



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

**[Islamabad]**

***Before Rashid Sadiq, Executive Director***

## Order

*In the Matter of*  
Emco Industries Limited

|                           |  |
|---------------------------|--|
| Number and date of notice | EMD/Co./233-EA/583/2002-5294 –5308<br>Dated March 5, 2003  |
| Date of hearing           | May 29, 2003   |
| Present                   | Mr. Mansoor Jamal Butt<br>Chief Financial Officer of the Company<br><br>Mr. Imtiaz Rashid Siddiqui, Advocate |
| Date of Order             | June 25, 2003  |

---

The case before me pertains to the proceedings initiated against Emco Industries Limited (hereinafter referred to as the “Company”), its present and ex-directors and the trustee of Emco Industries Ltd. Provident Fund Trust (hereinafter referred to as the “Fund”) 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 June 30, 2002, were scrutinized and it was found that an amount of Rs. 72.419 million (2001: 72.419 million) was shown in the Balance Sheet under the head “Long Term Loans” and an amount of Rs. 34.336 million (2001: 25.266 million) under “Creditors Accrued & Other Liabilities” as payable to the Provident Fund. Note No. 7.6 to the accounts for the year ended June 30, 2002 is also relevant and is reproduced here below:

“The balance payable to Provident Fund was converted into a long-term loan on July 1, 2000 repayable in four equal annual installments commencing from July 1, 2002. Mark up is payable annually at the rate of Rs. 0.4109 per 1,000 per diem or part thereof on the outstanding balance.”

3. The Company was asked vide letter dated February 3, 2003 to furnish certain documents/information including Provident Fund Trust Deed, Rules, and audited accounts to precisely ascertain the extent of violations and identify the persons responsible for the *prima facie* default. The information provided by the Company revealed that the Company had constituted the Fund on August 13, 1974 for all of its employees. The following persons were stated to be the trustees of the Fund during the last five years:

1. Mr. S. A. Mannan
2. Mr. Haris Noorani
3. Mr. Ghufraan Ali Khan
4. Mr. Manzoor Ahmad

4. 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 (these accounts were audited by M/S Riaz Ahmad, Saqib, Gohar & Co., Chartered Accountants):

| Current Assets                       | December<br>31, 2001 | December<br>31, 2000 | December<br>31, 1999 | December<br>31, 1998 | December<br>31, 1997 |
|--------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <i>Rupees in million</i>             |                      |                      |                      |                      |                      |
| Receivable From Emco Industries Ltd. | 110.744              | 85.906               | 61.186               | 41.747               | 15.446               |

### 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 consequently, a show cause notice dated March 05, 2003 (the “SCN”) was issued under Sub-sections (2) and (3) of Section 227 and 229 read with Section 476 of the Ordinance to the following persons, who *prima facie* had authorized and permitted the contravention of the provisions of Section 227 of the Ordinance:

- |     |                           |                      |
|-----|---------------------------|----------------------|
| 1.  | Emco Industries Limited   |                      |
| 2.  | Mr. S. A. Mannan,         | Chairman             |
| 3.  | Mr. Tariq Rehman,         | Chief Executive      |
| 4.  | Mr. Haris Noorani,        | Director             |
| 5.  | Mr. Sohail Mannan,        | Director             |
| 6.  | Mr. Iqbal Shafiq,         | Director             |
| 7.  | Ms. Maha Rehman,          | Director             |
| 8.  | Ms. Ayesha Noorani,       | Director             |
| 9.  | Mr. Mohammad Shafiq Gill, | ICP Nominee Director |
| 10. | Mr. A. Rehman,            | Ex-Director          |
| 11. | Mr. Shafiq A. Siddiqui,   | Ex-Director          |
| 12. | Mr. T. M. Sheikh,         | Ex-Director          |
| 13. | Mr. Tahir Rehman,         | Ex-Director          |
| 14. | Mr. Ghufran Ali Khan,     | Trustee              |
| 15. | Mr. Manzoor Ahmed,        | Ex-Trustee           |

6. The reply to the aforesaid show cause notice was received vide letter dated March 17, 2003 from the Chief Financial Officer on behalf of all the present directors and the Company. Mr. Mohammad Shafiq Gill, Nominee Director ICP filed a separate reply stating that he had resigned from the directorship of the Company on February 06, 2003. No reply was received from the trustees, Mr. Ghufran Ali Khan, Mr. Manzoor Ahmed and Ex-directors, namely Mr. Shafiq A.

Siddiqui, Mr. T. M. Sheikh and Mr. Tahir Rehman. It was also brought to the notice that Mr. A. Rehman had expired. In order to provide an opportunity of personal hearing and of making representation, the case was fixed for hearing several times. The case was finally heard on May 29, 2003. On the date of hearing, Mr. Mansoor Jamal Butt, Chief Financial Officer of the Company and Mr. Imtiaz Rashid Siddiqui, Advocate appeared and argued the case on behalf of the Company and following persons:

- Mr. S. A. Mannan
- Mr. Tariq Rehman
- Mr. Haris Noorani
- Mr. Sohail Mannan
- Mr. Shafiq A. Siddiqui
- Mr. Tahir Rehman
- Mr. Iqbal Shafiq
- Ms. Ayesha Noorani,
- Ms. Maha Rehman,
- Mr. Ghufraan Ali Khan

They have also filed written submission at the time of hearing.

### Submissions of the Company, its Directors and Trustees

7. In the written submissions as well as at the time of the hearing of this case, the learned Counsel admitted that the Company has violated the provisions of Section 227 of the Ordinance. He, however, forcefully argued that this was done due to liquidity shortage, delays in expansion plan and adverse internal and external geo-political situation, which had brought the Company on the brink of closure. It was also submitted that directors themselves and through their associated companies have injected interest free loan of Rs.177.398 million in the Company and have also subscribed over 99.84% of the right issue valuing Rs.38.27 million. It was also stated that the members of the Fund, who have left the Company or retired, have been fully paid their dues of provident fund. At the time of hearing, a plan for repayment of the outstanding balance of the Fund was

also submitted. It was also averred that the Company was paying higher return on the outstanding balance of the Fund. The measures being taken by the Company to ensure that deposits of the fund as well as the interest of its beneficiaries are duly protected were also explained at length. In view of the sincere efforts of the management to repay the liability of the Fund, the learned Counsel pleaded that default may be condoned

8. Mr. Mohammad Shafiq Gill, Nominee Director ICP submitted that he was on the Board of Directors of the Company and due to exigencies of service could not attend the Board Meetings held on September 23, 2002, February 9, 2002 and December 2, 2000 in which annual accounts of the Company for the year-ended June 30, 2002, 2001 and 2000 were approved. He further stated that he had never signed any authorization or permission for the violations as highlighted in the show cause notice. He also averred that in the capacity of a nominee director, he was not involved in the contravention of Section 227 of the Ordinance. Mr. T. M. Sheikh, Ex-Director and Mr. Manzoor Ahmed, Ex-Trustee neither submitted any reply nor appeared before me on the date fixed for hearing.

### The Law

9. Before proceeding further, it is necessary to advert to the provision of law, which have been violated by the Company, its directors and the trustees of the Fund. These provisions 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.

10. 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 for the 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, if any, including the profit thereon must be deposited within fifteen days of the contributions shall be invested 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 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 higher returns cannot, therefore, withhold such moneys.

## Consideration of Submissions

11. The Learned Counsel for the Company and its Directors admitted that the Company has not been able to pay the contributions to the Fund since 1998 due liquidity crunch and other reasons. I have full sympathy with the management for difficulties faced by them and also appreciate that they have invested substantial amount of money needed for the revival of the Company. I have also gone through the plan submitted by the Company for repayment of Fund liability and it appears that the management is sincere in repayment of money of the Fund. Nevertheless, this is also an admitted position that the Company has not been able to pay contribution to the Fund for a long period of time. The Company and its directors, therefore, have violated the provisions of Sub-section (3) of Section 227 of the Ordinance.

12. Mr. Mohammad Shafiq Gill, Nominee ICP has stated that he had not participated in the board meetings, never signed any related document and was not involved 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. The law also does not differentiate between the nominee and other directors. Although, Mr. Mohammad Shafiq Gill had not attended the Board meetings, nevertheless the audited accounts were available to him in all these years and it was his responsibility to have raised voice against the violation of the mandatory provisions of the Ordinance.

13. The trustees of the Company cannot take refuge in the argument that they advanced this money to the Company because it was in a financial fix and that it was paying them a return above the market rate. In my opinion, the decision of the trustees to provide funds to the Company is a clear violation of the provisions of Sub-section (2) of Section 227 of the Ordinance and as such they are liable for the penalty as specified under Section 229 of the Ordinance. As regards to Mr. T. M. Sheikh, Ex-Director and Mr. Manzoor Ahmed, trustee who neither file any reply nor appeared before me on the date of hearing, it appears to me that they have nothing to argue in their defence.

## Order

14. For the forgoing, I am of the view that the Company, its directors and trustee have breached the mandatory requirements of Section 227 of the Ordinance. 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. In view of the sincerity shown by the management to repay the Fund money, I take a lenient view of the default and proceed to Order as follows:

- i) A fine of Rs. 5,000/- (Five thousand only) is imposed on the Company under Section 229 of the Ordinance:
- ii) A fine of Rs.5,000/- (Five thousand only) is imposed on each of the following Directors under Section 229 of the Ordinance:
  - i. Mr. S. A. Mannan
  - ii. Mr. Tariq Rehman
  - iii. Mr. Haris Noorani
  - iv. Mr. Suhail Mannan
  - v. Mr. Iqbal Shafiq
  - vi. Mr. Mohammad Shafiq Gill
  - vii. Mr. Shafiq A. Siddiqui



- viii. Mr. T. M. Sheikh
- ix. Mr. Tahir Rehman
- x. Ms. Ayesha Noorani
- xi. Ms. Maha Rehman

- iii) A fine of Rs.5,000/- (Five thousand only) is imposed on each of the following trustees under Section 229 of the Ordinance:
  - i) Mr. S. A. Mannan
  - ii) Mr. Haris Noorani
  - iii) Mr. Ghufraan Ali Khan
  - iv) Mr. Manzoor Ahmed
- iv) As regards to Mr. A. Rehman, who had passed away, I withdraw show cause notice issued to him.
- v) 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.

15. The Company, its directors and the trustees of the Fundare 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.

**Rashid Sadiq**

Executive Director (Enforcement & Monitoring)

**Announced:**  
June 25, 2003  
**ISLAMABAD**