



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan
Director/Head of Department
Adjudication Department-I

In the matter of

The Searle Company Limited

Show Cause Notice No. & Date: No. CSD/ARN/372/2016/291 dated May 15, 2024
Date of hearing June 12, 2024
Hearing attended by: Syed Asim Raza Zaidi, Financial Controller

ORDER

Under Section 218 & 219 of the Companies Act, 2017 read with Section 479 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/372/2016/291 dated May 15, 2024 (**the SCN**) issued under Section 218 of the Companies Act, 2017 (**the Act**) and Sections 219 and 479 thereof to The Searle Company Limited (**the Company**) through the Chief Executive, hereinafter referred to as the Respondent.

2. The brief facts of the case are that on review of the annual audited financial statements for the year ended June 30, 2023 (**the Accounts**) it was transpired that the Company maintained a provident fund as per note 24 to the Accounts. Moreover, note 2.3.2 to the Accounts, *inter alia*, states that: "*The Company operates a recognised provident fund scheme for all employees.*"

3. The Securities and Exchange Commission of Pakistan (**the Commission**) through letters dated April 18, 2024 and April 30, 2024 requested the Company to provide monthly payment schedule for the said provident fund for the year ended June 30, 2023 along with respective dates on which amounts were transferred to the fund. In reply through letters dated April 26, 2024 and May 3, 2024, the Company, *inter alia*, submitted that the monthly payment schedule in relation to the provident fund contributions and the relevant payment dates and delays are given as hereunder:



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S. No.	Month	Total cont. (In millions)	Employee PF Contribution deduction Date	Date of deposits of contribution in bank	Difference (Days)	Delay in Days (Deposited after 15 days of the deduction)
1	July 2022	13.440	1-Aug-22	25-Aug-22	24	9
2	Aug 2022	15.625	2-Sep-22	21-Sep-22	19	4
3	Sep 2022	15.501	29-Sep-22	21-Oct-22	22	7
4	Oct 2022	15.014	31-Oct-22	23-Nov-22	23	8
5	Nov 2022	15.773	30-Nov-22	29-Nov-22	29	14
6	Dec 2022	14.497	30-Dec-22	1-Feb-23	33	18
7	Jan 2023	14.631	31-Jan-23	27-Feb-23	27	12
8	Feb 2023	14.858	1-Mar-23	31-Mar-23	30	15
9	Mar 2023	15.038	31-Mar-23	18-May-23	48	33
			31-Mar-23	29-May-23	59	44
			31-Mar-23	13-Jun-23	74	59
10	April 2023	15.052	3-May-23	23-Jun-23	51	36
			3-May-23	26-Jun-23	54	39
11	May 2023	15.057	5-Jun-23	27-Jun-23	22	7
			4-Jul-23	7-Aug-23	34	19
12	June 2023	14.928	4-Jul-23	11-Sep-23	69	54
			4-Jul-23	15-Sep-23	73	58
			4-Jul-23	2-Oct-23	90	75

4. The aforesaid delays show that the Company failed to deposit/pay within the stipulated time of fifteen days, the provident fund contributions, *prima facie*, contrary to the provisions of Section 218 of the Act for which penalty is provided in terms of Section 219 of the Act. Hence, the proceedings were initiated against the Respondent through the SCN and the Respondent was called upon to show cause in writing, within fourteen (14) days of the date of the SCN, as to why penalty may not be imposed in term of the requirements of the Act for the aforesaid violations.

5. In this regard, the Company through its reply dated May 27, 2024, *inter alia*, submitted that:

- We would like to apologize for default in complying with the requirements of Section 218 of the Act as the delay in deposit of provident fund contributions to the designated fund/ bank account was due to adverse macroeconomic conditions in the year 2022-23, like currency devaluation and rising policy rates, which negatively impacted the cash flows. This led to unintended delays in meeting required timelines.
- We accept full responsibility for the delay and assure we are taking necessary steps to prevent such delays/ non-compliances in future.

6. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 12, 2024, which was attended by Syed Asim Raza Zaidi, Financial Controller, on behalf of the Company. He reiterated stance as was given through written reply dated May 27, 2024.

7. Subsequent to the hearing, through letter dated June 13, 2024, the Authorized Representative, *inter alia*, submitted that:



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- In recent times, Pakistan's pharmaceutical and healthcare industry faced numerous challenges, notably the significant devaluation of the Pakistani rupee and unparalleled inflationary pressures. The fiscal year 2022-2023 in Pakistan presented formidable hurdles stemming from ongoing economic and political instability. The continued depreciation of the Pakistani rupee against the US Dollar led to an unprecedented surge in inflation. Moreover, this situation compounded due to soaring fuel prices and strict price control by Drug Regulatory Authority of Pakistan.
 - The management believes there won't be any further delays in depositing of employee's provident fund in the coming periods.
8. The following questions are relevant to be addressed in the instant proceedings:
- Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?
 - Whether the Company made delays in payment of contributions amounts into a separate designated bank account?
 - Whether the defaults of the provisions of Section 218 of the Act are admitted?
9. I have reviewed the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:

(i) **Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?**

At the outset, I am of the view that the requirements of Section 218 of the Act mandatorily require that the company is bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, within fifteen days into the separate designated bank account maintained for the purpose. In the instant matter, the Company, however, did not pay the amounts of contributions of the provident fund within the stipulated time of fifteen days and no evidence in this regard was furnished. The reasons cited by the Respondent that the delays were attributable to economic situation and financial distress faced by the Company; are not tenable.

(ii) **Whether the Company made delays in payment of contributions amounts into a separate designated bank account?**

Yes. the Company made delays during the financial year 2023 in payment of the contributions of the provident fund amounts into a separate designated bank account. I have noticed that in the instant matter, the delays range upto 75 days, as stated in para 3 above, which is violation of Section 218 of the Act and the default persisted in financial year 2023. It was obligatory on the Company to pay the amounts of the contributions within the stipulated time of fifteen days, therefore, the Company cannot extend such payments beyond the prescribed time period.

(iii) **Whether the defaults of the provisions of Section 218 of the Act are admitted:**

Yes. The Respondent has admitted the cited defaults in the SCN. However, assured that in future compliance shall be ensured with the provisions of the Act.



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10. Keeping in view the aforesaid I, therefore, in exercise of powers conferred on me in terms of Section 219 of the Act, hereby, impose a penalty of **Rs. 15,000/- (Rupees Fifteen Thousand only) on the Respondent i.e. The Searle Company Limited**. The Respondent is advised to ensure the compliance of the legal provisions of the Act in letter and spirit.

11. The aforesaid Respondent is, hereby, directed to deposit the amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

12. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

Shahzad Afzal Khan
Head of Department
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Announced: Dated: August 2, 2024
Islamabad