



Securities and Exchange Commission of Pakistan
(Enforcement & Monitoring Division)

[Islamabad]

Before Rashid Sadiq, Executive Director

In the Matter of
M/S Latif Jute Mills Limited

Number and date of notice	EMD/CO/-EA/233/326/2002 dated January 2, 2003
Date of Hearing	April 01, 2003
Present	Mr. M. Tariq Bawany, for himself and Mr. Yahya Ahmed Bawany Mr. A. Karim M. Yahya Mr. Arif Yousuf Jaliwala Mr. Amin Abdullah Moten
Date of Order	April 24, 2003

The case before me pertains to the proceedings initiated against the directors of M/s Latif Jute Mills Limited (hereinafter referred to as the “Company”) under Sub-section (2) of Section 227 of the Companies Ordinance, 1984 (the “Ordinance”).

Jurisdiction

2. The Commission brings this action pursuant to the provisions of Section 229 of the Ordinance. The powers under the aforesaid provisions have been delegated to the undersigned through the S.R.O. No. 230(I)/2001 dated April 16, 2001



The Company

3. The Company was incorporated on July 24, 1977 under the Companies Act, 1913 (repealed by the Companies Ordinance, 1984). Its shares are listed on the Karachi Stock Exchange. The main object of the Company is the manufacture and sale of jute products. The manufacturing facility of the Company is located near Hub Industrial Trading Estate in the Province of Baluchistan. The Company has 607 shareholders holding shares as per the following pattern reflected in the annual report of the Company for the year ended June 30, 2002:

<i>Shareholders (categories)</i>	<i>No. of Shareholders</i>	<i>No. of Shares</i>	<i>% of Issued Capital</i>
Individuals	577	1,377,081	38.710 %
Investment Companies	13	11,145	0.313%
Joint Stock Companies	12	806,380	22.668%
Modaraba Companies	1	121	0.003%
Charitable Institution	3	315,507	8.869%
CDC a/c various holders	1	1,047,166	29.437%
Total	607	3,557,400	100.000%

Background Facts

4. In order to dispose of the aforesaid matter, it is necessary to go into the background facts leading to the issue of the show cause notice by the Enforcement and Monitoring Division of the Commission. 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 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. 8,785,810 was shown in the Balance Sheet under the head "Creditors, Accrued and Other Liabilities" payable to the



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Provident Fund. The amount payable to the Provident Fund had increased from Rs. 6,478,820 as on June 30, 2001. In addition, under the head “Financial Charges” in the Profit and Loss Account for the year ended June 30, 2002 an amount of Rs. 1.535 million was charged as “Return on Provident Fund and gratuity balance”. The relevant notes appearing in the said accounts are reproduced hereunder:

Note 2.4 Staff Retirement Benefits

“The Company operates a funded provident fund scheme for its employees. Equal contribution is made by employees and the employer.”

Note 8. Creditors, Accrued and other Liabilities

	2002	2001
	Rupees	Rupees
...		
Provident Fund	8,785,810	6,478,820

Note 24. Financial Charges

...

Return on Provident Fund and gratuity balance	1,535,183	1,127,258
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5. Furthermore, it was observed that the statutory auditors, M. Yousuf Adil Saleem & Co. Chartered Accountants have given a matter of emphasis in their report to the shareholders on the accounts of the Company for the year ended June 30, 2002 and highlighted this matter in the following manner:

“ii. There is an outstanding balance of Rs. 8.786 million on account of amount due to Employees Provident Fund. Non-payment of the Fund’s liability is a violation of Section 227 of the companies Ordinance, 1984. An interest of Rs. 1.535 million has been charged in the accounts (Refer Note No. 8).”



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It is significant to note that, contrary to requirements of Sub-section (2) of Section 236 of the Ordinance, no explanation was given by the Directors in their Report to the Shareholders with regard to the aforesaid observation/remark of the statutory auditors.

6. In order to ascertain the amounts payable to the Provident Fund in previous years, the audited accounts of the Company for the years ended June 30, 1997 to 2001 were also examined. These accounts were also audited by M/S M. Yousuf Adil Saleem & Co., Chartered Accountants. The relevant notes appearing in the said accounts, being relevant to this case, are reproduced hereunder:

Year ended June 30, 1997

Balance Sheet	Payable to Provident Fund
Note 7 to the Accounts	Rs. 92,807

Year ended June 30, 1998

Balance Sheet	Payable to Provident Fund
Note 7 to the Accounts	Rs. 936,118

Year ended June 30, 1999

Balance Sheet	Payable to Provident Fund
Note 10 to the Accounts	Rs. 492,651

Year ended June 30, 2000

Balance Sheet	Payable to Provident Fund
Note 10 to the Accounts	Rs. 3,103,521

Year ended June 30, 2001

Balance Sheet	Payable to Provident Fund
Note 10 to the Accounts	Rs. 6,478,820



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7. In order to further probe the matter, the Company was asked to furnish the following information vide letter dated November 15, 2002, namely:

1. *Latest copy of the Provident Fund Trust.*
2. *Names and addresses of the persons who are or have remained trustees of the Provident Fund during last five years.*
3. *A summery/ reconciliation of month wise employees and employer's contributions to the provident fund, the amount invested in detail thereof, income earned and accrued and balance due at the end of every month. This information is required for last five years.*
4. *Copy of the audited account for the last five years."*

The above information was requested by November 18, 2002. Not having received a response by the said date, the Commission vide letter dated November 20, 2002 directed the Company to submit the required information. The Company vide letter dated November 23, 2002, explained that requisite information had not been supplied by the prescribed deadline because the records were misplaced due to departure of their accounts staff but would dispatch the records soon. Following two further reminders from the Commission vide letters dated December 10, 2002 and December 17, 2002 the Company finally submitted most of the required information, which was received in piecemeal on December 20, 2002 and January 01, 2003.

8. Examination of the information supplied by the Company revealed that the Company had constituted a trust, namely, Latif Jute Mills Ltd. Staff Provident Fund (the "Fund"), which was administered under the Provident Fund Rules (the "Rules") effective from July 01, 1986. The date of constitution of the Trust was not provided, however, the following persons were stated to be the current trustees of the Fund:



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1. Mr. Siraj Abdul Qadir
2. Mr. Arif Dalia
3. Mr. Abdul Aziz Umer

According to Rule 8 and 9 of the Rules, contributions to the Fund were to be paid by the Company and its Members in the following proportions:

MEMBERS CONTRIBUTION

Subscription of Members to the Fund shall in all cases be upon twelve of the salary or wage received by him per or reckoned as per month and such contribution of each member shall be deducted monthly by the Company from the Member's salary or wage and shall be paid by the Company to the Trustees. ...

CONTRIBUTION BY THE COMPANY

The Company shall contribute and pay at the end of each year as its contribution to the Fund an amount equal to that contributed during the year by all members and out of the contribution by the Company the amount equivalent to that contribution by the member concerned shall be for the credit of the respective member's account in the Fund. ..."

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 five years (audited by M/S Muhammad Saleem & Co.):

Year ended June 30, 1997

		Rupees
<u>Balance Sheet</u>		
Current Assets	Due from Company	604,669



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Year ended June 30, 1998

Balance Sheet

Current Assets	Due from Company	987,799
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Year ended June 30, 1999

Balance Sheet

Current Assets	Due from Company	6,026,141
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Year ended June 30, 2000

Balance Sheet

Current Assets	Due from Company	8,614,434
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Year ended June 30, 2001

Balance Sheet

Current Assets	Due from Company	11,989,733
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Show Cause Notice

10. In the above circumstances, the Enforcement & Monitoring Division apprehended violations of the statutory provisions of Sub-section (2) and (3) of Section 227, and it was decided to take up this matter with the Company. Consequently, a show cause notice dated January 02, 2003 (the "SCN") was issued under Sub-sections (2) and (3) of Section 227 read with Section 229 of the Ordinance to the following persons who were directors at the relevant time:

Directors

1. Mr. Yahya Ahmed Bawany (Chairman)
2. Mr. A. Karim M. Yahya (Vice Chairman)



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3. Mr. M. Tariq Bawany (Chief Executive)
4. Mr. Arif S. Ghazi
5. Com. (R) M. Idris Khan
6. Syed Mahfoozul Haque
7. Mr. Zakaria H. A. Sattar Maniya
8. Mr. Amin Abdullah Moten
9. Mr. Arif Yousaf Jaliawala
10. Mr. Ghulam Muhammad M. Adamjee

The directors were called upon to show cause as to why penalties may not be imposed on them for the contravention of Section 227 of the Ordinance. A period of fourteen days was given to respond to the show cause notice.

Reply to the Show Cause Notice

11. Reply to the SCN was received vide letter dated January 24, 2003 from the General Manager on behalf of the following five Directors:

- Mr. A. Karim M. Yahya (Vice Chairman)
- Mr. M. Tariq Bawany (Chief Executive)
- Mr. Arif S. Ghazi
- Mr. Amin Abdullah Motan
- Mr. Arif Yousaf Jaliawala

However, no response was received from Mr. Yahya Ahmed Bawany, Syed Mahfoozul Haque, Mr. Zakaria H. A. Sattar Maniya, and Mr. Ghulam Mohammad Adamjee who it was claimed had retired earlier. According to the said reply, Com. (Retd.) M. Idris Khan, had passed away.



Hearing of the Case

12. In order to provide an opportunity of personal hearing and of making representation, the case was fixed on March 26, 2003. A request was received through letter dated March 19, 2003 from the Company that hearing be fixed at Karachi, which was not accepted. However, at further request of the Company, the hearing scheduled for March 26, 2003 was adjourned and re-fixed on April 01, 2003. On the date of hearing Mr. M. Tariq Bawany, Chief Executive of the Company appeared and argued the case on behalf of himself and the following Directors:

Mr. Yahya Ahmed Bawany

Mr. A. Karim M. Yahya

Mr. Arif Yousuf Jaliwala

Mr. Amin Abdullah Moten

At the time of the hearing, no written submissions were made on behalf of the directors and reliance was placed mostly on the reply dated January 24, 2003 in response to the show cause notice.

Submissions of the Directors

13. In the written submissions as well as at the time of the hearing of this case, Mr. M. Tariq Bawany admitted that the Company had failed to make prescribed contributions to the Fund in violation of Sub-section (3) of Section 227 of the Ordinance, however, this was because the Company was facing a liquidity crunch due to economic difficulties facing the jute industry in general, and the Company was, therefore, financially not in a position to pay its contributions to the Fund. As per the Annual Audited Accounts for the year



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ended June 30, 2002, the Company had accumulated losses of Rs. 76,370,609. In spite of this, he averred that the Company had been accruing interest on unpaid amount regularly @ 12% per annum in financial year ended June 30, 2001 and June 30, 2002, which was more than return on other securities. Moreover, leaving and retiring employees had not suffered on account of Company's default as the Company has paid full amount of provident fund with interest accrued to those employees who had left service or retired during this period. Mr. Bawany maintained that efforts were underway to reduce Company's losses and restructure its operations to curb expenses and improve efficiency. Machinery and non-essential plant had also been disposed of and surplus employees laid off. The first priority of the Company as its financial position improved was to wipe out the Fund' liability. Towards this end, the Company had already paid an amount of Rs. 2 million on account of Provident Fund and accrued interest thereon as at December 31, 2002. He further committed to reduce the balance to Rs. 4 million by June 30, 2003 and the entire amount would be paid to the Fund by December 31, 2003 at the latest. In view of Company's efforts to regularize its liability to the Fund, he requested that a lenient view of the default be taken and penalty be condoned.

The Law

14. At this point, it will be useful to examine the provisions of law, which are applicable in this case. Sub-section (1) of Section 227 requires a company to keep or deposit all moneys and securities deposited by employees with the company pursuant to their contract of service in a special account to be opened by the company for the purpose in a scheduled bank or in the National Savings Schemes within 15 days from the date of deposit. Sub-section (2) of Section 227 provides that where a provident fund has been constituted by a company,



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all moneys contributed to such fund, whether by the company or by the employees, or received or accrued by way of interest, profit or otherwise, shall be deposited in a National Savings scheme or a special account opened by the company for the purpose in a scheduled bank or invested in any of the investments specified in Clauses (b) and (c). Of even greater significance to the facts of this case is Sub-section (3) of Section 227 which provides 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 employee concerned and pay such contribution as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid down by the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.

Consideration of the Submissions

15. The main issue in this case is whether the Company and its directors have contravened the provisions of Sub-section (3) of Section 227 of the Ordinance by not paying the employees as well as its own contributions to the Fund within stipulated period of time and whether such contribution were invested in contravention of the provisions of Section (3) of Section 227 of the Ordinance. Mr. M. Tariq Bawany has openly admitted the fact that the Company has failed to fulfill its obligation of making payment of contributions to the trustees within the period specified in sub-section (3) of Section 227. The Company is, therefore, in clear breach of the provisions of Sub-section (3) of Section 227 of the Ordinance. The directors have attempted to justify the above default by claiming that the interest charged on its contributions at 12% per annum ensured a higher return to the Fund than return on deposits/securities specified in Sub-section (2) of Section 227 of the Ordinance. I would like to



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point out in this regard that the underlying purpose of Sub-section (2) and (3) of Section 227 of the Ordinance is to protect the funds of the employees by obligating the Company/trustees to deposit contributions in the safe/secured modes of investment/deposits permitted in sub-section (2) of Section 227 of the Ordinance. Moneys of the Fund, a part of which is deducted from the hard earned salaries of the employees is in the nature of trust money with the Company and the trustees. The said funds, therefore, have to be deposited in accordance with the provisions of sub-section (2) of Section 227 of the Ordinance. In contradistinction to this, “loans” to the Company at a rate of interest, notwithstanding that such interest rates offer potentially higher returns than permitted investments, are nevertheless unsecured. In this scenario, if the Company goes insolvent, the employees would be the worst sufferers. Moreover, the interest was charged when the Company was in default to pay the contributions to the Fund on time. The Directors, therefore, have acted contrary to the statutory requirements by not ensuring payment of its contributions to the Trustees to enable them to invest the said amounts in the prescribed modes of investment. Sub-section (2) of Section 227 of the Ordinance clearly provides as to how the moneys of the Provident Fund is to be invested. As the Company has not transferred the contributions to the Fund under sub-section (3) of Section 227 of the Ordinance, therefore, the responsibility to invest the said contributions in the manner provided under Sub-section (2) of Section 227, in my view, rest with the Company. The Company, therefore, is also in breach of provisions of Sub-section (2) of Section 227 of the Ordinance.



Conclusion

16. Having considered the submissions, I am of the view that the directors have violated the mandatory requirements of Sub-sections (2) and (3) of Section 227 of the Ordinance as they have failed to ensure timely payments of contributions to the Fund from the year 1997 to 2002. The outstanding contributions reflected at the end of every year make it clear that the mandatory provisions of the law were breached for a long period of time. The persons, who were the Directors during the aforesaid period, therefore have made themselves liable to punishment as warranted under the law.

17. Before proceeding to decide this case, however, I would like to draw attention to certain aspects of Section 229 of the Ordinance, which lays down penalties for violation of Section 227 of the Ordinance. Section 229 of the Ordinance provides that whoever contravenes or authorizes or permits the contravention of any of the provisions of Section 227 of the Ordinance 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. In contrast to penalties imposed by the Ordinance for default/non-compliance by a company of other statutory provisions of the Ordinance, there is no requirement to prove the person concerned was “knowingly” or “willfully” in default. It suffices that he “authorized” or “permitted” the contravention. According to Black’s Law Dictionary (Fifth Edition) the expression “authorised” means:

QUOTE

“Authorized’ is sometimes construed as equivalent to ‘permitted’, or to ‘directed’, or to similar mandatory language. Possessed of authority; that is, possessed of legal or rightful power, the synonym of which is ‘competency’.”

UNQUOTE



Order

18. The officers who directed the non-payment of the company's contribution to the Fund or had sufficient power/authority in the management of the Company's affairs to prevent the non-payment, but who failed to do so are strictly liable for the contravention of Section 227 of the Ordinance and, therefore, liable to be punished under Section 229 of the Ordinance. It is the fiduciary duty of the Board of Directors to ensure that the affairs of the Company are being managed in accordance with the law. The directors, therefore, are liable for default by the Company in making its contributions to the Fund. They along with the management, led by the Chief Executive who has overall control and responsibility over the affairs of the Company cannot be acquitted for liability for violation of Section 227 of the Ordinance. However, in view of the assumption of entire responsibility by the Chief Executive, the fact that the Company has paid an amount of Rs. 2 million since the last annual audited accounts for the year ended June 30, 2002, and the Chief Executive has committed to pay the balance amount by December 31, 2003, and taking into account the decision of the Honourable Appellate Bench No. III of Appeals No. 7, 8 & 9 of 2003, in the matter of Hashmi Can Company Limited. I hereby, impose a fine of Rs. 5,000/- on the Chief Executive of the Company only and taking a lenient view condone the default of other directors of the Company. As regards to deceased Col. (R) M. Idrees Khan, I withdraw SCN issued to him without coming to any finding on his liability for default of the Company.

19. Mr. M. Tariq Bawany is directed to deposit the respective fine in the designated bank account of Securities and Exchange Commission of Pakistan



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within 30 days of the date of this order and submit a copy of the receipted challan to the Commission.

Discrepancy in Company and Fund Accounts

20. From the perusal of the accounts of the accounts both the Company and the Fund, it has been observed that there was a difference of Rs. 5.5 million in the amount payable to the Fund as per annual audited accounts of the Company and amount due from the Company as per annual audited accounts of the Fund. The detail of the difference is as under:

	<i>Payable to the Fund as per accounts of the Company</i>	<i>Due from the Company as per accounts of the Fund</i>	<i>Difference</i>
	<i>Rupees</i>	<i>Rupees</i>	<i>Rupees</i>
Year ended June 30, 1999	492,651	6,026,141	5,533,490
Year ended June 30, 2000	3,103,521	8,614,434	5,510,913
Year ended June 30, 2001	6,478,820	11,984,733	5,505,913

Direction Under Section 473 of the Ordinance

21. Before parting with this Order, it is necessary for me to issue some direction regarding the outstanding amount as of June 30, 2002 payable by the Company to the Fund. The Chief Executive Mr. M. Tariq Bawany has stated that the Company reducing the total balance due to the Fund has already paid an amount of Rs. 2 million and accrued interest thereon. He has also committed on behalf of the Company to repay the entire overdue contributions of the Company by December 31, 2003. However in light of the subsequent observation regarding difference of Rs. 5.5 million in the amount payable to the



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Fund as per annual audited accounts of the Company and amount due from the Company as per annual audited accounts of the Fund, it is necessary to determine the actual amount payable to the Fund by the Company and loss if any suffered by the Employees of the Company. In the circumstances, I deem it appropriate to invoke the powers under Section 473 of the Ordinance and direct the Chief Executive and the directors of the Company to:

- i. Arrange for Reconciliation of the amount of funds outstanding as on December 31, 2002 in the books of the Fund with the amount payable appearing in the books of accounts of the Company and provide an auditor's certificate verifying the said reconciliation within 30 days of this Order; and
- ii. Arrange for payment of the said amount along with mark-up thereon at the rate not less than average rate of return on approved securities, in terms of Sub-section (2) of Section 227 of the Ordinance, in each of the years, not later than December 31, 2003; A complete working certified by the auditors of the Company shall be submitted within one month of the date of this Order indicating the loss, if any suffered by the employees on account of non-receipt of contributions from the Company.
- iii. Submit a report to the Commission within fifteen days following the close of the second quarter of the Company ending on December 31, 2003 regarding the money received from the Company and contributions, if any, due by the Company to the Fund.



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22. In case of non-compliance of the above directive, the Chief Executive and the Directors 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 or 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 subsection (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.

23. The office is also directed to send a copy of this order to the Company with instructions to ensure future compliance of Section 227 of the Ordinance.

Rashid Sadiq
Executive Director (Enforcement & Monitoring)

Announced
April 24, 2003
Islamabad