



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Gray Mackenzie Restaurants International Limited

ORDER

Number and date of notice:	No. CSD/ARN/390/2016-526 dated August 11, 2016
Date of hearing:	November 14, 2016
Present:	1. Mr. Raza Pirbhai, Chief Operating Officer, 2. Khalid Mahmood, KPMG Taseer Hadi & Co. Chartered Accountant.

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

This order shall dispose of the proceedings initiated against the Directors (*the "respondents"*) of Gray Mackenzie Restaurants International Limited (*the "Company"*) through show cause notice ("SCN") dated August 11, 2016 issued under the provisions of Section 227 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the annual audited financial statements for the year ended June 30, 2014 (*"Accounts"*) of the Company filed with the registrar of companies revealed that the total annual contribution of the Company (employee & employer) to the employee provident fund, in the amount of Rs 7.37 million was not deposited in a special account, to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes. Note 14 to the accounts reveal an outstanding amount of Rs. 53.17 million (2013:63.61 million) payable to provident fund.

Section 227 (1) of the Ordinance requires that *all moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by*



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the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

3. The Company, *prima facie*, was in contravention with the provisions of Section 227 of the Ordinance, hence SCN was served upon the respondents to show cause as to why penalty may not be imposed under Section 227 of the Ordinance for failure to ensure timely payment of contribution of the fund.

4. The Company responded to the contents of the SCN through its letter dated October 26, 2016, stating that the Company intended to comply with section 227 of the Ordinance in the year under review, however the transfer of funds to the bank accounts of provident fund could not be made due to liquidity crisis. The Company later on and by now, has settled all its previous and current liabilities together with accrued/additional interest for the later payments and is now fully compliant.

A hearing was fixed on November 14, 2016 wherein Mr. Raza Pirbhai, Chief Operating Officer of the Company and Mr. Khalid Mahmood, KPMG Taseer Hadi & Co, appeared as authorized representatives on behalf of respondents, and reiterated the same arguments as were submitted in the afore-referred letter.

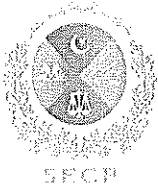
5. Before proceeding further, it is necessary to advert to the relevant provisions of law:

Sub-section (2) of Section 227 of the Companies Ordinance, 1984 ("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*



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- (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.*

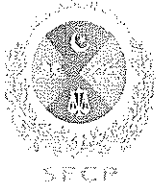
Section 229 of the Ordinance provides that whoever contravenes or authorizes or permits the contravention of any of the provisions of section 227 shall be punished with a fine which may extend to five thousand rupees and shall also liable to pay the loss suffered by the employee on account of such contravention.

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 227 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 VIII A consisting of sections 282A to 282N, from the date of coming into force of this Ordinance and the provisions of the said Part VIII A 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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(f) 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”.

6. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, representations submitted by the respondents in response to the contents of the SCN during hearing, and observed that the respondents are in contravention of the provisions of Section 227 of the Ordinance. However, I have also noted that the respondents admitted oversight on their part and have taken corrective measure. The Company later on and by now, has settled all its previous and current liabilities together with accrued/additional interest for the later payments and is now fully compliant, which is exhibited by the auditor certificate submitted in this regard. The self-realization and corrective measures taken for avoidance of future errors are reassuring as the enforcement and regulatory function of the Commission is aimed at building a compliant corporate culture. In view of the above facts, I hereby conclude the proceedings against the respondents without any adverse order.

Amina Aziz
Director (Corporate Supervision Department)

Announced:
December 14, 2016
Islamabad