



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Khairpur Sugar Mills Limited

Number and date of notice: No. CSD/ARN/415/2016-667-73 dated October 12, 2017

ORDER

Under Section 227 read with Section 229 and 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against the directors including chief executive (*the "Respondents"*) of Khairpur Sugar Mills Limited of (*the "Company"*) through show cause notice dated October 12, 2017 (*the "SCN"*) issued under the provisions of Section 227 read with Section 229 and 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that examination of the annual audited accounts of the Company for the year ended September 30, 2016 and information provided through Company's reply to Commission's letter dated June 8, 2017 revealed that the Company is not timely transferring the provident fund contributions to the account of the employees provident fund trust (*the "Fund"*), which is contrary to the requirements of Section 227 of the Ordinance. The table as given below indicates that the amounts paid by the Company to the Fund were not paid within the time stipulated in Section 227 of the Ordinance i.e. 15 days from the date of collection:

Month	Amount (Rs.)	PF Contributions Due Date	PF Contributions Payment Date	Delay (Days)
Oct-15	398,362	15 Nov-15	12 Jan-16	57
Nov-15	395,598	15 Dec-15	12 Jan-16	27
Dec-15	392,282	15-Jan-16	13 Apr-16	87
Jan-16	391,084	15 Feb-16	13 Apr-16	56
Feb-16	390,470	15 Mar-16	13 Apr-16	28
Mar-16	256,146	15 Apr-16	09 Jun-16	54
Apr-16	256,146	15 May-16	09 Jun-16	24
May-16	344,072	15 Jun-16	19 Aug-16	64
Jun-16	344,074	15 Jul-16	19 Aug-16	34
Aug-16	313,838	15 Sep-16	09 Jan-17	115
Sep-16	313,838	15 Oct-16	09 Jan-17	85
Oct-16	313,840	15 Nov-16	09 Jan-17	54
Nov-16	313,840	15 Dec-16	09 Jan-17	24
Jan-17	450,996	15 Feb-17	29 Mar-17	41



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3. Subsequently, the SCN was issued to the directors of the Company including the chief executive wherein the respondents were called upon to show cause in writing as to why penal action may not be taken against them. Mr. Abdul Wahid Naviwala, company secretary (the "Authorized Representative") submitted reply on behalf of the respondents, which was received in this office on October 25, 2017. The following are the relevant extracts of the aforesaid reply;

"Here first of all we would like to highlight that the transactions which you have highlighted in your above dated show cause notice belongs to our staff working at factory. The main reason for this inordinate delay in depositing the employees as well as the company contribution in the trust account is the absence of any proper mechanism in the disbursement of salaries of SITE staff. Further, it may also please be noted that the fund was newly established at that time and as you know it takes time to streamline the things and make all regulatory compliances considering the fact that fund hardly completes 2 year till that time. Below we are producing the details of disbursement of salaries for the last 6 months as mentioned in your above dated notice:

S. No.	Salary Month	Salary Disbursement
1	June 2016	29th June 2016
2	August 2016	07th September 2016
3	September 2016	14th October 2016
4	October 2016	08th November 2016
5	November 2016	07th December 2016
6	January 2017	14th February 2017

Moreover, it is for the first time that the Commission have highlighted such non-compliance for which the management is fully committed to make full regulatory compliances in this connection and all other matters incidental and related to the corporate compliances. Further, we ensure that the same will be corrected on most urgent basis and the commission will need not to point out any such non-compliances in future.

We hope that the above will be sufficient to clarify our position. Therefore, kindly take a lenient view and drop the proceedings without charge as it is very time for newly established PF Trust."



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4. Before proceeding further, it is necessary to revert to the following relevant provisions of section 227 of the 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.*

5. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 229 have been delegated to the Executive Director (Corporate Supervision Department).

6. I have analyzed the facts of the case, provisions of Sections 227 of the Ordinance and arguments put forth in writing. As per the information provided by the Company, the Fund is newly established and that some part of the delay is caused by disbursement of salaries to the factory staff.



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I have observed that the matter relates to delay in payments to the provident by the Company which has been admitted in the reply on behalf of the respondents, however, the payments have been made albeit with a delay. The Company has admitted the default and have assured of urgent corrective measure for future compliance therefore I am inclined to take a lenient view in the instant matter and hereby conclude the proceedings with a warning to the respondents to ensure strict compliance with provisions of law regarding provident fund payments and to make all payments to the Fund within the time prescribed in relevant provisions of the law.

Abid Hussain
Executive Director

Announced:
April 18, 2018
Islamabad