



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

[Islamabad]

*Before Rashid Sadiq, Executive Director*

*In the Matter of*  
M/S Dandot Cement Company Limited

Number and date of notice	EMD/CO/233/EA/373/2002 dated April 11, 2003
Date of Hearing	May 14, 2003
Present	Barrister M. Saleem Sahgal, for the Company and its Directors
Date of Order	May 14, 2003

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The case before me pertains to the proceedings initiated against the directors of M/S Dandot Cement Company 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

### Background Facts

3. 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



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accounts of the Company for the year-ended June 30, 2002, were scrutinized and it was found that an amount of Rs. 54.886 million was shown as payable to the Provident Fund in the Balance Sheet under the head “Creditors, Accrued and Other Liabilities”. The amount payable to the Provident Fund had increased from Rs. 47.628 million 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. 1.887 million was charged as “Interest on Provident Fund”.

4. In order to probe the matter, the Company was asked to furnish certain information, the examination of which revealed that the Company had constituted a trust, namely, Dandot Cement Company Ltd. Staff Provident Fund (the “Fund”), which was administered under the Provident Fund Rules effective from July 01, 1980. 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. Yousaf Adil Saleem & Co., Chartered Accountants):

**Year ended June 30, 1997**

		Rupees
<u>Balance Sheet</u>		
Current Assets	Due from DCCL	21,562,597

**Year ended June 30, 1998**

<u>Balance Sheet</u>		
Current Assets	Due from DCCL	30,913,232

**Year ended June 30, 1999**

<u>Balance Sheet</u>		
Current Assets	Due from GCL	35,395,952

**Year ended June 30, 2000**

<u>Balance Sheet</u>		
Current Assets	Due from DCCL	40,908,624

**Year ended June 30, 2001**

<u>Balance Sheet</u>		
Current Assets	Due from DCCL	48,236,678

**Year ended June 30, 2002**

<u>Balance Sheet</u>		
Current Assets	Due from DCCL	54,887,716



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Show Cause Notice

5. 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 April 11, 2003 (the “SCN”) was issued under Sub-sections (3) of Section 227 read with Section 229 of the Ordinance to the Company and to the following directors of the Company:

Mr. Abdur Rafique Khan, Chairman  
Mr. A. Shoeb Peiracha, Chief Executive  
Mr. Farooq Zaman, Director  
Mr. Mohammad Tousif Peracha Director,  
Mr. Jawaid A. Paracha, Director  
Mr. Ali Rashid Khan, Director  
Mr. Mohammad Asif, Director (N.I.T. Nominee)

Reply to the Show Cause Notice

6. A letter dated May 12, 2003 was also received from M/S Walker Martineau Saleem Advocates and Legal Consultants on behalf of the Company and rest of the directors. It was stated therein that cement industry as a whole has been facing critical and serious financial problems for the last many years and the Company has been exposed to colossal losses as was evident from the record which was also available with the Commission. The Company, therefore without any deliberate intention on its part could not meet its obligations for contribution towards the Fund. Rs. 31.633 million out the total outstanding amount of Rs. 54.887 Million payable to the Fund pertains to the period of the old management and its repayment is governed by the agreement between the parties at the time of take-over by the new management. The said is the liability of the out-going management and they are, therefore, liable for the default during their tenure. The said amount is by virtue of an agreement between the Company and the CBA Union is payable by the Company after June 2008. However, the Company does not deny its obligation and in view of the slight improvement of business activity it reasonably believes that it should be able to discharge its financial obligation towards the fund by paying monthly installment Rs. 1.00 million towards repayment of Rs. 21.367 million. It was further pleaded that the notice may be discharged as default on part of the Company was not intentional and the Company may be permitted to pay the



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outstanding amount, excluding the sum of Rs. 31.633 Million which is payable in terms of agreement with CBA Union, in equal monthly installment of Rs. 1.00 Million beginning July 01, 2003.

### Hearing of the Case

7. Barrister M. Saleem Sahgal of M/S Walker Martineau Saleem Advocates and Legal Consultants appeared before the undersigned on May 14, 2003. He forcefully averred that the default in compliance of Section 227 of the ordinance was un-intentional. He further assured that outstanding amount would be repaid to the Fund within a period of two years in equal monthly installment Rs. 1.00 million beginning July 01, 2003, excluding the sum of Rs. 31.633 Million which is payable in terms of agreement with CBA Union.

### The Law

8. At this point, it will be useful to examine the applicable provisions of law. 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, 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

9. The Company and its directors admitted that they have failed to fulfill the obligation of making payment of contributions to the trustees within the



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period specified in sub-section (3) of Section 227. Barrister M. Saleem Sahgal has assured that the outstanding contribution would be paid in accordance with the Schedule provided by the Company. I would like to 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. 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.

### Conclusion

10. Having heard the submissions, I am of the view that the Company and its directors have breached the mandatory requirements of Sub-section 0..... (3) of Section 227 of the Ordinance as they have failed to ensure timely payments of contributions to the Provident Fund. 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.

### Order

11. In view of the fact that the Company has undertaken to pay back the outstanding amount in equal monthly installments amounting to Rs. 1.00 million commencing from July 01, 2003, I take a lenient view in this case and instead of imposing fine for continuing default during the preceding years, I hereby, impose a token fine of Rs. 5,000/- (Five thousand only) on the Company and its directors.

12. The Company and its directors are directed to deposit the 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.

### Direction Under Section 473 of the Ordinance

13. 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 directors of the Company have undertaken to pay



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back the outstanding amount in equal monthly installments amounting to Rs. 1.00 Million beginning from July 01, 2003 and have committed to repay the entire overdue contributions of the Company. In the circumstances, I deem it appropriate to invoke powers contained in Section 473 of the Ordinance and direct the Company to:

- i. Pay the entire amount including mark-up thereon not less than the rate of return on investments made by the Fund in the approved securities not later than June 30, 2008;
- ii. The Company shall submit auditors certificate regarding total amount (Contributions and mark-up thereon) payable to the Fund as of March 30, 2003 within 30 days of the date of this order. 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 July 7, 2003; and
- iii. The Company shall submit auditors certificate within 15 days of the repayment period verifying the repayment of the entire outstanding amount including mark-up therein to the fund

***Rashid Sadiq***  
Executive Director (Enforcement & Monitoring)

**Announced**  
***May 14, 2003***  
**Islamabad**