



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Enforcement Department  
Company Law Division

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*Before Abid Hussain, Director (Enforcement)*

*In the matter of*

*Arif Habib Limited*

Number & date of the notice: EMD/233/683/2007-1155-61 dated September 11, 2007  
Date of hearing: October 9, 2007  
Present: Mr. M. Javed Panni, Chief Executive  
MJ Panni & Associate

**Order**

**Under Section 227 read with Sections 229 and 476 of the Companies Ordinance, 1984**

This order shall dispose off the proceedings initiated against Arif Habib Limited (“the Company”) through show cause notice dated September 11, 2007 under the provisions of Section 227 read with Sections 229 & 476 of the Companies Ordinance, 1984 (“the Ordinance”).

2. The Company was incorporated on September 07, 2004 under the Ordinance, as an unquoted Public Limited Company. The Company is listed on the Karachi Stock Exchange (Guarantee) Limited with effect from January 31, 2007. It is a member of Karachi, Lahore and Islamabad Stock Exchanges and National Commodity Exchange. The authorized share capital of the Company is Rs.500,000,000/- divided into 50,000,000 ordinary shares of Rs.10/- each. The paid up share capital of the Company is Rs.200,000,000/- divided into 20,000,000 ordinary shares of Rs.10/- each. The Company is majority owned subsidiary of Arif Habib Securities Limited (“AHSL”) and principally engaged in the business of securities brokerage, commodities brokerage, IPO underwriting, corporate finance advisory and securities research.

3. The brief facts of the case are that while examining the annual accounts for the year ended June 30, 2007 (“the Accounts”) of the Company, it was observed that an amount of Rs.2.016 million is payable on account of staff provident fund (“the fund”) whereas during the year under review the Company had paid an amount of Rs.0.198 million as mark-up on the fund. This was transpired that the Company had not made payment to the fund in compliance with the provisions of Section 227 of the Ordinance.



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Consequently, a show cause notice dated September 11, 2007 under Section 227 read with Sections 229 and 476 of the Ordinance was issued to all the directors of the Company, namely:

- (i) Mr. Samad A. Habib, Chairman;
- (ii) Mr. Ahmed Reza, C.E.O. & Managing Director;
- (iii) Mr. Muhammad Yousaf Ahmad, Director;
- (iv) Mr. Muhammad Rafiq Jangda;
- (v) Mr. Abdullah A. Rehman;
- (vi) Mr. Abdul Majid M. Siddiqui;
- (vii) Mr. Syed Hassan Jafri.

4. In response to the show cause notice, followings has been submitted by the Company vide its letter dated September 24, 2007:

- The Company took over in its employment, a large number of staff members of AHSL who were engaged in equity brokerage and corporate finance section of AHSL as the Company was spun off from its holding company i.e. AHSL. This was done in different phases which continued up to the previous accounting year ended June 30, 2007. The Company had not assumed any obligation for providing provident fund benefits to the employees while absorbing the employees of AHSL. No provident fund was constituted by the Company and neither it was a part of the employees' service contracts with the Company;
- As a gesture of goodwill and for the benefit of the employees, the directors of the Company decided to introduce a formal provident fund scheme for its employees. For implementing this decision, the directors caused the Company to earmark a sum of Rs.2,015,513/- for constituting the provident fund which had to be reflected as liability. There was no other appropriate head to reflect this amount. However, no provident fund as such, was constituted;
- The mark-up of Rs.198,790/- was not on account of the use of monies of any provident fund by the Company, but was constituted by the Company voluntary on the sum so earmarked, so that the employees eventually get the benefit of provident fund. Since there was no other head to record this payment, the same has been reflected as mark-up under the head "financial charges" in the Company's financial statements;
- Neither any provident fund was constituted, nor has the Company used monies of any provident fund. On the contrary, the Company's board has substantiated the spirit of providing the retirement benefit facility to its employees by way of provident fund and earmarked this amount well in advance and further paid financial charges on this amount even this was not required;
- The Company is now in the process of constituting the provident fund by a trust deed, which shall in due course be submitted for recognition by the Commissioner of Income Tax. Once this is done, the sum of Rs.2,015,513/- earmarked for this purpose as well as the amount reflected as "Financial Charges" will be transferred to the fund which will be invested by the trustees in accordance with the provisions of the Ordinance and Income Tax Rules, 2002.



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5. In order to provide an opportunity of personal hearing, the case was fixed on October 9, 2007 on which date Mr. M. Javed Panni, Chief Executive, MJ Panni & Associates, appeared before me as Counsel on behalf of all the directors of the Company. He reiterated the Company's earlier stance as was given through written submissions in response to the show cause notice. He assured that the constitution of formal provident fund trust will be completed within one month. He however admitted that in case of non-existence of provident fund or trust the money should have been deposited in a separate bank account in compliance with the requirements of Section 227 of the Ordinance.

6. I have analyzed the facts of the case, provisions of Section 227 of the Ordinance, arguments put forth by the Company and observed as follows:

- (i) Under note 3.2 to the Accounts under review policy for "Staff Retirement Benefits" has been disclosed which states that the Company operates an unrecognized provident fund for all its eligible employees. Monthly contributions at the rate of 12.50% of basic salary are made respectively by the Company and the employees.
- (ii) Note 6 reflects an amount of Rs.2,015,513 is payable to staff provident fund which stood at Rs.661,802 in the year 2006;
- (iii) Under note 21.1 to the Accounts it has been mentioned that the Company had paid its contribution of Rs.720,547/- to the provident fund in the financial year ending on June 30, 2007 whereas previously in year 2006 an amount of Rs.661,802/- was contributed by the Company to the provident fund;
- (iv) From the above details, obtained from the annual accounts of the Company it is evident that the opening balance at the beginning of the year and contributions made during the year by the Company comes to Rs.1,382,349 (Rs.661,802 + Rs.720,547). However total amount payable towards provided fund is disclosed as Rs.2,015,513 leaving to an impression that total amount payable to provident fund includes an amount of Rs.633,164 pertaining to staff contributions towards provident fund;
- (v) During the year under review the Company paid mark-up of Rs.198,790/- on provident fund.

7. Before proceeding further, it is necessary to advert to the following provisions of law, reproduced below:

- Provisions of Sub-section (1) of Section 227 of the Ordinance provides that 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



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in the National Savings Schemes, and no portion thereof shall be utilized by the Company except for the breach of contract of service on the part of the employees as provided in the contract and after notice to the employee concerned;

- Provisions of Sub-section (2) of Section 227 of the Ordinance provides that 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 Saving 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 schedule 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
  - (c) in bonds, redeemable capital debt securities or instruments issued by the Pakistan Water & Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Commission;
- Provisions of Sub-section (3) of Section 227 of the Ordinance provides that 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.

8. The aforesaid provisions of law are clear and explicit. The objective of these provisions is to secure the amount of provident fund of the employees by the company and this fund is for the use and benefits of the employees only. The law requires that all moneys contributed by the employees as well as the company's own contribution including the profit / interest thereon must be deposited in a separate bank account or be invested in accordance with the provisions of Sub-sections (1) and (2) of Section 227 of the Ordinance. Where a trust has been constituted for this specific purpose, the company has an obligation to pay the employees provident contributions including its own contributions to the trustees within fifteen days from the date of collection. The amount collected from the employees as contributions to the fund are in the nature of trust moneys in the hand of the company and must be paid to the trustees



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within stipulated time whereas the trustees are responsible to invest the moneys of the fund in accordance with the provisions of law.

9. Considering the circumstances of the case, I am of the view that the directors have failed to clarify their position with respect to the provident fund payable by the Company. The submissions made by them materially differ when compared with the disclosures given in the Accounts. Policy for the Staff Retirement Benefits” disclosed in the Accounts states that the Company operates an unrecognized provident fund for all its eligible employees and monthly contributions at the rate of 12.50% of basic salary are made respectively by the Company and the employees whereas in the response to the show cause notice it has been stated that no provident fund was constituted by the Company and neither it was a part of the employees’ service contracts with the Company. Further, at note 21 contribution made by the Company towards provident funds during the two years has clearly been disclosed whereas in the reply to the show cause notice it has been stated that an amount of Rs.2,015,513 has been earmarked by the Company on the recommendations of the directors which has to be reflected liability. This amount of provident fund has not been invested or deposited in the separate bank account contrary to the requirements of the provisions of Section 227 of the Ordinance therefore directors failed to comply with the aforesaid provisions of the Ordinance. Accordingly, an action is necessary under Section 229 of the Ordinance which provides that whoever contravenes or authorizes the contraventions 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. However, taking into consideration the Company’s commitment for constituting the fund through a trust deed and assurance by the Counsel in the hearing that all the moneys of the fund including mark-up accrued on the outstanding amounts of the fund shall be transferred to the fund in accordance with the provisions of the Ordinance, I, instead of imposing penalty on the directors of the Company hereby warn them to observe the compliance of law in letter and spirit and if any default of the provisions of the Ordinance is observed in future a stern action will be taken against them.

10. Further, in terms of the provisions of Section 473 of the Ordinance, I hereby direct the Chief Executive of the Company:

- To complete all the formalities to constitute a formal provident fund trust within thirty days of the date of this order and transfer all the outstanding moneys of the fund including mark-up accrued on it in accordance with the provisions of Section 227 of the Ordinance;



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- To submit an auditors' certificate confirming that all outstanding moneys of the fund including the mark-up accrued on it, have been transferred to the trust in accordance with the provisions of Section 227 of the Ordinance;

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**Abid Hussain**  
Director-Enforcement

*Announced*  
*October 12, 2007*  
*Islamabad*