



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

[Islamabad]

Before Rashid Sadiq, Executive Director

In the Matter of
M/S Bawany Sugar Mills Limited

Number and date of notice	EMD/233/336/2002 dated May 11, 2003
Date of final hearing	June 03, 2003
Present	Mr. Faisal Latif, ACA Mr. M. Baqir Jaffery, Company Secretary Mr. Ansar Hussain, Director Nominee, SLIC
Date of Order	June 17, 2003

The case before me pertains to the proceedings initiated against the directors of M/S Bawany Sugar Mills Limited (hereinafter referred to as the “Company”) under Sub-section (2) and (3) of Section 227 of the Companies Ordinance, 1984 (the “Ordinance”).

Background Facts

2. 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 September 30, 2002, were



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scrutinized and it was found that an amount of Rs. 79.312 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 Employees Provident Fund (hereinafter referred to as the “Fund”) increased from Rs. 56.839 million as on September 30, 2001. In addition, an amount of Rs. 15.116 million was shown as “Interest on P. Fund Contribution” under the head “Financial Charges” in the Profit and Loss Account for the year ended September 30, 2002.

Show Cause Notice

3. In the above circumstances, the Enforcement & Monitoring Division apprehended violations of the statutory provisions of Sub-section (2) and (3) of Section 227 of the Ordinance, and it was decided to take up this matter with the Company. Consequently, a show cause notice dated May 12, 2003 was issued under the above referred provisions read with Section 229 of the Ordinance to the following persons, who *prima facie* had authorized and permitted the contravention of the Provisions of Section 227 the Ordinance:

- i) Mr. Muhammad Din, Chief Executive
- ii) Mr. Qazi Amjad Abid Abbasai Director
- iii) Mr. M. Arshad Mirza, Director
- iv) Mrs. Husna Amjad Qazi, Director
- v) Mr. Khalid Ebrahim Bawany, Ex-Director
- vi) Mr. Muhammad Ashique, Ex-Director
- vii) Mr. Syed Zamir Hassan, Ex-Director
- viii) Mr. Shamas-ud-Din Khawaja, Director
- ix) Mr. Abdul Hussain Buledi, Director
- x) Mr. Ansar Hussain, Nominee Director, S.L.I.C.
- xi) Mr. Muhammad Abdul Samad, Nominee Director, N.I.T



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- xii) Mr. Dawood Ebrahim Bawany, Ex-Director
- xiii) Mr. Muhammad Baqir Jafri, Ex-Director
- xiv) Mr. H.A. Sattar Muhammad, Ex-Director

They were also advised to furnish certain documents/information including Provident Fund Trust Deed, rules and audited accounts to precisely ascertain the extent of violations.

Reply to the Show Cause Notice

4. The reply to the show cause notice was received from M/S Tariq Ayub Anwar & Co., Chartered Accountants vide their letter dated May 20, 2003 on behalf of all except Mr. Dawood Ebrahim Bawany, Mr. Ansar Hussain, Nominee Director SLIC and Mr. Muhammad Abdul Samad, Nominee Director NIT. In the reply, it was submitted by M/S Tariq Ayub Anwar & Co., that the Company was faced with liquidity constraints due to draught situation, lower size of cane crop, price competition, declining rate of yield per acre etc. It was further stated that the financial institutions refused to provide the required funds therefore, the directors of the Company decided to utilize the funds from provident fund to meet the working capital requirements of the Company and prevented the Company from being closed down. It was also averred that interest rate ranging from 15% to 18% was being accrued on the funds utilized by the Company. A written reply was also received from Mr. Muhammad Abdul Samad stating that he was co-opted as Director on the Board of Directors of the Company on January 14, 2002. It was further submitted that he had taken up the issue of contravention of Section 227 of the Ordinance in the meeting of Board of Directors held on January 25, 2003. To substantiate this assertion, a copy of the minutes of the meeting of the Board of Directors held on January



25, 2003 was also placed on record. It was prayed that he should be absolved from the violation of Section 227 of the Ordinance. No reply was, however, received from Mr. Ansar Hussain, Nominee Director, SLIC and Mr. Dawood Ebrahim Bawany.

Hearing of the Case

5. In order to provide an opportunity to the directors for personal hearing, the case was fixed on May 21, 2003. A request for adjournment of hearing was, however, received from M/S Tariq Ayub Anwar & Co., Chartered Accountants vide their letter dated May 20, 2003 on behalf of all except Mr. Ansar Hussain, and Mr. Muhammad Abdul Samad. On the date of hearing i.e. May 21, 2003, Mr. Haseeb Ahmed appeared on behalf of Mr. Abdul Samad, Nominee Director NIT and argued the case. He has not submitted any new arguments and repeated the contentions contained in the written reply to the show cause notice. In order to give another opportunity of hearing to other directors, the case was re-fixed on June 03, 2003 on which date Mr. Faisal Latif, ACA of M/S Tariq Ayub Anwar & Co., Chartered Accountants, Mr. Ansar Hussain, and Mr. M. Baqir Jaffery, Company Secretary appeared before the undersigned and argued the case. Mr. Faisal Latif represented all the directors except Mr. Dawood Ebrahim Bawany, Mr. Ansar Hussain and Mr. Muhammad Abdul Samad. Mr. Faisal Latif admitted that no contribution has been paid to the Fund since 1998 and the investments in the approved securities made by the Provident Fund Trust up to 1997 were also en-cashed upon maturity and the money advanced to the Company during the years 1997, 1998, 1999 and 2000. Mr. Ansar Hussain, stated that he has expressed his concern over the violation of Section 227 by the Company in the meeting of Board of Directors held on January 25, 2003. Further, the management was also asked to chalk out a plan to settle this



liability as soon as possible. To substantiate this assertion, he also placed on record a copy of the minutes of the above said meeting. Mr. Dawood Ebrahim Bawany was not represented at the time of hearing.

The Law

6. Before proceeding further, it is necessary to advert to the provision of law, which have been violated by the directors of the Company. 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].



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(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.

7. 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 and benefits 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.

Consideration of the Submissions

8. Reverting to the submissions made on behalf of the directors I would first consider the arguments advanced by Mr. Faisal Latif, ACA. His contention



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that the moneys were not paid to the Fund due to liquidity constraints is not tenable because of the reason that the law makes it obligatory for the Company to pay the employees contributions as well its own contributions within fifteen days from the date of collection thereof. Mr. Faisal Latif has admitted that the Company has not been able to pay the contributions to the Fund since 1998. Such contributions / loans are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. The directors, therefore, have violated the provisions of Sub-section (3) of Section 227 of the Ordinance. With regard to the encashment of Company's investments for providing funds to the Company, the trustees are also *prima facie* in violation of the provisions of Sub-section (2) of section 227 of the Ordinance which provides the modes of investment of the moneys of the Fund.

9. In respect of Mr. Muhammad Abdul Samad, Nominee Director, NIT it has been noticed that he was appointed a Director of the Company in January 2002 and there was no disclosure of outstanding contributions payable to the Fund in the annual accounts for the year ended September 30, 2001. It was the annual accounts for the year ended September 30, 2002 when it has come to his knowledge that the Company had contravened the provisions of Section 227 of the Ordinance. The minutes of the meeting of the Board of Directors where these accounts were approved substantiates that he has expressed his concern over the said violation. In view of this fact of the matter, I am inclined to take a lenient view of the default in his case.

10. In respect of Mr. Ansar Hussain, Nominee Director SLIC, it has been observed that he was appointed as director of the Company in April 2000, and there was no disclosure of outstanding contributions payable to the Fund in the annual accounts for the year ended September 30, 2000 and 2001. It was the



annual accounts for the year ended September 30, 2002 when it has come to his knowledge that the Company has contravened the provisions of Section 227 of the Ordinance. This was so because the auditor in their report on the said accounts have qualified their report with regard to violation of Section 227 and also that the disclosure regarding outstanding payments to the Fund was made for the first time in the said accounts. The minutes of the meeting of the Board of Directors where the accounts for the year ended September 30, 2002 were approved substantiates that Mr. Ansar Hussain has expressed his concern over the violation of Section 227 of the Ordinance. His views that the Company should settle the liability of the Fund as soon as possible are also on record. In view of this fact of the matter, I am inclined to take a lenient view of the default in his case also.

Order

11. For the forgoing, I am of the view that directors 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 1998 onwards. 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. 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



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employees on account of such contravention. I, therefore, proceed to Order as follows:

- i) A fine of Rs. 5,000/- (Five thousand only) is imposed on each of the following Directors under Section 229 of the ordinance:
 - o Mr. Muhammad Din, Chief Executive
 - o Mr. Qazi Amjad Abid Abbasai Director
 - o Mr. M. Arshad Mirza, Director
 - o Mrs. Husna Amjad Qazi, Director
 - o Mr. Khalid Ebrahim Bawany, Ex-Director
 - o Mr. Muhammad Ashique, Ex-Director
 - o Mr. Syed Zamir Hassan, Ex-Director
 - o Mr. Shamas-ud-Din Khawaja, Director
 - o Mr. Abdul Hussain Buledi, Director
 - o Mr. Dawood Ebrahim Bawany, Ex-Director
 - o Mr. Muhammad Baqir Jafri, Ex-Director
 - o Mr. H.A. Sattar Muhammad, Ex-Director
- ii) No fine is imposed on Mr. Muhammad Abdul Samad, and Mr. Ansar Hussain in view of the discussion in Para 9 and 10 of this order. They are, however, advised that 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 directorship. 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.
- iii) Notices shall be issued to trustees of the Fund for violation of Section 227 of the Ordinance.
- iv) A notice shall be issued to the Company to make good the default in terms of the Sub-section (1) of Section 472 of the ordinance

12. The directors of the Company 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



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challan to the Commission. They shall also remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance.

Announced
June 17, 2003
Islamabad

Rashid Sadiq
Executive Director (Enforcement & Monitoring)