a Trust has been created by a company with respect to any Provident Fund, the company has an obligation to pay the contributions including its own contributions to the trustee within fifteen days from the date of collection. In the latter case, the trustees are responsible to invest the moneys of the Provident Fund in accordance with the provisions of Law. The amounts collected from the employees as contributions to a Provident Fund are in the nature of trust moneys in the hand of the company and the same must be paid to the trustees within stipulated time. The Company on the pretext of higher returns cannot, therefore, withhold such moneys.

10. I have given due consideration to the submissions of the directors as well as the arguments advanced by the representatives of the Directors at the time of hearing but none of them justified the default. The non-payment of liability of Rs.4 million, arisen during the current year, on the plea that the payment to the fund could not be made due to liquidity crunch is not valid. During the financial year ended on June 30, 2004 the Company has generated cash flow from operations amounting to Rs. 64.308 millions (2003: Rs. 40.367 millions) and the current year's liability towards the Fund was just Rs.4 million. It appears that payment towards the Fund is not the prioritized by the Company and does not take compliance of the law seriously.

11. An earlier Order was passed against the Company on June 25, 2003 for violation of the same statutory provisions i.e. Sub-section (2) and (3) of Section 227 of the Ordinance. The aforesaid Order was passed because it was observed by the Commission that an amount of Rs. 72.419 million (2001: 72.419 million) was shown in the Balance Sheet for the year ended June 30, 2002 under the head "Long Term Loans" and an amount of Rs. 34.336 million (2001: 25.266 million) under "Creditors Accrued & Other Liabilities" as payable to the Provident Fund. Consequently besides imposing penalty on each of 11 present and ex-directors of the Company and on 4 trustees of the Company, it was ordered that a notice shall



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be issued to the Company to make good the default in terms of the Sub-section (1) of Section 472 of the Ordinance. Consequently a notice was served on July 28, 2003 under Section 472 (1) of the Ordinance to make good the default by making the payment of the entire outstanding amount to the Provident Fund within 30 days of the issue of the Notice. The Schedule of Payment submitted by the Company is as under;

Quarter	Period		Principal Balance	No. of days	Installment
	From	To			
1	1-Jan-03	31-Mar-03	90,959,116	90	2,242,828
2	1-Apr-03	30-Jun-03	90,959,116	91	2,267,748
3	1-Jul-03	30-Sep-03	90,959,117	92	2,500,000
4	1-Oct-03	31-Dec-03	90,751,785	92	2,500,000
5	1-Jan-04	31-Mar-04	90,539,227	91	4,000,000
6	1-Apr-04	30-Jun-04	88,796,506	91	4,000,000
7	1-Jul-04	30-Sep-04	87,010,337	92	4,000,000
8	1-Oct-04	31-Dec-04	85,203,474	92	4,000,000
9	1-Jan-05	31-Mar-05	83,351,069	90	4,000,000
10	1-Apr-05	30-Jun-05	81,406,301	91	8,500,000
11	1-Jul-05	30-Sep-05	74,935,882	92	8,500,000
12	1-Oct-05	31-Dec-05	68,324,677	92	8,500,000
13	1-Jan-06	31-Mar-06	61,546,833	90	8,500,000
14	1-Apr-06	30-Jun-06	54,564,427	91	8,500,000
15	1-Jul-06	30-Sep-06	47,424,800	92	8,500,000
16	1-Oct-06	31-Dec-06	40,120,165	92	8,500,000
17	1-Jan-07	31-Mar-07	32,631,413	90	8,500,000
18	1-Apr-07	30-Jun-07	24,936,023	91	8,500,000
19	1-Jul-07	30-Sep-07	17,057,716	92	8,500,000
20	1-Oct-07	31-Dec-07	8,987,664	92	9,214,202
			Total		123,724,778

The Company did not pay the agreed amount to the Provident Fund Trust as per its Commitment. It is observed that the Company only paid Rs.3.948 million, during the year 2003-04, against the agreed amount of Rs.13 million. Separate proceedings under Section 472 (1) of the Ordinance are in process and direction will be issued to the Company for repayment of amount as per agreed schedule .



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12. For the forgoing, I am of the view that the Company and its directors have breached the mandatory requirements of Section 227 of the Ordinance. The outstanding contributions disclosed at the end of every year make it clear that the mandatory provisions of the law were breached since long. Breach of mandatory provisions of the Ordinance meant to secure the funds of the employees cannot be allowed. An action, therefore, is necessary under Section 229 of the Ordinance. I therefore, proceed to impose a fine of Rs. 5,000 (Five thousand only) on the Company and each of its Directors under Section 229 of the Ordinance:

1.	Mr. S. A. Mannan,	Chairman	Rs. 5,000
2.	Mr. Tariq Rehman,	Chief Executive	Rs. 5,000
3.	Mr. Haris Noorani,	Director	Rs. 5,000
4.	Mr. Sohail Mannan,	Director	Rs. 5,000
5.	Mr. Iqbal Shafiq,	Director	Rs. 5,000
6.	Ms. Maha Rehman,	Director	Rs. 5,000
7.	Ms. Ayesha Noorani,	Director	Rs. 5,000
8.	Mr. Ehsan Suhail Mannan,	Director	Rs. 5,000
9.	EMCO Industries Limited	Company	Rs. 5,000

13. The Company, its Chief Executive and Directors are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines totaling to Rs.45,000 (Rupees forty five thousands Only) in the Commission's designated bank account No. 75010-6 maintained at Habib Bank Limited, Central Branch, 102/ 103, Upper Mall, Lahore or pay by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the Directors in their personal capacity; therefore, they are required to pay the said amounts from their personal resources.

Tariq Bakhtawar
Director Enforcement