



Corporate Supervision Department  
Company Law Division

Before Amina Aziz – Director

*In the matter of*

**The Nishat Mills Employees Provident Fund**

Number and date of notice: CSD/ARN/403/2016-1823-25 dated December 13, 2016  
Date of hearing: February 14, 2017  
Present: Mr. Rashid Sadiq  
Authorized Representatives

**ORDER**

**RULE 5 OF THE EMPLOYEES PROVIDENT FUND (INVESTMENT IN LISTED SECURITIES)  
RULES 1996 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against board of trustees of the provident fund (the "respondents") of Nishat Mills Limited (the "Company"). These proceedings were initiated through show cause notice ("SCN") dated December 13, 2016 under rule 5 of the Employees Provident Fund (Investment in Listed Securities) Rules 1996 ("Rules") read with section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that review of annual audited financial statements of the Company for the year ended on June 30, 2016 ("Accounts") and information subsequently provided by the Company, revealed that investment of the Nishat Mills Employees Provident Fund Trust ("Fund") in the listed securities exceed 30% of the Fund. The detail of which is tabulated as under;

Description	Rupees in million	
	2016	2015
Total size of the Fund (net assets)	4,141.28	3,925.02
Total investment in equities	1,861.34	2,098.57
Percentage of the investment	44.95%	53.47%

The Fund has made investment of Rs. 861.31 million in shares of MCB Bank Limited ("MCB") which exceeds the limit of 5% of the paid up capital of Rs. 11,130.31 million of MCB.

3. The board of trustees of the provident fund, prima facie, contravened the provisions of sub-rule (i) and (iii) of the Rules as investment in listed securities exceed the threshold of 30% and investment in shares of MCB exceeds the limit of 5%. Consequently, the SCN was issued to the respondents requiring them to show cause in writing as to why penal action may not be taken

against them in terms of rule 5 of the Rules.

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4. In response to the SCN, Mr. Rashid Sadiq ("authorized representative") submitted reply vide letter dated January 24, 2017. A brief of the reply relevant to the contents of the SCN is given below:

- a) The investment of the Fund in listed securities is less than 30% and not 44.95% of the fund size as of June 30, 2016. Out of total investment of Rs. 3.18 billion net of fair value, a sum of Rs. 886.48 million is invested in listed securities while the balance amount is invested in unit trust schemes. Therefore, the sum of Rs. 886.48 million invested in securities is less than the prescribed threshold of 30% and the Fund is not in violation of rule 5 of the repealed Rules.
- b) The investment in listed equities at the end of the year is disclosed at fair value and accordingly, the fair value adjustment, negative or positive is reflected in the accounts of the Fund. Such adjustment of the fair value for meeting the accounting requirement cannot be treated as investment in listed equities by the Fund and the same does not violate rule 3 of the repealed Rules.
- c) The investment of the Fund in the shares of MCB as of June 30, 2016 i.e. 861.31 million (8,284,390 shares) is not above 5% of the total paid up share capital of MCB which is 11,130.31 million divided into 1,113.031 million ordinary shares of Rs. 10 each. Therefore, the percentage of investment in shares of MCB is merely 0.74% of total paid up share capital of MCB. The Fund is in compliance with the threshold requirements for investments in a particular company as envisaged under the repealed Rules.

5. In order to provide opportunity of personal hearing; the case was fixed before the undersigned on February 14, 2017. Mr. Rashid Sadiq, on behalf of respondents appeared, and reiterated the submissions made in the written reply.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of Rule:

Rule 3 of the Rules provides *conditions for investment in listed securities, etc.-- Where it is decided to make investment, out of the provident fund constituted for the employees of a company, in securities of the companies listed on any stock exchange in Pakistan, such investment shall be subject to the following conditions, namely: -*



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- (i) Total investment in listed securities shall not exceed thirty percent of the provident fund;
- (ii) investment in shares or other listed securities of a particular company shall not exceed five per cent of its paid up capital;

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).

7. Having gone through the facts of the case, provisions of the law and submissions of the authorized representative, it has been observed that the Fund made investments in listed securities in compliance with the Rules, therefore, I hereby close the case without any adverse order.

**Amina Aziz**  
Director

**Announced:**  
May 3, 2017  
Islamabad

