



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Shahzad Textile Mills Limited

Number and date of show cause notice: No. CSD/ARN/52/2024/266 dated April 30, 2024

Date of hearing: June 04, 2024

Present: Mr. Rashid Sadiq, CEO/Managing partner-RS Corporate Advisory; and Mr. M. Azeem Rashid, Advocate High Court; as the Authorized Representatives

ORDER

Under Section 218 of Companies Act, 2017 read with Sections 219 and 479 thereof

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through Show Cause Notice No. CSD/ARN/52/2024/266 ("SCN") dated April 30, 2024 issued under section 218 of the Companies Act, 2017 (the "Act") read with sections 219 and 479 thereof against Shahzad Textile Mills Limited (the "Company").

2. Brief facts of the case are that:

- i. Examination of financial statements for the year ended June 30, 2023 (the Account), revealed that under Note 10 to the Accounts, Rs. 16.725 million is payable to the Provident Fund (PF). In terms of Note 3.2.2 to the Accounts, the Company has defined contributory PF for all eligible employees since April 1, 2023, wherein equal monthly contributions are made both by the Company and the employees at the rate of 5.5% of gross salary.
- ii. The Commission vide letter dated January 22, 2024, sought clarification relating to compliance with section 227 of the Act. The Company vide letter dated February 13, 2024 replied that it switched its retirement benefit from Gratuity to Contributory Provident Fund in April 2023. The change had no material impact effect on the Accounts, therefore, considered an immaterial affair requiring disclosure in Directors' Report.
- iii. The Commission vide email dated April 17, 2024, advised the Company to provide bank statements reflecting that the aforesaid amount was kept in special account opened by the Company for the purpose and the current status of compliance. The Company vide email dated April 18, 2024, *inter-alia*, admitted that the amount of PF



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contribution is not kept in a separate bank account and informed that it is in the process of registration of PF and seeking various approvals and NOC's from relevant authorities and separate bank account will be opened once the registration process is completed.

- iv. The response of the Company was not found cogent as section 218 of the Act does not discriminate between recognized or unrecognized PF and requires that where a provident fund, contributory pension fund or any other contributory retirement 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 by both, 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 separately be deposited or invested in accordance with section 218 of the Act or regulations made thereunder.
- v. The aforesaid transpires that the Company, *prima facie*, has contravened the provisions of section 218 of the Act by failing to deposit/ invest PF contributions as per requirement of aforesaid provision of the Act.

3. In order to take cognizance of the aforesaid contraventions, SCN was issued to the Company requiring it to show cause in writing within fourteen (14) days, as to why penalty may not be imposed on it for the aforesaid non-compliances. In response to the SCN, Mr. Rashid Sadiq, CEO/Managing Partner - RS Corporate Advisory vide letter dated June 03, 2024 *inter alia* submitted as under:

"The SCN alleges in its Para 5 that the Company prima facie has contravened the provisions of Section 218 of the Act by failing to deposit/ invest provident fund contributions as per requirements of the provisions of the Act. The SCN, however, does not mention which of the exact provision (sub-section) of Section 218 of the Act alleged to have been violated by the Company as each sub-section of Section 218 of the Act envisages a distinctly separate duty from the others sub-sections.

The SCN calls upon the Company, Shahzad Textile Mills Limited to show cause in writing as to why penalty may not be imposed on the Company for contravening the aforesaid provisions of the Act.

Accordingly, the Company makes the following arguments in the matter at hand.

Sub-Section (1) of Section 218 of the Act:

The Company has constituted a contributory provident fund for its employees from 01 April, 2023 in place of gratuity scheme as disclosed in note 3.2.2 of the audited financial statements of the Company for the year ended 30 June, 2023.

It is submitted that the applicable provision of Section 218 of the Act in the above context is Sub-Section (2) and Sub-section (1) of Section 218 of the Act is not applicable in the matter at hand as will be abundantly clear from the succeeding submissions. Sub-section (1) of Section 218 the Act is reproduced hereunder, for ease of reference:

"218. Employees' provident funds, contributory retirement funds and securities» (1)



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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 b11 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 in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

It is amply clear from a plane reading, that the above reproduced provision of the Act envisions deposit of monies by employees of the Company pursuant to contractual employment terms by specifically providing for 'moneys or securities deposited with a company by its employees in pursuance of their contracts of service'.

You will appreciate that it is the underlying contract of employment which will determine whether the deposit made by an employee is by way of security or of some other nature, however, the said deposit does not classify as 'contribution' for the purposes of Section 218 (2) of the Act, which is a special provision for provident funds. This fact is bolstered by the language of the above provision which provides that no portion of the deposit so made 'shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

Clearly the intent of the law through the subject provisions is to make a distinction between treatment of amounts deposited by employees as for breach of contractual provisions in terms of Sub-Section (1) of Section 218 of the Act and contributions made for purposes of the provident fund as stipulated in Sub-section (2) and (3) of Section 218 of the Act.

You will also appreciate that Section 219 of the Act makes a distinction between Sub-section (1) of Sections 218 and Sub-Section (2) Section 218 of the Act by providing for both 'the depositor of security or the employee'. Section 219 of the Act is reproduced hereunder for convenience:

219. Penalty for contravention of section 217 or 218. - Any contravention or default in complying with requirements of sections 217 or 218 shall be an offence liable to a penalty of level 1 on the standard scale and shall also be liable to pay the loss suffered by the depositor of security or the employee, on account of such contravention." (emphasis provided)

Accordingly, you will appreciate that the requirement of Sub-Section (1) of Section 218 of the Act relates to the deposit of monies received by the Company, pursuant to terms of relevant contracts of employment, in a special account maintained for the purpose.

It is noteworthy that the provision of Sub-Section (1) of Section 218 of the Act does not allow for investment of deposits received as per employment contracts in all avenues stipulated in Sub-Section (2) Section 218 of the Act which is special provision for investment for the purposes of generating income for the employees who are members of the provident fund.



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The word '**contributions**' as provided under Sub-section (2) of Section 218 of the Act cannot be imported into Section 218 (1) of the Act as its implication would be that the contributions of provident fund can only be invested in the stipulated avenues provided in the said provision. Obviously, this is not the intent of the legislation as the provident fund contributions are to be invested in accordance with the provisions of Sub-Section (2) of Section 218 of the Act and not in accordance with the requirements of Sub-Section (1) of Section 218 of the Act.

In view of the above discussion, there is no obligation on the Company to deposit the contributions in terms of Sub-Section (1) of Section of the Act and hence no violation of Sub-Section (1) of Section 218 of the Act could be attributed to the Company.

Sub-Section (2) of Section 218 of the Act:

Sub-section (2) of Section 218 of the Act is reproduced hereunder for ease of reference:

"218. Employees' provident funds, contributory retirement funds and securities. -

(2) Where a provident fund, contributory pension fund or any other contributory retirement 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 by both, 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-

(i) Government securities; or

(ii) bonds, redeemable capital, debt securities or instruments issued by a statutory body, units of collective investment schemes registered as notified entities with the Commission, and in listed securities including shares of companies, bonds, redeemable capital, debt securities and equity securities, subject to the conditions as may be specified.

The above provision requires that all moneys contributed by employees and employers as well as profit, interest or otherwise received or accruing from the date of contribution, received or accrued, as the case may be, shall be deposited in one or more of the avenues provided under Clause (a) and (b) of Sub-section (2) of Section 218 of the Act.

We note that there is no time limit imposed through Sub-section (2) of Section 218 of the Act which must be complied with for investment of contributions for purposes of the provident fund. Similarly, there is no time-bound restrictions on the trustees to deposit or invest of provident fund moneys once the contributions have been paid to them in terms of Sub-section (3) of Section 218 of the Act.



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Accordingly, it is submitted that there has been no violation of Sub-Section (2) of Section 218 of the Act by the Company for the simple reason that no time limit has been stipulated under the said provision.

The Company would also like to place on record the past decisions of the Commission and its Appellate Benches in the context of Article 25 of the Constitution and Section 20(6)(c) of the SECP Act 1997.

In light of the foregoing, we respectfully submit that there is no violation of Subsection (2) of Section 218 of the Act as alleged in the SCN. Sub-Section (1) of Section 218 of the Act is not applicable in the matter at hand as discussed hereinabove.

We would also like to inform you that the Company has deposited the contributions of employer and employees since setting up of provident fund on 01 April, 2024 in a separate bank account with MCB Bank Limited. The Company has also paid profit/mark up on the contributions as per requirements of Sub-Section (2) of Section 218 of the Act.

The Company assures the SECP of its continued commitment to uphold the applicable law and regulations."

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 04, 2024 wherein Mr. Rashid Sadiq (CEO/Managing Partner) - RS Corporate Advisory and Mr. M. Azeem Rashid (Advocate High Court) appeared on behalf of the Company as its Authorized Representatives (**the Representatives**). The Representatives, *inter alia*, submitted that:

- (i) The earlier reply submitted vide letter dated June 03, 2024 is reiterated;
- (ii) There is no clarity as to which sub-section of section 218 is alleged;
- (iii) Contract of service in sub-section (1) talks about securities that are under contract of service;
- (iv) No timeline defined in sub-section (2) of Section 218;
- (v) Whole process requires time to complete;
- (vi) PF money has been deposited in separate bank account and interest accrued has also been deposited therein; and
- (vii) Evidences of deposit of funds in bank will be provided along with earlier judgments.

5. Subsequent to the hearing, the Representative vide letter dated June 13, 2024, submitted additional response as under: (*Relevant Extract*)

"As allowed, the orders of the Commission in the following cases are relied in the context of principles of equality as enshrined in Article 25 of the Constitution of Pakistan and consistency in application of decision making as provided under Section 20 (6) (c) of the Securities and Exchange Commission of Pakistan Act, 1997.

(a) *Karandaz Pakistan. The merits and facts of the case of Karandaz are similar to the case in hand. The allegation against Karandaz was that it did not deposit the*



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employers' and employees' contributions in a special account. Karandaz argued that it has subsequently opened a special account for provident fund and also has established a provident fund trust. The case was decided by the Commission on 10 November, 2016 and the relevant part of the operating paragraph 6 of the order is reproduced here below

"...the self-realization and corrective measure taken for avoidance of future errors are reassuring as the enforcement and regulatory function of the Commission is aimed at building a compliant corporate culture. Accordingly, the proceedings were concluded without any adverse order."

(b) **Samin Textiles Limited.** The merits and facts of the case of Samin are similar to the case in hand. The allegation against Samin was that it did not pay the employers' and employees' contributions amounting to Rs. 15.733 million to employee provident fund. Samin argued that it has subsequently transferred the amount payable to the provident fund **along with interest accrued thereon.** The case was decided by the Commission on 21 November, 2019 and the relevant part of the operating paragraph 10 of the order is reproduced here below

"... although the Company breached the provisions of Section 227 of the Ordinance, but later on, the Respondent took rectified measures and complied with the provisions of Section 227 of the Ordinance by transferring the due amount to the EPF [Employees Provident Fund]. Further, in order to compensate employee provident fund, Company created interest amounting to Rs. 1.723 million on the outstanding balance on the closing date. Therefore, from the facts stated above and after careful consideration I, hereby conclude the proceedings with a warning to the Respondents to ensure meticulous compliance of applicable laws in future.

(c) There are large number of other orders passed by the Commission under Section 218 of the Act [Section 227 of the repealed Companies Ordinance]. The following are some of the orders having identical facts and circumstances are placed on record of the Commission where no fine was imposed:

- i. Askari General Insurance Limited, 17 July, 2013.
- ii. Descon Engineering Limited, 27 January, 2016.
- iii. Attock Cement Pakistan Limited, 28 November, 2017.
- iv. Bawany Sugar, 18 February, 2016.
- v. Azgard Nine Limited, 09 May, 2016.
- vi. Byco Petroleum, 13 December, 2016.
- vii. Bannu Woolen Mills, 17 May, 2023.
- viii. Bestway Cement, 18 November, 2021
- ix. Burshane LPG Pakistan, 29 June, 2022.
- x. Byco Petroleum, 28 June, 2022.
- xi. Clover Pakistan, 12 October, 2022.
- xii. Colony Textile, 08 February, 2022.
- xiii. Dandot Cement, 07 December, 2021.
- xiv. Idrees Textile, 04 June, 2022.
- xv. National Foods, 09 May, 2022.
- xvi. Shams Textile, 21 April, 2022.





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- xvii. *Siddiqsons Tin Plate, 30 March, 2022.*
- xviii. *Sitara Chemicals, 15 June, 2022.*
- xix. *Shaheen Insurance, 20 December, 2013.*
- xx. *Arif Habib Limited, 12 October, 2007.*

While reiterating our arguments at the time of hearing and in written reply, it is submitted that the requirement of Sub-Section (1) of Section 218 of the Act relates to the deposit of monies received by the Company, pursuant to terms of relevant contracts of employment, in a special account maintained for the purpose.

Accordingly, there is no obligation on the Company to deposit the contributions in terms of Sub-Section (1) of Section of the Act and hence no violation of Sub-Section (1) of Section 218 of the Act could be attributed to the Company. For detailed submissions, please refer to our reply dated 03 June, 2024 which may be treated as an integral part of our submissions.

Sub-section (2) of Section 218 of the Act imposes no time limit which must be complied with for investment of contributions for purposes of the provident fund. Similarly, there is no time-bound restrictions on the trustees to deposit or invest of provident fund moneys once the contributions have been paid to them in terms of Sub-section (3) of Section 218 of the Act.

In light of the foregoing, we respectfully submit that there is no violation of Subsection (2) of Section 218 of the Act as alleged in the SCN. Sub-Section (1) of Section 218 of the Act is not applicable in the matter at hand as discussed hereinabove and in our earlier written submissions.

We would also like to inform you that the Company has deposited the contributions of employer and employees since setting up of provident fund on 01 April, 2024 in a separate bank account with MCB Bank Limited. A copy of the bank statement is attached hereto for your perusal.

The Company assures the SECP of its continued commitment to uphold the applicable law and regulations."

6. Relevant provisions of the Act are reproduced as under:

Section 218 of the Act:

"218. Employees' provident funds, contributory retirement funds and securities.—

(1) 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 in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

(2) Where a provident fund, contributory pension fund or any other contributory retirement fund has been constituted by a company for its employees or any class of its employees, all moneys



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contributed to such fund, whether by the company or by the employees or by both, 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 –

(i) Government securities; or

(ii) bonds, redeemable capital, debt securities or instruments issued by a statutory body, units of collective investment schemes registered as notified entities with the Commission, and in listed securities including shares of companies, bonds, redeemable capital, debt securities and equity securities, subject to the conditions as may be specified.

(3) Where a trust has been created by a company with respect to any provident fund or a contributory pension funds or any contributory retirement 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.

219. Penalty for contravention of section 217 or 218.— Any contravention or default in complying with requirements of sections 217 or 218 shall be an offence liable to a penalty of level 1 on the standard scale and shall also be liable to pay the loss suffered by the depositor of security or the employee, on account of such contravention.”

7. I have reviewed the facts of the case, I considered the written and verbal submission made by the Representatives in light of the applicable legal provisions and records placed before me, I am of the considered view:

(i) **Application of Section 218(1) of the Act**

Section 218 of the Act provides the mechanism as to how moneys/funds deposited or contributed by employees should be managed by the Company. It is highlighted that section 218(1) of the Act is not limited to just security deposits or specific contractual payments, rather covers all forms of funds deposited with the company by its employees, including PF contributions. Further, the outlined requirement for proper deposit and management of those funds is not negated through section 218(2) of the Act which provides specific avenues for the investment of PF contributions. Hence the arguments by the Representatives that section 218(1) of the Act pertains strictly to deposits made by employees under their contracts of service, distinct from contributions designated for provident funds, is not based on facts as section 218(1) of the Act, in order to ensure protection of employee funds and restricts their utilization by the company without proper authorization, mandates deposit of all moneys or securities deposited with the company by its employees, irrespective of their categorization, into a special account.



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(ii) **Distinction between sub-sections (1) and (2) of section 218 of the Act:**

The argument of the Respondent/Representatives that section 218(1) of the Act should only apply to deposits made in pursuance of contractual obligations and not to PF contributions is overly restrictive. Section 218(1) of the Act establishes a general requirement for how all types of employee-deposited moneys/funds deposits, including those related to provident funds all must be handled while section 218(2) specifically deals with the investment of PF contributions to generate income for employees. Section 218(2) prescribes an additional requirement but does not exempt the Company from the basic deposit of funds and other requirements outlined in section 218(1) of the Act. The distinction made in section 219 of the Act between 'depositors of security' and 'employees' further underscores the need for compliance with all relevant provisions of section 218 including section 218(1) of the Act which being a fundamental requirement, ensures the integrity of funds and aligns with the broader legislative intent to protect employee interests.

(iii) **Absence of a specific time limit in section 218(2) of the Act for investment of provident fund contributions**

Non-specification of an exact time frame under section 218(2) of the Act for depositing or investing contributions does not absolve the Respondent of its responsibility to ensure that employee funds are managed in a timely and proper manner. Such an interpretation by the Respondent negates the general principle behind the prescribed requirement i.e. to safeguard employee interests by ensuring that their contributions are promptly deposited and invested to achieve the intended benefits. The absence of a specific time limit does not imply that there is no obligation to act in a timely manner; rather, it underscores the need for the Company to adhere to best practices and industry standards. Moreover, the absence of an explicit time limit in section 218(2) of the Act cannot be interpreted as permission to delay the deposit or investment of PF contributions. Regulatory compliance generally entails acting within a reasonable time frame, and the failure to do so can constitute a breach of fiduciary duty. The principles of prudent management and the protection of employee interests necessitate that contributions be deposited and invested promptly to prevent any potential loss of value or benefits to the employees.

(iv) **Fiduciary Duty and Compliance:**

The fiduciary duty of the Company toward its employees necessitates the timely handling and investment of PF contributions. The delay or failure to deposit or invest such contributions can negatively impact the employees' benefits and is contrary to the principles of trust and diligence required by the Act. The Company must ensure that all contributions are deposited and invested in a manner that aligns with the best interests of the employees and complies with both the letter and spirit of the regulatory framework.

(v) **Significance of Depositing Employee Contributions:**

The mandatory requirements relating to deposit of employees' funds into a special account as prescribed by the legislator is intended to safeguard employee funds, ensuring financial integrity, maintaining legal compliance, enhance transparency and protection of such funds from misuse. Maintaining PF in a separate bank account



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fosters trust and confidence among employees and provides them the assurance that their contributions are managed responsibly. Moreover, maintaining separate accounts prevents financial mismanagement and facilitates better monitoring and auditing, thereby reinforcing the company's commitment to ethical business practices and statutory obligations.

(vi) **Past Judgements by the Commission and Appellate Bench**

In the context of the request by the Representatives for equal treatment on the basis of binding precedents for just and fair dispensation of justice, it is stated that every case has distinct facts and circumstances. Therefore, decision in one case may not be treated as binding precedent for other cases. Furthermore, in the recent judgement of the Islamabad High Court in the case of PKP Exploration Limited vs Federal Board of Revenue (PTD 2021, 1644), it was held that decisions of quasi-judicial forums in one case are not bonding for other similar cases before such tribunal. For reference relevant abstract of the judgement is reproduced below:

"A precedent, therefore, is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed as ratio decidendi. The concrete decision is binding between the parties to it, but it is abstract ratio decidendi which alone has the force of law as regards to the world at large."

As per articles 189, 203GG and Constitution of Pakistan, 1973, decisions of Supreme Court are binding on other Courts, decision of Court binding on High Court and Courts subordinate to it and decision of High Court binding in Subordinate Courts respectively.

*13..... Given that it is an adjudicatory forum of a quasi-judicial nature established by statute, it is vested with no inherent power. The consequences of the decision of the Tribunal are limited to the case it decides and do not travel beyond the four corners of the subject-matter before it in appeal. In other words, neither the Constitution nor any statute envisages a law-declaring function for the Tribunal. **Its decision do not become binding precedents.** The reasoning of the Tribunal in one case could be treated by tax authorities as a persuasive precedent in a subsequent case where the subject-matter is the same or similar. But the persuasive quality or cogent reasoning of a decision of the Tribunal does not transform it into a legally binding precedent for officials exercising executive or adjudicatory authority under tax, statutes, just as the most compelling and potent decisions of District Courts do not make such decisions binding precedents."*

It is evident from the aforesaid that the precedents may be considered as reference but are not binding for the competent forum and accordingly each case can be decided on its merits and facts.

(vii) **Subsequent Compliance with the provisions prescribed under the Act, absolves the Respondent from the non-compliance made**

No, subsequent compliance of the given requirements of section 218 of the Act does not exonerate the Respondent for the violations as stated above. In the instant case,



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the Company's failure to deposit and invest provident fund contributions as required under section 218 of the Act constitutes the contravention with the requirement of the law at relevant point in time.

8. In view of the aforesaid, it is established that the Company has contravened the provisions of section 218 of the Act at relevant point in time and is liable for penalty under section 219 of the Act read with Section 479 thereof. In view of the foregoing, I, hereby, conclude the proceedings initiated through the SCN by imposing a penalty of **Rs. 15,000/- (Rupees Fifteen Thousand Only)** on the Company and advise it to ensure compliance with the applicable legal framework in letter and spirit in future.

9. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

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

(Shahzad Afzal Khan)
Director/ HOD
Adjudication Department-I

Announced:

Dated: August 08, 2024
Islamabad

