



Corporate Supervision Department  
Company Law Division

Before Amina Aziz – Director

*In the matter of*

**Bawany Sugar Mills Limited**

Number and date of notice: CSD/ARN/217/2015-1077-83 dated October 21, 2015  
Date of hearing: January 25, 2016  
Present: Mr. Ghulam Shah Abbasi, Authorized Representative

**ORDER**

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

This order shall dispose of the proceedings initiated against the following directors including the chief executive (the "respondents") of **Bawany Sugar Mills Limited** (the "Company):

1. Khawaja Ali Kamal Majid, CEO
2. Aurangzeb Khan
3. Khawaja Aleem Majid
4. Khawaja Anver Majid
5. Nihal Anwar
6. Rashid Ahmed Khan
7. Syed Zeeshan Ali Warsi

These proceedings were initiated through show cause notice ("SCN") dated October 21, 2015 under the provisions of section 227 read with sections 229 and 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that examination of annual audited financial statements ("Accounts") of the Company for the year ended September 30, 2014 filed with the registrar of companies pursuant to provisions of section 242 of the Ordinance revealed that an amount of R. 17,048,441/- was disclosed under 'trade and other payables' (note 11 to the Accounts) representing the Company's and employees' contributions to Employees' Provident Fund ("EPF"). It was further disclosed under note 11.4 to the Accounts that the Company established the EPF in the year 2012 and the balance of the EPF had not been transferred till the year ended June 30, 2014. It appeared that the Company, prima facie, contravened the provisions of section 227 of the Ordinance, as it failed to deposit or invest the amounts of the EPF within fifteen days, as per requirements of section 227 of the Ordinance. Consequently, the SCN was issued to the respondents under section 229 of the Ordinance and they were called upon to show cause in writing within fourteen days, as to why penalties may not be imposed on them for the aforesaid contravention.



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3. The respondents failed to submit any reply to the SCN, therefore, a hearing in the matter was fixed on December 14, 2015 through hearing notice dated December 2, 2015. Since no one appeared on the due date, another hearing was fixed on December 29, 2015 through hearing notice dated December 16, 2015. Subsequently, the respondents through letter dated December 12, 2015 (received on December 18, 2015) through Mr. Nisar Ahmed, FCA, requested for extension of two weeks in time for submission of reply to the SCN. Another hearing in the matter was fixed on January 18, 2016 and Mr. Ghulam Shah Abbasi, appeared on behalf of the respondents, however, he could not present duly signed power of attorney from the respondents. The hearing was finally held on January 25, 2016 and Mr. Abbasi appeared before the undersigned and produced the power of attorney whereof he was appointed as the authorized representative by the respondents. Mr. Abbasi submitted that the Company has transferred all the amounts of the EPF to comply with the law. He was advised to provide evidence of transfer of the EPF amounts to comply with the applicable legal provisions. He gave commitment to submit the auditors' certificate confirming transfer of EPF amounts as per the legal requirements.

4. Subsequently, through letter dated February 1, 2016, Mr. Abbasi submitted the auditor's certificate dated January 26, 2016 in terms whereof the auditor certified payments made by the Company to the EPF, as under:

(Amounts in Rupees)	
Old outstanding Balances as per EPF records as at June 30, 2015	9,221,912
Less: Paid to BSML EPF Trustees as at January 20, 2016	9,000,000
Unpaid Balance	221,912

The auditor also confirmed regarding managements' intention to make payments of unpaid amounts in due course of time. Subsequently the information provided by the representative through letter dated February 16, 2016 reflected reconciliation of outstanding balances of EPF as under:

(Amounts in Rupees)	
Balance of EPF as on 30 September 2014	17,048,441
Temporary loan advanced (net)	4,500,000
Contribution for the year	4,620,801
Paid during the year	(16,947,330)
Balance as on 30/09/15	9,221,912
Paid & transferred into EPF fund account (trustees) as on 20-01-2016	(9,000,000)
Balance payable	221,912



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However, there has been no information or evidence provided regarding payment of mark up on the outstanding amount of EPF that has been used by the Company.

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

Sub-section (2) of section 227 of the Ordinance provides as under:

*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*

(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.*

Sub-section (3) of section 227 of the Ordinance provides as under:

*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 contributions 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.*

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).



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6. Having gone through the facts of the case, submission of the respondents and applicable legal provisions, I have concluded that the provisions of section 227 of the Ordinance have been contravened as the amounts of EPF have not been paid / deposited by the Company within fifteen days in terms of the law. However, taking cognizance of the fact that the Company has paid the major outstanding amounts of EPF and relatively a small amount of Rs221,912 has remained unpaid, instead of imposing fines, I hereby conclude the proceedings against the respondents with a stern warning to them to be careful in future and ensure meticulous compliance with applicable legal provisions.

Before parting with the order, I hereby direct the Company in terms of section 473 of the Ordinance to:

- Transfer / pay the entire outstanding amount of EPF as per legal requirements and also ensure payment of all amounts of EPF in future in a manner and within the time specified by the law; and
- Pay mark up to the EPF on the amounts utilized to be calculated based on the prevailing bank rate applicable during the relevant period and auditor's certificate to this effect may be submitted to the Commission.

Armina Aziz  
Director (CSD)

**Announced:**  
February 18, 2016  
Islamabad