



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Agha Khan Cultural Services -Pakistan

Number and date of notice: CSD/ARN/218/2015-1270 dated November 5, 2015
Date of hearing: February 10, 2016
Present: Mr. Salman Beg, Chief Executive Officer
Mr. A-Rehman Nasrali- Manager Finance

ORDER

**UNDER SECTION 227 READ WITH SECTION 229 AND SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the directors including the Chief Executive (the “respondents”) of Agha Khan Cultural Services - Pakistan (“Company”). These proceedings were initiated through show cause notice (“SCN”) dated November 5, 2015 under the provisions of section 227 read with section 229 and section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that the examination of annual accounts of Agha Khan Cultural services - Pakistan (the “Company”) for the year ended December 31, 2013 revealed that Rs. 4.682 million (2012; Rs. 1.893 million) was payable by the Company to the employees provident fund (“Fund”).

3. In response to Commission letter dated April 29, 2015, the Company submitted it has been depositing contributions of employee and employers to the separate bank account but since several months due to shortage of fund in company’s grant account, Company has used the monthly contributions of Fund instead of depositing the same in to separate bank account which is now being gradually paid off. The Company is also contemplating paying markup on the Fund used by the Company. Consequently, the SCN was issued to the respondents requiring them to show cause in writing as to why penal action may not be taken against them in terms of section 229 of the Ordinance for, prima facie violation of the provisions of Section 227. The respondents failed to respond the SCN.



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4. In order to provide opportunity of personal hearing; the case was fixed before the undersigned on February 10, 2016. Mr. Salman Beg, CEO and Mr. A. Rehman Nasrali appeared on behalf of respondents and submitted the following;

- The Company is part of the Agha Khan Development Network agencies working to improve the welfare and prospects of people in the developing world. In Pakistan our programmes extend across the economic, social and cultural fields. It is our endeavor not to default any law whatsoever and fully comply with all relevant laws and regulations in force.
- The Company has defaulted in not depositing the contributions of Fund but the default was not intentional but due to unavoidable circumstances. Out of total amount of payable to Fund account of Rs. 4.682 million, Rs. 3.2 million has been completely paid as of June 11, 2104 , while profit on the same is being worked out and once approved by the management, the same will also be paid in the Fund by end of March 2016.
- The remaining amount of Rs. 1.472 million could not be paid as the process for opening of separate bank account for the Fund of Shigar Fort Residence is in process, once opened, the remaining amount of Rs. 1.472 million will be paid along with the profit.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Section 227 of the Ordinance, inter alia, provides as under:

Sub-section (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 fund, 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 a 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; or*



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- (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.*

Section 229 of the Ordinance provides that *whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 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 depositor of security or the employee on account of such contravention.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

6. Having gone through the facts of the case, provisions of the law and submissions of the respondents, I have concluded that the provisions of section 227 of the Ordinance have been violated as the Company has utilized the amounts of Fund. However, keeping in view efforts made by the respondents for subsequent compliance of Section 227 of the Ordinance, I hereby conclude the case with a warning to the respondents to ensure future compliance of applicable legal provisions.

Amina Aziz
Director

Announced:
February 29, 2016
Islamabad