



Securities and Exchange Commission of Pakistan  
*Enforcement and Monitoring Division*  
*Islamabad*

**Before Rashid Sadiq, Executive Director**

*In the Matter of*  
**M/S Hashmi Can Company Limited**

Number and date of notices	EMD/Co./233-EA/601/2002-3357 – 3365 Dated November 22, 2002
	EMD/Co./233-EA/601/2002-3366 – 3374 Dated November 21, 2002
	EMD/Co./233-EA/601/2002-3375 – 3383 Dated: November 22, 2002
Date of hearings	January 14 and 21, 2003
Present	Mr. Nadeem Akhtar, Advocate for Mr. Munawar A. Malik, Mr. Asif Ali Mufti, Mr. M. Yasin Arain, Mr. M. Aslam, Mr. Naseer A. Malik, Mrs. Musarat Bano Malik, Mr. Zaheer A. Malik, Ms. Humera Malik, Mr. Shamsuddin Khan  Mr. Mohammad Shahzad-ul-Haq for Mr. Aftab. A. Shaikh, Mrs. Nasreen Aftab, Mr. Hasan Aftab,  Mr. Mohammad Ismail, Trustee
Date of Order	January 29, 2003

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The case before me pertains to the proceedings initiated against the directors of M/s Hashimi Can Co. Limited (hereinafter referred to as the “Company”) and the trustee of Hashmi Can Provident Fund (hereinafter

referred to as the “Fund”) under Sub-sections (2) and (3) of Section 227 of the Companies Ordinance, 1984 (the “Ordinance”).

2. In order to dispose of the aforesaid matter, it is necessary to go into the background facts leading to the issue of show cause notice by the Enforcement and Monitoring Division of this Commission. The Company was incorporated on December 19, 1953 under the Companies Act, 1913 (now the Companies Ordinance, 1984). Its shares are listed on Stock Exchanges in Pakistan. The main object of the Company is to manufacture tin containers and processing of canned food. The manufacturing facility of the Company is located at Sind Industrial Trading Estate, Karachi. The Company has 605 shareholders holding shares as per the following pattern reflected in the annual report of the Company for the year ended June 30, 2002:

<i>Categories of Shareholders</i>	<i>Numbers</i>	<i>Shares Held</i>	<i>%</i>
Individuals	587	152,562	9.34%
Joint Stock Companies	4	10,468	0.64%
Investment Companies	2	5,313	0.33%
Insurance Companies	4	80,965	4.96%
Financial Institutions	3	327,034	20.02%
Holding of Directors	5	1,057,158	64.71%
	<b>605</b>	<b>1,633,500</b>	<b>100.00%</b>

3. During the usual examination of the audited accounts of the listed companies received at the Commission under Sub-section (5) of Section 233 of the Companies Ordinance, 1984 (hereinafter referred to as the “Ordinance”), the annual accounts of the Company for the year-ended June 30, 2002 were scrutinized and it was found that an amount of Rs. 11,890,319 has been shown as Provident Fund Contribution/Loan payable to Fund at an interest rate of 16%. The aforesaid balance has increased from Rs. 11,048,153 shown as payable to the Fund as on June 30, 2001. In order to ascertain the amounts

payable to the Fund in previous years, the audited accounts of the Company for the years ended June 30, 1999 to 2002 were also examined. These accounts were audited by M/S Rao & Co., Chartered Accountants.

The relevant notes appearing in the said accounts, being relevant to this case, are reproduced hereunder:

***Year ended June 30, 1999***

<b>Balance Sheet</b>	Creditors, Accrued and other liabilities
<b>Note 7 to the Accounts</b>	Provident Fund Contribution/Loan Payable Rs. 6,859,900/- Interest on Provident Fund is being charged at 16% p.a.

***Year ended June 30, 2000***

<b>Balance Sheet</b>	Creditors, Accrued and other liabilities
<b>Note 7 to the Accounts</b>	Provident Fund Contribution/Loan Payable Rs. 8,868,706/- Interest on Provident Fund is being charged at 16% p.a.

***Year ended June 30, 2001***

<b>Balance Sheet</b>	Creditors, Accrued and other liabilities
<b>Note 7 to the Accounts</b>	Provident Fund Contribution/Loan Payable Rs. 11,048,153/- Interest on Provident Fund is being charged at 16% p.a.

***Year ended June 30, 2002***

<b>Balance Sheet</b>	Long Term Loan
<b>Note 6 to the Accounts</b>	Provident Fund Contribution/Loan Payable Rs. 11,890,319/- Interest on Provident Fund is being charged at 16% p.a.

4. It was also observed that the Company has not made the following disclosures in the annual accounts:

- i) installments or period in which the loans has to be paid to the Fund;
- ii) interest accrued on loans payable to the Fund;

5. The trustees of any Fund are required to invest all monies of the Fund in the manner prescribed under Sub-section (2) of Section 227 of the Ordinance, therefore, in order to find out further information in this regard, an enquiry was made to the Company in the following manner, vide letter dated November 15, 2002:

*“Kindly send the following information:*

- i) Latest copy of the Provident Fund Trust.*
- ii) Names and addresses of the persons who are or have remained trustees of the Provident Fund during last five years.*
- iii) A summary/reconciliation of month wise employees’ and employer’s contributions to the provident fund, the amount invested and detail thereof, income earned and accrued and balance due at the end of every month. This information is required for last five years.*
- iv) Copy of the audited accounts for the last five years.*

6. In response to the aforesaid enquiry, the Company submitted the requisite information on November 18, 2002, the examination whereof revealed that a trust namely, Hashmi Can Provident Fund was formed by the Company on April 01, 1957. It was approved by the Commissioner of Income Tax vide letter No. jud – 2 (227) / 57-58, dated June 3, 1958. Following persons have remained trustees of the Fund during 1999 to 2002:

<i>Years</i>	<i>Trustees</i>
<i>1999</i>	<i>1. Mr. Munawar A. Malik 2. Mr. A. Rehman Qureshi 3. Mr. Mohammad Yasin Arain 4. Mr. M. Aslam</i>
<i>2000</i>	<i>1. Mr. Munawar A. Malik 2. Mr. Asif A. Mufti 3. Mr. Mohammad Yasin Arain 4. Mr. M. Aslam</i>

2001-2002

1. Mr. Munawar A. Malik
2. Mr. Asif A. Mufti
3. Mr. Mohammad Yasin Arain
4. Mr. Mohammad Ismail

7. Month-wise contributions made by the employees and the Company for the years from 1998 to 2002 are as under:

**Provident Fund Contribution Detail (July 1997 To June 1998)**

Months	Employees Contribution	Employers Contribution	Total	Payment	Balance
July	117,383.36	117,383.36	234,766.72	0.00	234,766.72
August	116,928.91	116,928.91	233,857.82	234,766.72	(908.90)
September	153,047.89	153,047.89	306,095.78	233,857.82	72,237.96
October	138,691.91	138,691.91	277,383.82	506,095.78	(228,711.96)
November	132,022.39	132,022.39	264,044.78	255,383.82	8,660.96
December	136,093.59	136,093.59	272,187.18	186,044.78	86,142.40
January	136,857.01	136,857.01	273,714.02	172,187.18	101,526.84
February	125,454.07	125,454.07	250,908.14	273,714.02	(22,805.88)
March	130,612.09	130,612.09	261,224.18	250,908.14	10,316.04
April	132,676.26	132,676.26	265,352.52	261,224.18	4,128.34
May	138,009.58	138,009.58	276,019.16	265,352.52	10,666.64
June	133,482.40	133,482.40	266,964.80	542,983.96	(276,019.16)
<b>TOTAL</b>	<b>1,591,259.46</b>	<b>1,591,259.46</b>	<b>3,182,518.92</b>	<b>3,182,518.92</b>	<b>0.00</b>

**Provident Fund Contribution Detail (July 1998 To June 1999)**

Months	Employees Contribution	Employers Contribution	Total	Payment	Balance
July	134,841.35	134,841.35	269,682.70	0.00	269,682.70
August	130,517.98	130,517.98	261,035.96	269,682.70	(8,646.74)
September	129,528.98	129,528.98	259,057.96	0.00	259,057.96
October	126,772.43	126,772.43	253,544.86	0.00	253,544.86
November	118,688.12	118,688.12	237,376.24	0.00	237,376.24
December	106,928.71	106,928.71	213,857.42	0.00	213,857.42
January	99,855.99	99,855.99	199,711.98	0.00	199,711.98
February	168,579.58	168,579.58	337,159.16	0.00	337,159.16
March	115,081.43	115,081.43	230,162.86	0.00	230,162.86
April	107,998.57	107,998.57	215,997.14	0.00	215,997.14
May	111,758.24	111,758.24	223,516.48	0.00	223,516.48
June	114,285.47	114,285.47	228,570.94	223,516.48	5,054.46
<b>TOTAL</b>	<b>1,464,836.85</b>	<b>1,464,836.85</b>	<b>2,929,673.70</b>	<b>493,199.18</b>	<b>2,436,474.52</b>

**Provident Fund Contribution Detail (JULY 1999 TO JUNE 2000)**

<b>Months</b>	<b>Employees Contribution</b>	<b>Employers Contribution</b>	<b>Total</b>	<b>Payment</b>	<b>Balance</b>
July	100,995.17	100,995.17	201,990.34	0.00	201,990.34
August	99,557.26	99,557.26	199,114.52	0.00	199,114.52
September	79,979.99	79,979.99	159,959.98	0.00	159,959.98
October	82,378.56	82,378.56	164,757.12	0.00	164,757.12
November	80,771.74	80,771.74	161,543.48	0.00	161,543.48
December	46,398.53	46,398.53	92,797.06	0.00	92,797.06
January	48,473.26	48,473.26	96,946.52	0.00	96,946.52
February	48,290.19	48,290.19	96,580.38	0.00	96,580.38
March	49,934.35	49,934.35	99,868.70	0.00	99,868.70
April	47,281.42	47,281.42	94,562.84	0.00	94,562.84
May	48,924.25	48,924.25	97,848.50	0.00	97,848.50
June	47,556.73	47,556.73	95,113.46	0.00	95,113.46
<b>TOTAL</b>	<b>780,541.45</b>	<b>780,541.45</b>	<b>1,561,082.90</b>	<b>0.00</b>	<b>1,561,082.90</b>

**Provident Fund Contribution Detail (July 2000 To June 2001)**

<b>Months</b>	<b>Employees Contribution</b>	<b>Employers Contribution</b>	<b>Total</b>	<b>Payment</b>	<b>Balance</b>
July	45,510.13	45,510.13	91,020.26	0.00	91,020.26
August	45,741.17	45,741.17	91,482.34	0.00	91,482.34
September	46,260.07	46,260.07	92,520.14	0.00	92,520.14
October	45,587.01	45,587.01	91,174.02	0.00	91,174.02
November	45,848.22	45,848.22	91,696.44	0.00	91,696.44
December	45,014.89	45,014.89	90,029.78	0.00	90,029.78
January	46,249.41	46,249.41	92,498.82	0.00	92,498.82
February	46,445.96	46,445.96	92,891.92	0.00	92,891.92
March	45,511.97	45,511.97	91,023.94	0.00	91,023.94
April	45,823.04	45,823.04	91,646.08	0.00	91,646.08
May	46,375.25	46,375.25	92,750.50	0.00	92,750.50
June	46,225.49	46,225.49	92,450.98	0.00	92,450.98
<b>TOTAL</b>	<b>550,592.61</b>	<b>550,592.61</b>	<b>1,101,185.22</b>	<b>0.00</b>	<b>1,101,185.22</b>

**Provident Fund Contribution Detail (July 2001 To June 2002)**

Months	Employees Contribution	Employers Contribution	Total	Payment	Balance
July	39,164.45	39,164.45	78,328.90	78,328.90	0.00
August	38,872.77	38,872.77	77,745.54	77,745.54	0.00
September	37,105.63	37,105.63	74,211.26	0.00	74,211.26
October	37,440.40	37,440.40	74,880.80	149,092.06	(74,211.26)
November	40,604.69	40,604.69	81,209.38	50,000.00	31,209.38
December	40,503.22	40,503.22	81,006.44	0.00	81,006.44
January	41,846.17	41,846.17	83,692.34	120,000.00	(36,307.66)
February	38,285.06	38,285.06	76,570.12	60,000.00	16,570.12
March	39,861.34	39,861.34	79,722.68	130,000.00	(50,277.32)
April	38,587.26	38,587.26	77,174.52	119,375.50	(42,200.98)
May	39,236.45	39,236.45	78,472.90	78,472.90	0.00
June	38,145.92	38,145.92	76,291.84	60,000.00	16,291.84
<b>TOTAL</b>	<b>469,653.36</b>	<b>469,653.36</b>	<b>939,306.72</b>	<b>923,014.90</b>	<b>16,291.82</b>

8. As is evident from the aforesaid information that the irregularities in the payment of contributions to the Fund started from the year 1998. During the year 1999, only Rs. 269,682 equivalent to one month's contributions were paid to the Fund. No payment was made in the years 2000 and 2001 and the payment in the year 2002 was again irregular. The Company, therefore, was holding back the contributions of the employees as well as its own contributions for a long period of time. Such contributions were to be paid within fifteen days from the date of collections.

9. It was also noticed from the perusal of the audited accounts of the Fund that the amounts receivable from the Company was reflected as follows in the last four years (These accounts were also audited by M/S Rao & Co., Chartered Accountants):

**Year ended June 30, 1999**

Balance Sheet	HCC Contribution due	Rs. 2,436,475
	Sundry debtors due	Rs. 4,423,425
		<b>Rs. 6,859,900</b>

**Year ended June 30, 2000**

Balance Sheet	HCC Contribution due	Rs. 3,997,557
	Sundry debtors due	Rs. 4,781,149
		<b>Rs. 8,778,706</b>

**Year ended June 30, 2001**

Balance Sheet	HCC Contribution due	Rs. 5,089,743
	Sundry debtors due	Rs. 5,949,410
		<b>Rs.11,039,153</b>

**Year ended June 30, 2002**

Balance Sheet	HCC Contribution due	Rs. 8,313,761
	Sundry debtors due	Rs. 3,576,558
		<b>Rs. 11,890,319</b>

10. It was further noted from the aforesaid information that the trustees of the Fund have en-cashed Defence Saving Certificates before their maturity dates to provide funds to the Company. On the one hand, the contributions were not being received from the Company and on the other hand, the trustees have en-cashed Defence Saving Certificates for providing funds to the Company and to make payments to its members. This was a cause of concern as the money of the trust invested in accordance with the statutory requirements was withdrawn for providing loans to the Company. In this regard, the following resolution dated September 12, 2001 passed by the trustees was also noted:



Resolved that Defence Saving Certificates, as per details given below be en-cashed to enable the trustees to effect the payment of amount to Retirees and Resignees from the Provident Fund Trust

<i>Registration No.</i>	<i>DSC No.</i>	<i>Issue Date</i>	<i>Denomination</i>
27425	M011569	03.04.98	Rs. 1,000,000
27425	M011570	03.04.98	Rs. 1,000,000
27425	M 010571	03.04.98	Rs. 1,000,000

11. In the above circumstances, the Enforcement and Monitoring Division apprehended violations of the statutory provisions of Section 227 of the Ordinance and it was decided to take up this matter with the Company. Consequently, three notices dated November 21 and 22, 2002 were issued under Sub-section (2) and (3) of Section 227 of the Ordinance to the following persons who were the directors of the Company and the trustee of the Fund at the relevant time:

**Directors**

**Tenure of directors**

Mr. Aftab A. Shaikh	June 12, 1996 to November 02, 2001
Mrs. Nasreen Aftab	June 12, 1996 to November 02, 2001 (Also CEO)
Mr Hassan Aftab	June 12, 1996 to November 02, 2001
Saiyid Aftab Ahmed Zaidi	June 12, 1996 to November 02, 2001
Mr. Asif A. Mufti	June 12, 1996 to date
Mr. Shamsuddin Khan	June 11, 1999 to date
Mr. Munawar A. Malik	June 12, 1996 to date (CEO effective November 02, 2001)
Mr. Zaheer A. Malik	November 02, 2001 to date
Mrs. Musarat Bano Malik	November 02, 2001 to date
Ms. Humera Malik	November 02, 2001 to date
Mr. Naseer A. Malik	November 02, 2001 to date

**Trustees**

Mr. Munawar A. Malik	1999-2002
Mr. A. Rahman Qureshi	1999
Mr. Muhammad Yasin Arain	1999-2002
Mr. M. Aslam	1999-2000
Mr. Asif A. Mufti	2000-2002
Mr. Muhammad Ismail	2001-2002

12. Mr. Nadeem Akhtar, advocate responded vide his letter dated December 19, 2002 on behalf of the following directors / trustees:

Mr. Munawar A. Malik,	Director/trustee
Mr. Asif Ali Mufti,	Director/trustee
Mr. M. Yasin Arain,	Trustee
Mr. Muhammad Aslam,	Trustee
Mr. Naseer A. Malik,	Director
Mrs. Musarrat Bano Malik,	Director
Mr. Zaheer A. Malik,	Director
Ms. Humera Malik and	Director
Mr. Shamsuddin Khan	Director

13. The response from Mr. Aftab A. Shaikh and Mr. Hasan Aftab was received on December 19, 2002 vide letter dated December 18, 2002. No response, however, was received from Mrs. Nasreen Aftab, Saiyid Aftab Ahmed Zaidi who were the directors of the Company during the period June 12, 1996 to November 02, 2001 and Mr. Mohammad Ismail, who is one of the trustees of the Fund.

14. In order to provide an opportunity of personal hearing and of making representation, the case was fixed on January 14, 2003 on which date only Mr. Mohammad Ismail, trustee of the Fund appeared and argued the case. Mr. Nadeem Akhtar, through his letter dated January 09, 2003, requested for hearing at Karachi, which was not accepted, however, another opportunity was given to Mr. Nadeem Akhtar to appear on January 21, 2003. On the date of hearings, the following represented the directors/trustees:

Mr. Nadeem Akhtar, advocate for

Mr. Munawar A. Malik,  
Mr. Asif Ali Mufti,  
Mr. M. Yasin Arain,  
Mr. M. Aslam,  
Mr. Naseer A. Malik,  
Mrs. Musarat Bano Malik,  
Mr. Zaheer A. Malik,  
Ms. Humera Malik,  
Mr. Shamsuddin Khan

Mr. Mohammad Shahzad-ul-Haq for

Mr. Aftab. A. Shaikh,  
Mrs. Nasreen Aftab,  
Mr. Hasan Aftab,

Mr. Mohammad Ismail, Trustee

At the time of hearings, no written submissions were made on behalf of the directors/trustees and reliance was placed mostly on the replies earlier given in response to the show cause notices.

15. In the written submission as well as at the time of hearing of this case, Mr. Nadeem Akhtar averred that this problem was inherited by the new management of Mr. Munawar A. Malik who took over the Company on November 02, 2001. He said that as the Company was unable to pay the monthly contributions to the Fund due to paucity of funds, therefore, trustees, voluntarily and independently, resolved to charge markup @ 16% from the Company on balance contributions due to the Fund. Moreover, they also resolved that Defense Saving Certificates should be en-cashed as and when required in order to meet the urgent requirements of the Fund for payment to its members. The trustees, however, did not insist on the payment of contributions. As the trustees did not revoke their resolution, therefore, it could not be discontinued unilaterally. He said that Sub-section (3) of Section 227 provides that after receiving contributions from the Company, the obligations laid on the Company by Sub-section (2) of this Section shall devolve on the trustees and shall be discharged by them instead of the Company. The trustees passed the resolution in the interest of and for the betterment of the members of the Fund. The Fund is receiving a return of 16% per annum, which is much higher than the profits available in Government Schemes. He, thus, concluded that the provisions of law were contravened in good faith and in the interest of the employees of the Company. He further submitted that Mr. Naseer A. Malik,

Mr. Zaheer A. Malik, Mrs. Musarat Bano Malik and Ms. Humera Malik were only inducted in the Board of Directors of the Company on November 02, 2001 and as such they have not played any role in the creation of the Provident Fund Trust or utilization of its funds. Mr. Shamsuddin Khan is a nominee director and as such has no direct involvement in the affairs of the Company. Mr. M. Aslam is an employee and former trustee of Provident Fund Trust. As such, he has no direct involvement in the creation of the Provident Fund Trust and utilization of its funds. A request for personal hearing was also made by Mr. Nadeem Akhtar.

16. Mr. Shahzad-ul-Haq appearing on behalf of Mr. Aftab A. Shaikh, Mrs Nasreen Aftab and Mr Hassan Aftab submitted that Mr. Munawar A. Malik being Chief Executive of the Company was in full control of the affairs of the Company and he never informed the directors about the utilization of funds and when the balance sheet was presented, objections were raised by the directors, however, he undertook that this amount will be paid in a very short period of time. As this irregularity was not removed, therefore, the directors dis-associated from the Company and did not sign the balance sheet for the year ended June 30, 2001.

17. Mr. Mohammad Ismail, trustee who is also head of the Labor Union has stated that he had been protesting the non-payment of contribution to the Fund by the Company. He also placed on record a letter dated October 19, 1999 to show that he had protested the non-payment of contributions to the Fund due to which the workers were facing great hardship. He said that the employees' money was not in safe hands and in order to secure these funds, the Commission must issue appropriate direction to the Company.

18. Saiyid Aftab Ahmed Zaidi who was one of the directors of the Company during the default period 1999 and 2000 did not appear before me on the date of hearing. The Company vide letter dated November 27, 2002 informed the Commission that Mr. A. Rahman Quershi a former director of the Company had expired.

19. Before proceeding further, it would be necessary to advert to the provision of law, which have been violated by the directors of the Company and the trustees of the Fund. These are contained in Section 227 of the Ordinance and are, to the extent relevant, reproduced as follows:

**227. Employees' provident funds and securities:**

(2) 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 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.

[(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].

(3) 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 contribution 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.

20. The aforesaid provisions of the law are clear and unambiguous. The objective of these provisions is to secure the amounts collected from the employees of the company as contributions to a Provident Fund constituted by the Company for the use of the employees of the Company through the mechanism of trustees. The law requires that all moneys contributed by the employees as well as the company's contributions including the profit thereon must be deposited within 15 days of the contributions in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. When a Trust has been created by a company with respect to any Provident Fund, the company has an obligation to pay the contributions including its own contributions to the trustee within fifteen days from the date of collection. In the latter case, the trustees are responsible to invest the moneys of the Provident Fund in accordance with the provisions of Law. The amounts collected from the employees as contributions to a Provident Fund constituted by the Company are in the nature of trust moneys in the hand of the company and the same must be paid to the trustees within stipulated time. The Company on the pretext of payment of higher returns cannot, therefore, withhold such moneys.

21. Reverting to the submissions made on behalf of the directors and the trustees, I would first consider the arguments put forth by Mr. Nadeen Akhtar, advocate. His contention is that after receiving the contributions, the trustees are responsible to fulfill the statutory requirement with regard to investment of funds. As the trustees have in the interest of the employees resolved to charge interest on the contributions not paid by the Company, therefore, the directors

of the Company committed no default. Moreover, the trustees have resolved to en-cash the Defence Saving Certificates to make payments to members of the Fund, thus, the interest of the employees was duly protected. I am in total agreement with the Learned Counsel that once the contributions collected by the Company are paid to the Fund, the obligation laid on the Company for making investment shall devolve on the trustees who shall discharge their obligations in accordance with the requirements of law. What I do not agree is that in the first instance the Company has failed to fulfill its obligation of making payment of contributions collected from the employees as well as its own contributions within fifteen days of such collections and secondly, the trustees have instead of insisting for the payment of outstanding contributions have en-cashed the Funds' investment in Defence Saving Certificates for advancing them to the Company and in the process incurred loss to the Fund due to premature encashment. Such contributions / loans are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. The directors, therefore, have acted contrary to the statutory requirements and trustees have also failed to protect the interest of its members by not investing funds money in the prescribed mode of investment.

22. As regards to the argument that the management of Mr. Munawar A. Malik inherited this problem when they took over the Company on November 02, 2001, I am of the view that the directors appointed subsequently are not responsible for the acts done by the previous directors. It has, however, been noticed in this respect that Mr. Munawar A. Malik has been the director of the Company since July 12, 1996 and since November 02, 2001, he is also Chief Executive of the Company. He is occupying these positions for a long period of time. During his tenure, the Company has failed to make payment of contributions to the Fund within stipulated period. His responsibility becomes

more important in view of the fact that he was also one of the trustees during this period when defaults were committed. He cannot, therefore, escape his responsibility on the mere plea that he had taken over the management only on November 02, 2001. He has failed in his duty as director and Chief Executive of the Company to ensure compliance with the provisions of Section 227 with regard to the Employees Provident Fund. Moreover, the trustees also have not done any positive service to the employees by not demanding the contributions from the Company and further providing funds to the Company by withdrawing funds invested in Defence Saving Certificates. No document has been placed on record to substantiate that the trustees have insisted for payment of the contributions. Rather, they have passed a resolution for charging interest on contributions in a bid to legalize the default of the Company. The argument that the contribution was not paid because the trustee did not call for its payment is not tenable as the Section 227 of the Company makes it binding on the Company to deposit all contributions towards the Fund with fifteen days of their collection/deduction. The payment of the contribution to the Fund is not subject to a request in this regard by the Trustee of the Fund. Furthermore, the stance of the directors and trustees that the default was made in the best interest of the Company is not justified because the employees of the Company were deprived of their legitimate right and contributions were not credited to the Fund. Further, the Defense Saving Certificates were en-cashed to further deprive the Fund from its investments. Also the decision did not prove to be beneficial for the Company, as there is no improvement in the operating results of the Company, which have further deteriorated. In view of the above discussion, the contentions of the directors and trustees are not sustainable. I am, therefore, of the view that the directors and the trustees have committed violation of the mandatory provisions of the Ordinance.



23. It was submitted on behalf of Mr. Naseer A. Malik, Mr. Zaheer a. Malik, Mrs. Musarat Bano Malik and Ms. Humera Malik that they became directors of the Company on November 02, 2001. As such they are not responsible for the acted done by the previous directors. From the statements of contributions received and paid for the period subsequent to their appointments, irregularities have also been noticed. However, most of the contributions for the period November 02, 2001 to June 30, 2002 have been paid to the Fund.

24. Mr. Nadeem Akhtar has also raised the question about the responsibility of Mr. Shamsuddin Khan who is stated to be the nominee director of NIT. His plea is that Mr. Shamsuddin Khan had no direct involvement in the affairs of the Company. This plea is not acceptable, as the nominee directors owe same duties and responsibilities as any other director of the Company. The law expects the nominee directors to give full attention to the affairs of the companies where they are holding office of directorships. They must look after the interest of the Company as a whole and discharge their functions entrusted to them under the Ordinance with due care and prudence. Mr. Shamsuddin Khan, therefore, cannot be relieved from his liability attracted for violation of the mandatory provisions of the Ordinance.

25. Now, I would discuss the submission made on behalf of Mr. Aftab A. Shaikh, Mrs Nasreen Aftab and Mr. Hasan Aftab. They remained directors of the Company from June 12, 1996 to November 02, 2001. Mrs. Nasreen Aftab was also Chief Executive of the Company during this period. Mr. Shahzad-ul-Haq appearing on their behalf has contended that they were not in full control of the affairs of the Company. He also stated that the enquiry against the Company was started at their request and their defaults may be condoned taking a lenient view. He further said that informer should be appreciated and not

punished. When he was asked as to whether there was any documentary evidence to substantiate his assertion that they have raised objections to the withholding of contributions, his response was in negative. They have been directors of the Company for a long period of time when the Company committed irregularities and violations with regard to moneys payable to the Fund. They have also been approving these accounts and have not raised any voice. They cannot be allowed to escape their responsibility on the plea that they had no control over the affairs of the Company. It was their duty to observe due care in exercise of their duties as directors of the Company. The argument that Mr. Munawar A. Malik in control of the Company is not sustainable as Mr. Aftab A. Shaikh, Mrs. Nasreen Aftab and Mr. Hasan Aftab were also directors of the Company during this period of time. When he was asked to provide copies of the minutes of the Board meetings in which objection were raised by these directors, he could not produce any evidence. They, therefore, cannot be acquitted from the liability attracted for violation of Section 227 of the Ordinance, because the irregularity was first initiated when Mian Aftab A. Sheikh was the Chairman of the Board, his wife, Mrs. Nasreen Aftab was the Chief Executive and his son, Mr. Hassan Aftab was the director of the Company i.e. in the years 1999 and 2000. This is no ground for relief that the proceedings were initiated on their request. In this respect, it has been noted with concern that during the period they remained at the helm of affairs of the Company, no objection was raised by them. It is only after they resigned from the Company that they have started raising objections. I am, therefore, not convinced with the arguments presented by Mr. Shahzad-ul-Haq on behalf of Mr. Aftab A. Shaikh, Mrs. Nasreen Aftab and Mr. Hasan Aftab.

26. Mr. Mohamamd Ismail, trustee being an employee of the Company has shown some evidence to substantiate his assertion that he had protested for the

payment for contribution as head of the Labour Union. It has, however, been noted that he was a signatory to the resolution of Hasmi Can Provident Fund passed to withdraw funds from Defence Saving Certificates. He, therefore, acted contrary to the requirements of Section 227 of the Ordinance. At the same time, he also failed in his duties to protect the moneys of the Fund.

27. Before deciding this case, I would like to make an observation. The directors of a company are appointed by the shareholders to manage and run their Company in their best interest. The directors should, therefore, exercise due care in the performance of their duties. It is, therefore, imperative that the directors should regularly oversee the affairs of the Company. They should attend the Board of Directors meetings and have their view recorded in the minutes of their meetings, keep themselves informed about the corporate formalities, examine the accounts and other financial and non-financial information prepared by the Company and ensure that all actions of the Company are in accordance with the provisions of law.

28. Having heard the submissions, as dilated in the preceding paragraphs, I am of the view that directors as also the trustees have breached the mandatory requirements of Section 227 of the Ordinance as they have failed to ensure timely payments of contributions of the Provident Fund from the year 1999 to 2002. The outstanding contributions reflected at the end of every year evidently make it clear that the mandatory provisions of the law were breached for a long period of time. The persons who were the directors and the trustees during the aforesaid period, therefore, have made themselves liable to punishment as warranted under the law. Neither the bid to legalize the default on the pretext of higher interest on contribution not received nor the admission of the breach by the current management absolve them from their responsibility. Breach of

mandatory provisions of the Ordinance meant to secure the funds of the employees cannot be encouraged. An action, therefore, is necessary under Section 229 of the Ordinance, which provides that whosoever 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 be liable to pay the loss suffered by the employees on account of such contravention. I, therefore, proceed to Order as follows:

- i) Mr. Muawar A. Malik. He is a director of the Company since June 12, 1996 and Chief Executive of the Company since November 02, 2001. He was also trustee of the Fund for the years 1999 to 2002. During his tenure, the Company committed defaults as aforesaid. He, therefore, is liable for punishment for default committed during the years 1999 to 2002. As the Company is required to make payments within fifteen days of the collection of contributions, therefore, the default made every month during the last several years is an independent breach and attract a fine of Rs. 5,000/- per month. In the case of Mr. Munawar Ali Malik, the fine works out to be more than Rs. 250,000/- However, in view of the fact that after being appointed as Chief Executive of the Company, he has made some payments relating to the period after his appointments, I take a lenient view in his case and instead of imposing a maximum fine, impose a penalty of Rs. 10,000/- for every year from 1999 to 2001 (aggregating to Rs. 30,000/-) during the period he was a director of the Company.
- ii) Mr. Asif Ali Mufti. He is a director of the Company since June 12, 1996. He was also trustee of the Fund for the years 1999 to 2002. During his tenure, the Company committed defaults as aforesaid. He, therefore, is liable for punishment for default committed during the

years 1999 to 2002. In his case, the fine works out to be more than Rs. 250,000/-. However, I take a lenient view and instead of imposing a maximum fine, impose a penalty of Rs. 10,000/- for every year from 1999 to 2001 (aggregating to Rs. 30,000/-) during the period he was a director of the Company.

- iii) Mr. Shamsuddin Khan, who is a director of the Company since June 11, 1999 is also liable for punishment for default committed during the years 1999 to 2002. Fine in his case works out to be more than Rs.250,000/-calculated @ Rs. 5,000/- per month. However, instead of imposing a maximum fine, I taking a lenient view of the default impose a penalty of Rs. 5,000/- for every year from 1999 to 2001 aggregating to Rs. 15,000/-.
- iv) Mr. Zaheer A. Malik, Mrs. Musarat Bano Malik, Ms. Humera Malik and Mr. Naseer A. Malik became director of the Company only on November 02, 2001. No fine is imposed on them for the reasons recorded in Para 23 of this Order.
- v) Mr. Aftab A. Shaikh, Mrs. Nasreen Aftab and Mr. Hasan Aftab remained directors of the Company from June 12, 1996 to November 02, 2001. They are liable for punishment for default committed during the years 1999 to 2002. Fine calculated @ Rs. 5,000/- per month for default made every month for not making payment of monthly contribution works out to be more than Rs. 200,000/-. However, instead of imposing a maximum fine, I taking a lenient view of the default impose a penalty of Rs. 5,000/- for every year from 1999 to 2001 aggregating to Rs. 15,000/- each on Mr. Aftab A. Khan and Mr. Hasan Aftab. However, in the case of Mrs. Nasreen

Aftab, who was also the Chief Executive of the Company from June 12, 1996 to November 02, 2001, a fine of Rs. 10,000/- per year is imposed (aggregating to Rs 30,000/- ) and that too after taking a lenient view of the default.

vi) As Mr. Saiyid Aftab Zaidi did not appear before me on the date for hearing. He was given an adequate opportunity to defend himself. On the basis of the facts and available record, I am convinced that he is liable to punishment for violation of Section 227 of the Ordinance. Fine calculated @ Rs. 5,000/- per month for default made every month for not making payment of monthly contribution works out to be more than Rs. 200,000/-. A fine of Rs. 5,000/- for each year i.e., 1999 to 2001 is, therefore, imposed on him (aggregating to Rs. 15,000/-).

vii) The trustees of the Fund also failed to act in accordance with the requirement of Section 227 of the Ordinance. They have en-cashed the Defence Saving Certificates for providing loan to the Company, which has not been returned so far. They are liable for punishment under Section 229 of the Ordinance. I, therefore, impose a fine of Rs. 5,000 on each of the following trustee, who passed the resolution for encashment of Defence Saving Certificates for providing loan to the Company:

Mr. Munawar A. Malik	1999-2002
Mr. Muhamamd Yasin Arain	1999-2002
Mr. Asif A. Mufti	2000-2002
Mr. Muhammad Ismail	2001-2002

29. The following directors of the Company and Trustees of the Fund are directed to deposit respective fine in the designated Bank account of Securities and Exchange Commission of Pakistan within 30 days of the date of this order and submit a copy of the receipted challan to the Commission. The name of the persons and penalties imposed on them in their capacities as Directors of the Company and/or Trustees of the Fund are as follows:

<i>S. #</i>	<i>Name</i>	<i>Penalty as Director</i>	<i>Penalty as Trustee</i>	<i>Total</i>
1	Mr. Aftab A. Shaikh	15,000		15,000
2	Mrs. Nasreen Aftab	30,000		30,000
3	Mr Hassan Aftab	15,000		15,000
4	Mr. Asif A. Mufti	30,000	5,000	35,000
5	Mr. Shamsuddin Khan	15,000		15,000
6	Mr. Munawar A. Malik	30,000	5,000	35,000
7	Saiyed Aftab Zaidi	15,000		15,000
8	Mr. Muhammad Yasin Arain		5,000	5,000
9	Mr. Muhammad Ismail		5,000	5,000
	<b>Total</b>	<b>150,000/-</b>	<b>20,000/-</b>	<b>170,000/-</b>

30. Before parting with this Order, it is necessary for me to issue some direction regarding the following:

- (i) Outstanding amount of Rs. 11.890 million (as of June 30, 2002) payable by the Company to the Fund.
- (ii) Ascertainment and recovery of the loss incurred due to premature encashment of the investment of the Fund in Defence Saving Certificate

Although, I could have directed the Company to immediately make payment of the whole amount in one go, I gave an opportunity to the Company to come up with a reasonable proposal for repayment of money to the Fund. This was done by the Company through its letter dated January 23, 2003. A repayment plan

spreading over five years have been proposed by the Company. This, however, cannot be allowed, as the amount is not huge that its repayment should take such a long period of time. In the circumstances, I direct the Company in terms of Section 473 of the Ordinance to pay the said amount along with mark-up thereon @ 16%, as decided by the trustee, in twelve equal monthly installments, the first installment to commence from February 01, 2003. The Company shall also pay monthly contributions to be collected from the employees from February 2003 onwards within the time prescribed under Sub-Section (3) of Section 227 of the Ordinance. In this regard, the Company shall submit auditors certificate regarding total amount (Contributions and mark-up thereon) payable to the Fund as of December 31, 2002. A quarterly progress report shall be submitted by the Company to the Commission on the 7th of the month following the close of the relevant quarter, the first such report shall be filed by the Company on March 7th, 2003. As regards ascertainment of the loss incurred on premature encashment of Defence Certificate the Company is directed to submit to the Commission a certificate by the auditors of the Fund for the loss incurred by the Provident Fund on premature encashment and the amount so ascertained be deposited in the Funds account within 30 days of this order, by the following trustees:

- i) Mr. Munawar A. Malik,
- ii) Mr. Asif Ali Mufti,
- iii) Mr. M. Yasin Arain
- iv) Mr. Muhammad Ismail

31. On receipt of the funds from the Company, the trustees shall immediately make investments in accordance with the provisions of Section 227 of the Ordinance. A quarterly report shall be submitted by the trustee on the



7<sup>th</sup> of the month following the close of the relevant quarter regarding money received from the Company and investment made. The first such report shall be submitted to the Commission on March 07, 2003.

32. In case of non-compliance of the above directive, the Company and the trustees the directors and trustees shall be liable to action under Section 495 of the Ordinance, which provides that: Where any directive is given or order is issued by the court, the officer, the Authority, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two hundred rupees for every day after the first during which such non-compliance continues. If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

***Announced:***  
***January 29, 2003***  
**ISLAMABAD**

***Rashid Sadiq***

Executive Director (Enforcement & Monitoring)