



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

[Islamabad]

Before Rashid Sadiq, Executive Director

In the Matter of
M/S Gharibwal Cement Limited

Number and date of notice	EMD/CO/233/EA/378/2002 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

The case before me pertains to the proceedings initiated against the directors of M/S Gharibwal Cement 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. 17.840 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. 8.239 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. 1.668 million was charged as “Interest on Employees’ 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, Gharibwal Cement Mills Ltd. Staff Provident Fund (the “Fund”), which was administered under the Provident Fund Rules effective from July 01, 1964. 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 Aftab Nabi & Co.):

Year ended June 30, 1997

<u>Balance Sheet</u>		Rupees
Current Assets	Due from GCL	2,887,660

Year ended June 30, 1998

<u>Balance Sheet</u>		
Current Assets	Due from GCL	7,077,506

Year ended June 30, 1999

<u>Balance Sheet</u>		
Current Assets	Due from GCL	6,884,874

Year ended June 30, 2000

<u>Balance Sheet</u>		
Current Assets	Due from GCL	8,494,094

Year ended June 30, 2001

<u>Balance Sheet</u>		
Current Assets	Due from Company	8,259,030

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



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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 (2) and (3) of Section 227 read with Section 229 of the Ordinance to the following directors of the Company:

Mr. Mohammad Tousif Peracha, Chairman
Mr. Farooq Zaman, Chief Executive
Mr. Abdur Rafique Khan, Director,
Mr. M. Niaz Paracha, Director
Mrs. Tabassum Tousif Peracha, Director
Mr. Anis Wahab Zuberi, Director (N.I.T. Nominee)
Mr. Mohammad Saeed Akhtar, Director (Nominee SIC)

Reply to the Show Cause Notice

6. Reply to the notice was received vide letter dated April 23, 2003 from Mr. Anis Wahab Zuberi (Nominee NIT) wherein he admitted the violation of Sub-section (3) of section 227 of the Ordinance. He submitted that this violation was due to acute liquidity problem faced by the Company, which is evident from negative shareholders’ equity of Rs. 487.068 million as at June 30, 2002 and accumulated loss of Rs. 987.832 million as on that date. He requested that a lenient view may be taken for non-payment of the dues to the Fund as these would be most certainly be paid on priority basis. 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 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. 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 the outstanding amount. 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 outstanding amount 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 one and half years in equal monthly installment Rs. 1.00 million beginning July 01, 2003.

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 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



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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-sections (2) and (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 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 by December 31, 2004. In the circumstances, I deem it appropriate to invoke powers contained in Section 473 of the Ordinance and direct the Company to:



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- i. Pay the said amount along with mark-up thereon not less than the rate of return on investments made by the Fund in the approved securities not later than December 31, 2004;
- 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 March 7th, 2003; and
- iii. The Company shall submit auditors certificate within 15 days of the repayment period i.e. January 15, 2005, 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