



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Ecopack Limited

Number and date of notice: CSD/ARN/123/2015-3435-42 dated April 24, 2017
Date of hearing: August 7, 2017
Present: Mr. Muzammil Ahmed (Authorized Representative)

ORDER

UNDER SECTION 227 AND THE EMPLOYEES' PROVIDENT FUND (INVESTMENT IN LISTED SECURITIES) RULES, 1996 READ WITH SECTION 229 AND 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the Board of Trustees of the Provident Fund (*the "Respondents"*) of Ecopack Limited (*the "Company"*). These proceedings were initiated through show cause notice (*the "SCN"*) dated April 24, 2017 under Section 227 of the Companies Ordinance 1984 (*the "Ordinance"*) and The Employees' Provident Fund (Investment In Listed Securities) Rules, 1996.

2. The brief facts of the case are that, on review of the annual audited accounts for the year ended June 30, 2016 (*the "Accounts"*) of the Company, it has been observed from Note 33 to the Accounts that total investment of the provident fund in mutual funds amounts to Rs.10,258 million which is 67.66% of the size of the Provident Fund of Rs.15,162 million. This reveals that the total investment in unit trust schemes registered under Asset Management Companies Rules, 1995 exceed the 50% threshold as stipulated in S.R.O 261(I)/2002. It has also been observed that under the head "Mutual Funds" an investment in "NAFA Fullerton Asset Management" amounting to Rs.6.620 million has been disclosed which accounts to 44% of the total size of the Provident Fund thus breaching the threshold of 20% as stipulated as per the S.R.O 261(I)/2002.

3. The SCN was issued to the respondents on April 24, 2017 requiring them to show cause in writing as to why penal action may not be taken against them under the stated provisions of law. In response, the Company submitted its reply vide letter dated May 4, 2017. A brief description of the reply is given below:

"To clarify our stance that at the point of time i.e. June 30, 2016 total investments in Mutual Funds was 67.66% of the total size of fund which was exceeded from the

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threshold of 50% as stipulated in SRO 261(1)/2002. However, as soon as this non-compliance was highlighted, excessive investments had immediately been retrieved from the Mutual Funds in the months of January & February 2017....

...Basically, in March 2016 it was analyzed that the idle fund kept in bank account was not earning sufficient return and average rate of return from bank was 3%. Therefore, in the best interest of the members of PF, an effort was made to optimize the return by making investment in Mutual Funds. The investment made in NAFA funds earned a return of 12.9% which contributed towards the better return to PF members for the year 2015-16. We would therefore, request you to please accept our explanation in this regard, being un-willful noncompliance of the SRO."

It was further clarified by the Company in the reply that, "As per clause (ii) of SRO 261(1)/2002, threshold of 20% is stipulated for investment in 'any one unit, trust scheme' and not an Asset Management Company. NBP Fullerton Asset Management Ltd. is an Asset Management Company which floats and manages various unit trust schemes. As at June 30, 2016, there were investments in four different unit trust schemes managed by NBP Fullerton Asset Management Ltd, each of which is well below the above mentioned threshold of 20%.

S. No.	Name of Unit Trust	Amount Invested (Rs.)	%age of Fund
1	NAFA Income Opportunity Fund	1,748,123	11.5%
2	NAFA Stock Fund	1,556,354	10.3%
3	NAFA Islamic Aggressive Income Fund	1,749,243	11.5%
4	NAFA Islamic Stock Fund	1,566,766	10.3%
	TOTAL	6,620,486	43.7%

Therefore, investments in NAFA funds may be analyzed independently for each unit trust scheme."

4. In order to provide an opportunity to the respondents, hearing was fixed before the undersigned on August 7, 2017. Mr. Muzammil Ahmad, Senior Manager Accounts of the Company (the "Authorized representative") appeared on the hearing date. During the hearing the Authorized Representative reiterated the stance taken in the written submissions and it was informed that the excessive investments had immediately been retrieved from the Mutual Funds in the months of January & February 2017 and a lenient view may please be taken in the matter.



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5. 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).

6. 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 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."

Provision of Section 229 of the Ordinance provides that:

"Whoever contravenes or authorises 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



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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"

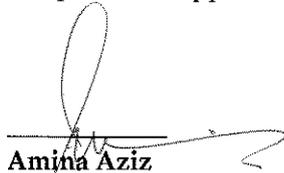
The Commission vide S.R.O. 261(I)/2002 dated May 10, 2012, relaxed the condition of investment in provident fund in listed securities which states as follows

"(i) That the total investment in unit trust schemes registered under Asset Management

Companies Rules, 1995 shall not exceed fifty percent of the provident fund;

(ii) that the total investment in any one unit trust scheme registered under Asset Management Companies Rules, 1995 shall not exceed twenty percent of the provident fund;"

7. Having gone through the facts of the case, provisions of the law and submissions of the authorized representative, I have observed that total investment by the Company in unit trust schemes have exceeded fifty percent of the size of the provident fund. However, keeping in view the rectification measures and withdrawal of excessive investment by the Company, I hereby conclude the case with a warning to the respondents to ensure future compliance of applicable legal provisions.


Amina Aziz
Director

Announced:
August 23, 2017
Islamabad