



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Faran Sugar Mills Limited
(*In respect of Faran Sugar Mills Limited Employees Provident Fund*)

Number and date of notice: CSD/ARN/328/2016-4630-37, dated June 20, 2016

Hearing held: August 02, 2016

ORDER

UNDER SECTION 227 READ WITH SECTIONs 229 AND 476 OF COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following trustees (the “respondents”) of employees’ provident fund trust (“EPFT”) of the Faran Sugar Mills Limited (the “Company”):

- | | |
|-------------------------------|----------------------------------|
| 1. Mr. Muhammad Amin Bawany | 5. Mr. Muhammad Omar Amin Bawany |
| 2. Mr. Ahmed Ali Bawany | 6. Mr. Bilal Omar Bawany |
| 3. Mr. Muhammad Arif Aminwala | 7. Mr. Irfan Zakaria Bawany |
| 4. Mr. Muhammad Asif | 8. Mr. Sheikh Asim Rafiq |

These proceedings were initiated through show cause notice (“SCN”) dated June 20, 2016 under the provisions of section 227 read with sections 229 and 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that examination of annual audited financial statements (“Accounts”) of the Company for the year ended June 30, 2015 filed with the registrar of companies pursuant to the provisions of section 242 of the Ordinance revealed that Company has only made only four payments to provident fund as under;

S.No	Amount in Rupees	Date of Payment
1	350,000	September 20, 2013
2	100,000	October 22, 2013
3	3,600,000	November 13, 2014
4	700,000	May 22, 2015

3. It appeared from the above table that the directors of the Company, prima facie, violated the provisions of sub-section (2) of section 227 of the Ordinance, by depositing the amounts contributions of provident fund into the account of EPFT with delays beyond prescribed period of fifteen days. Consequently, the SCN was issued to all the respondents calling upon them to show cause as to why penalty may not be imposed on them for the aforesaid alleged contraventions.



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4. In response to the SCN, the Company Secretary submitted reply through letter dated July 02, 2016 which is reproduced as under:

“balance outstanding to Provident Fund Trust Account on June 30, 2015 was only 696,237/-, which is mentioned in the audited financial statements of our employee’s provident fund trust for the year ended June 30, 2015. Outstanding balance of Rs 696,237/- mentioned above pertains to provident fund contributions and recoveries of loan installment during the month of June 2015.

5. The respondents were granted an opportunity of personal hearing on August 02, 2016. Mr. Atif Muhammad Amin Finance Manager and Mr. Abdul Aziz, Manager corporate affairs appeared before me and reiterated the earlier stance already submitted through letter dated July 02, 2016. During the hearing authorized representative was asked to provide:

- a) Reconciliation of the amount collected,
- b) Direct payment made to the members/loan to employees,
- c) Monthly contribution deposited in provident fund,
- d) Receivable appearing in the provident fund trust account.

6. The respondents vide its letter dated November 5, 2016 and December 07, 2016 provided the above mentioned information and requested to vacate the SCN. It states that the payments on account of provident fund to outgoing/retiring member and loan to employees are made directly by the Company’s own funds on a regular basis and the contribution is deposited to provident fund trust account after adjustment of the aforesaid payments. Analyses of the reply of the company reveals that Company is not depositing, differential amount post adjustments of payments and loan, in provident fund trust account within fifteen days of the collection and are deposited in the account whenever necessary as claimed by the Company, as prescribed in the law.

7. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance: Sub-section (2) of section 227 of the Ordinance provides as under:

Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund, whether by the company or by the employees, or



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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 the Pakistan Water and Power Development Authority 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 as under:

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 be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention.*

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

It is important to highlight here that the Ordinance has been repealed while promulgating Companies Ordinance, 2016 ("Ordinance 2016"). However, provisions of Section 509(1)(f) of the Ordinance 2016 clearly provides that pending proceedings shall be concluded as provided in the Ordinance:

"509. Repeal and savings. — (1) The Companies Ordinance, 1984 (XLVII of 1984), hereinafter called as repealed Ordinance, shall stand repealed, except Part VIIIA consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIIIA along with all related or connected provisions of the repealed Ordinance shall be applicable mutatis mutandis to Non-Banking Finance Companies in a manner as if the repealed Ordinance has not been repealed:

Provided that repeal of the repealed Ordinance shall not-



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affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, prosecution, legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Ordinance has not been passed".

9. Having gone through the facts of the case, submission of the Company and applicable legal provisions, I have concluded that the provisions of section 227 of the Ordinance have been violated by the directors of the Company in respect of payment of amounts of provident fund to the Trust account, as the same were not deposited within prescribed time of fifteen days, rather it was deposited whenever necessary. Assurance was, however, given to be careful and compliant in future.

10. In view of the aforementioned facts, in cognizance of the Company's assurance to remain careful in future, in exercise of the powers conferred by section 229 of the Ordinance, instead of imposing fine, I hereby conclude the proceedings with a warning to all the respondents and the Company to be careful in future and ensure meticulous compliance with applicable legal provisions.

Amina Aziz
Director (CSD)

Announced:
December 15, 2016
Islamabad