



Securities and Exchange Commission of Pakistan
Enforcement Department

[Islamabad]

Before Imran Bashir, Director Enforcement

In the Matter of
M/S Mirza Sugar Mills Limited

Number and date of notice	EMD/233/ 354/2002 dated April 14, 2004
Date of final hearing	June 09, 2004
Present	Mr. Dawoodi Morkas
Date of Order	August 11, 2004

The case before me pertains to the proceedings initiated against the directors of M/S Mirza Sugar Mills Limited (hereinafter referred to as the “Company”) under Section 227 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 the examination of the Annual Accounts of the Company for the years ended September 30, 2002 and 2003, that amounts of Rs.4,630,827 and Rs.5,285,886 respectively were payable by the Company to the Employees’ Provident Fund (hereinafter referred to as the “Fund”).

3. In the above circumstances, the Enforcement Department apprehended violations of the statutory provisions of Section 227 of the Ordinance and consequently, a show cause notice dated April 14, 2004 was issued to the following directors, who *prima facie* had contravened the provisions of Section 227 of the Ordinance:

- i. Dr. Fehmida Mirza, Chairman & Chief Executive,
- ii. Mir Ghulamullah Talpur, Director
- iii. Mr. Arshad Abid Abbasi, Director
- iv. Ms. Fariha Abid Qazi, Director
- v. Mir Furqan Ali Talpur, Director
- vi. Mirza Saulat Raza, Director
- vii. Mr. Ali Jawad Jabir Ansari, Director

4. The reply to the show cause notice was received from the Chief Internal Auditor of the Company vide his letter dated April 23, 2004 on behalf of all the



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directors admitting the default and submitted that the mill could not perform well due to the natural factors and the government actions, therefore, the Company could not pay dues to the Fund. It was stated that the outstanding amount represents the amount of markup, which the Company voluntarily accrued in its books of accounts due to delay in payment to the Fund. He averred that the outstanding amount, which was Rs. 5.3 million on September 30, 2003 has now been reduced to Rs. 3.1 million as on May 31, 2004 and it was also undertaken that the balance amount would also be paid to the Fund by December 31, 2004.

5. In order to provide an opportunity of personal hearing to the directors, the case was fixed for hearing on May 12, 2004, which was adjourned and re-fixed on June 09, 2004. On the date of hearing, Mr. Dawoodi Morkas appeared on behalf of the directors of the Company and reiterated the submission made in written reply. He also placed on record the latest position and reconciliation of the amounts due and paid to the Fund/Employees. While admitting the default, it was submitted that the default occurred as the Company was in financial crisis and requested for a lenient view of the default.

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.

(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



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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 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 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 company with respect to any Provident Fund has created a Trust, 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 cannot withhold such moneys on the pretext of liquidity constraints.

8. Revert to the submissions made on behalf of the directors, I would first consider the arguments advanced by Mr. Dawoodi Morkas. His contention 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 contributions to the Fund within fifteen days from the date of its collection. It was attempted to justify the above default by claiming that the Company has charged interest on the contribution due to the Fund. I would like to point out in this regard, that the Company has failed to disclose this fact or the rate of interest charged therein in the annual audited accounts. The submission that the interest has been accrued voluntarily by the Company is not acceptable for failure to make payment to the Fund. As Mr. Dawoodi Morkas has admitted that there has been delayed in payment of amounts due to the Fund. Such amounts are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. The directors, therefore, have violated the provisions of Section 227 of the Ordinance.

9. Although, the Company has reduced the liability towards the Provident Fund and has also undertaken to rectify the default by December 31, 2004, however, they have failed to abide by the provisions of law and failed to make timely payments.



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10. For the forgoing, I am of the view that the directors have breached the mandatory requirements of Section 227 of the Ordinance as they have failed to ensure timely payments to the Provident Fund. The outstanding amounts 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 employees on account of such contravention. I, therefore, proceed to Order as follows:

- i) As the Company has reduced the liability of the Provident Fund and has also assured that the balance amount shall be paid by December 31, 2004. Therefore, taking a lenient view of the default, a token fine of Rs.5,000 (Rupees five thousand only) is imposed only on the Chief Executive namely Dr. Fahmida Mirza of the Company under Section 229 of the Ordinance.
- ii) As it has been undertaken to pay the balance amount by December 31, 2004, the office may wait till the expiry of the said deadline and in default 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.
- iii) Submit a report to the Commission within fifteen days of the close of the period ending on December 31, 2004 regarding amount due by the Company has been paid. A certificate from statutory auditors may also be submitted in this regard.

11. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challan to the Commission. The directors shall remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance.

Imran Bashir
Director (Enforcement)

Announced:
August 11, 2004
ISLAMABAD