



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## *Enforcement Department*

### *Islamabad*

#### *Order u/s 227 read with Sections 229 and 476 of the Companies Ordinance, 1984*

In the Matter of  
**M/S Crescent Knitwear Limited**

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The case before me pertains to the proceedings initiated against the Chief Executive and Directors of M/S Crescent Knitwear Limited (hereinafter referred to as the “Company”) under Section 227 read with Sections 229 and 476 of the Companies Ordinance, 1984 (the “Ordinance”).

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 Department of the Commission. It was noticed from examination of Annual Accounts of the Company for the years ended June 30, 2004, 2003, 2002, 2001 and 2000, that amounts of Rs. 6.35 million, Rs. 5.29 million, Rs.4.39 million, Rs. 3.49 million and Rs. 2.37 million respectively, were payable by the Company to the Employee’s Provident Fund (hereinafter referred to as the “Fund”).

3. In view of the above, the Enforcement Department apprehended violation of the statutory provisions of Section 227 of the Ordinance and consequently, a show cause notice No. EMD/233/246/2002 dated January 25, 2005 was issued to the Chief Executive and the following Directors, who *prima facie* had contravened the provisions of Section 227 of the Ordinance:-

i.	Mr. Khurram Mazhar Khan	Chief Executive Officer
ii.	Mr. Shams Rafi	Director
iii.	Mr. Zaheer A. Sheikh	Director
iv.	Mr. A. H. Zaidi	Director
v.	Mr. Abdul Rauf	Director
vi.	Mr. Mohammad Shahbaz	Director
vii.	Mr. Imran-ur-Rehman	Director



4. The reply to the show cause notice was received from the Chief Executive of the Company, on behalf of all the directors, vide his letter dated February 8, 2005. He, while admitting the default, submitted that the Company has been utilizing the provident funds amount because it was in a phase of severe financial crises since last few years and was carrying out its operations in the worst phase of heavy losses. It was stated that Company was deducting 8.3 percent of the basic salaries of its employees on account of provident fund and contributing an equivalent amount from its side as employers' contribution and accruing the same in the books of accounts of the Company. It was further stated that currently Company has shut down its operations and terminated all its employees and have made payment to some of them. For the balance amount, lists are being finalized and the Company shall clear dues within a short period of time. It was further stated that the amount of fund including interest payable to employees was Rs. 6.35 million as on June 30, 2004 which, after partial payments, has been reduced to Rs. 4.44 million, out of which, Rs. 1.345 million is payable to the Chief Executive Officer. He further contended that the employees have not suffered any loss because the Company is paying to them 18% interest on their investment.

5. In order to provide an opportunity of personal hearing, the case was fixed for March 9, 2005, which was adjourned to March 10, 2005 on the request of the Company. On the date of hearing, Mr. Tariq Aleem, Deputy General Manager, Crescent Group of Companies, appeared on behalf of all the directors of the Company and argued the case. He reiterated the same arguments as were made earlier in the written reply to the show cause notice. He, while admitting the default, again submitted that although the Company was utilizing the provident fund amount, yet it was paying handsome return on the said amount. He was asked to clarify, whether the Company is maintaining a provident fund account or a provident fund trust as two separate amounts were appearing in the accounts of the Company, under the head of "Creditors, accrued and other liabilities" as Payable to Provident Fund and Payable to Provident Fund Trust. He was not aware of this fact and stated that he'll inform the Commission after checking the record. He was further asked to provide the following documents within a period of seven days of the date of hearing:



- i. Names of the persons to whom the amount on account of the Provident Fund are payable; and.
- ii. The Company's plan to rectify the default.

6. Mr. Tariq Aleem again appeared on March 18, 2005 and submitted the required documents personally and stated that Company has already laid off its employees. He also disclosed that the Company is not maintaining any Provident Fund Trust, but is maintaining Provident Fund Account. He further stated that the Company is not maintaining any separate bank account for the provident fund amount and only separate book entries are being made for the purpose of calculating the liability of provident fund. He, while admitting the default stated that as of now, only an amount of Rs. 1.312 million is payable to the provident fund alongwith financial charges of Rs. 0.554 million (total Rs. 1.866 million), which is owed to the Chief Executive of the Company only. As regards amount payable to the ex-employees, he provided a list of 140 persons to whom this amount was payable. He further stated that amount payable on account of provident fund to ex-employees has been transferred to their terminal benefit account and, therefore, it is no more being shown as payable to ex-employees on account of provident fund.

7. Before proceeding further, it is necessary to advert to the provision of law, which has been violated by the Chief Executive and 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:**

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.



(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.

8. The aforesaid provisions of law are clear and explicit. 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. 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 a separate bank accounts, opened by the Company exclusively for provident fund money. Further, this money can only be invested in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. In this case, the Chief Executive and directors were 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 cannot withhold such moneys on the pretext of liquidity constraints or payment of higher returns as compared to government securities.

9. Reverting to the submissions made on behalf of the directors, I would first consider the arguments advanced by Mr. Tariq Aleem, that the Company was using amounts of the Fund due to liquidity constraints, is not a valid ground as the law makes



it obligatory for the Company to pay the contributions to the Fund within fifteen days from the date of its collection. He tried to justify the above default by claiming that the interest charged on outstanding amounts at 18% per annum ensured a higher return to the Fund than return on any other investment. It is pointed out that the underlying purpose of Sub-section (1) and (2) of Section 227 of the Ordinance is to protect the funds of the employees by obligating the Chief Executive and directors of the Company to deposit contributions in the safe/secured modes of investment/deposits permitted in sub-section (2) of Section 227 of the Ordinance. Such amounts are unsecured if the Company goes insolvent and in this situation, the employees would be the worst sufferers. Further, the amounts payable to Fund had increased to Rs. 6.35 million as on June 30, 2004 from Rs. 2.37 million as on June 30, 2000. Moreover, transferring the amount of provident fund which is payable to the ex-employees to their terminal benefits does not appear to be a correct treatment. It appears that the Company has reduced the amount due to the Fund from Rs. 4.814 million (as claimed in the reply to show cause notice) to Rs. 1.866 million by transferring the balance of Rs. 2.948 million to another account as payable to the resigned employees as terminal benefits, which is window dressing of the actual liability towards employees in respect of the provident fund.

10. Considering the circumstances of the case, I am of the view that the Chief Executive and directors have breached the mandatory requirements of Section 227 of the Ordinance as they have failed to ensure timely payments of the amounts of Fund in a separate bank account, which calls for an action under Section 229 of the Ordinance. The said Section 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 employees on account of such contravention. I, therefore, proceed to pass the following order:-



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- i) Impose a fine of Rs. 5000/- (Rupees five thousand only) on the chief executive of the Company under Section 229 of the Ordinance. The other directors of the company are reprimanded to be careful in future.
- ii) In terms of Section 473 of the Ordinance to restate the correct position of the amount payable to the Fund in the next annual accounts of the Company for the year-ending on June 30, 2005, by reversing the bifurcated amount, as referred to in para 9 above. The Chief Executive of the Company is also directed to take steps to pay the amounts payable to the ex-employees and to eliminate this balance at the earliest possible. It is further ordered that the chief executive and directors shall remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance till repayment of total outstanding amount to the ex-employees of the Company.

11. The Chief Executive of the Company is directed to deposit the fine of Rs. 5,000/- (Rupees five thousand only) in the in the Bank Account of Securities and Exchange Commission of Pakistan maintained with Habib Bank Limited or Demand Draft drawn in favour of SECP within thirty days the date of this Order and to furnish a receipt/bank voucher in this regard to the Commission.

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**Ashfaq Ahmed Khan**  
Director (Enforcement)

Announced  
April 07, 2005  
Islamabad