



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

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Before Ali Azeem Ikram, Director (Enforcement)

In the matter of

Ex-Chief Executive of Dandot Cement Company Limited

Under Section 227 & Section 495 read with Section 229 & Section 476 of Companies Ordinance, 1984

Number and date of notice	No. EMD/233/373/2002-3846 dated April 30, 2008
Date of hearing	September 04, 2008
Present	Mr. Iqbal A Rizvi, FCA Authorized Representative

ORDER

This order shall dispose of the proceedings initiated through show cause notice No. EMD/233/373/2002-3846 dated April 30, 2008 against Mr. A. Rafique Khan, Ex-Chief Executive of Dandot Cement Company Limited (DCCL) under the provisions of Section 227 and Section 495 read with Section 229 and Section 476 of the Companies Ordinance, 1984 (Ordinance) for failure to transfer regular provident fund contributions to provident fund trust and non-compliance with the order of the Executive Director under Section 227 of the Ordinance dated May 14, 2003(the Order).

2. In terms of the provisions of Section 227 of the Ordinance the DCCL was required to pay the provident fund contributions to provident fund trust within 15 days of collection. Furthermore, in terms of our earlier Order the DCCL was also required to repay previous liabilities of provident fund amounting to Rs.54.887 million outstanding as on June 30, 2002 in installments of Rs.1.00 million per month by June 30, 2008. Examination of the annual audited accounts of the DCCL for the year ended June 30, 2007 (accounts) revealed that the Auditors of DCCL had qualified their report on the accounts for DCCL's failure to transfer current provident fund contributions and past dues to provident fund trust within the stipulated time. Further scrutiny of the records revealed that during the year ended June 30, 2007 that DCCL had only paid six months contributions (July 2006-Dec 2006) to the provident fund. Furthermore, during the aforesaid period only seven installments amounting to Rs.7 million, on account of previous liabilities of provident fund, were paid instead of twelve installments as required by Commission's Order. Records also revealed that payments of Rs. 14.438 million to the provident fund, on account of outstanding balance of provident fund, were shown in the accounts for the year ended June 30, 2006, however, as per ledger accounts an amount of Rs.7 million was taken out of the provident fund



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subsequent to the year end. It was also noted that during nine months period ended on 30-3-2005 payment of only Rs.4.9 million was made instead of required payments of Rs.9 million.

3. In view of the aforesaid, a show cause notice under Section 227 and 495 read with Section 229 and Section 476 of the Ordinance (SCN) was issued to Mr. A. Rafique Khan, the Ex-Chief Executive of DCCL who has been the Chief Executive of the DCCL during the period of the default.

4. In response to the SCN Mr. A. Rafique Khan made following submissions:

a). The amount payable to Dandot Cement Company Limited Provident Fund as disclosed in audited accounts is given below:

	2002	2003	2004	2005	2006
Dues of fund prior to takeover	31.633	31.633	31.633	31.633	31.633
Dues to Fund after takeover	21.368	29.561	18.028	10.183	-
Interest	1.887	4.166	6.480	8.462	4.206
Total	54.888	65.360	56.141	50.278	35.839

b). As per Commission's order dated May 14, 2003 outstanding amount to the fund was payable by June 30, 2008 in monthly installment of Rs.1 million. The liability to the fund was Rs.29.561 as at June 30, 2003 i.e. after takeover of Dandot Cement by us which reduced to nil during the year 2005-2006. This shows that we had made payments to the Fund as per order of the ED of SECP dated May 14, 2003.

c). At the special request of CBA, additional funds amounting to Rs.94.904 million were paid to employees during the period of four years (2003-2006) on account of salaries and other benefits relating to closure period in the following manner:

Financial Year	Paid against old liabilities(Rs.)
2002-2003	14.644
2003-2004	8.316
2004-2005	10.892
2005-2006	29.091
2006-2007	31.961
TOTAL	94.904

d). These payments were made to keep labor management relations strong and operational and to accommodate maximum number of employees/ labor. Although payments towards the fund were diverted to other liabilities but the end beneficiaries were the same and satisfied.

e). So far as the liability to the fund accruing before takeover by us is concerned, the new management had a memorandum of settlement with CBA at the time of takeover. According to clause 6 of this memorandum the balance of all previous dues payable to employees before takeover including dues to the Funds were deferred by the union/workers for a period of six years w.e.f December 21, 2002.

f). Similarly, the amount of Rs.14.438 million (in 2006) was paid to the fund but at the request of CBA, Rs.7 million were utilized to pay the salaries and benefits of the employees.



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g). At the time of changeover in June 30, 2007 additional funds of Rs.7.55 million and Rs.0.60 million were also paid to workers and officers.

5. The written representation of Mr. A Rafique Khan was examined in the light of applicable provisions of the Ordinance and relevant records. It was noted that the statement that payments to the fund were made as per Order of the Executive Director was not tenable as the said Order required payment of Rs.54.887 million (inclusive of liabilities of provident fund before takeover) outstanding as on June 30, 2002 in installments of Rs.1 million by June 30, 2008. However, Mr. A. Rafique Khan in his reply has referred to provident fund liability of Rs.29.561 million (outstanding as on June 30, 2003) accrued after takeover of DCCL by the ex-management and has claimed that by the payment of the said liability in 2005-2006 the Order of the Executive Director has been complied with which is contrary to the aforementioned facts. As regards payment of funds amounting to Rs.94.904 million to employees of DCCL on account of salaries/other benefits relating to closure period it was observed that the same was a separate issue. The same was also agreed by Mr. A. Rafique Khan in his reply that the said payments were made for strong/operational labor management relations. He also admitted that payments towards the fund were diverted to other liabilities however he stated that the end beneficiaries were the same and satisfied. In view of the aforesaid, the default was considered established. The matter was therefore fixed for personal hearing.

6. Hearing in the matter was held on September 4, 2008 which was attended by Mr. Iqbal A. Rizvi, FCA, the authorized representative of Mr. A. Rafique Khan. He reiterated the arguments put forward by Mr. A. Rafique Khan in his written reply. He stated that ex-management always strived to compensate its employees despite troubles created by labor related issues. He also presented evidence of payment of additional funds of Rs.7.55 million and Rs.0.60 million to workers and officers as referred in written reply. In principal he agreed with the observation of the Commission however he asserted that the same was due to peculiar circumstances being faced by DCCL, due to its labor and financial problems.

7. Written representation made in response to the SCN has been discussed in detail in Para 5 above and need no further deliberation. At the time of hearing, the authorized representative though agreed with the default however stressed that the same was merely a product of state of affairs of DCCL.

8. Having considered the arguments presented before me, in writing as well as at the time of hearing, I am of the considered view that mandatory provisions of Section 227 and Section 495 of the Ordinance have been breached which attracts the penal provisions of Section 229 and Section 495 of the Ordinance. I appreciate that the ex-management has paid additional funds of Rs.94.904 million on account of salaries and other benefits relating to closure period. However, at the same time I also believe



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that the management was responsible for compliance with the mandatory provisions of the Ordinance as well. An action therefore is necessary under the aforesaid provisions of the Ordinance. Considering the admitted default and circumstances of the case I am inclined to take a lenient view and instead of imposing the maximum penalty impose a fine of Rs.5,000/- under Section 229 and Rs. 15,000/- under Section 495 of the Ordinance on Mr. A. Rafique Khan.

9. Mr. A. Rafique Khan is hereby directed to deposit the aforesaid fine in bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or pay through a demand draft in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of the fines as an arrear of land revenue will be initiated.

Ali Azeem Ikram
Director (Enforcement)

Announced
September 09, 2008
Islamabad.