



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

United Distributors Pakistan Limited

Show Cause Notice No. & Date: No. CSD/ARN/378/2016/338 dated May 27, 2024
Date of hearing August 13, 2024
Hearing attended by: Mr. Rahat Aziz, as the Authorized Representative

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/378/2016/338 dated May 27, 2024 (the SCN) issued under Section 218 of the Companies Act, 2017 (the Act) and Sections 219 and 479 thereof to United Distributors Pakistan 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 5.11 to the Accounts, the disclosure of which, *inter alia*, stated that: "The Company operates an approved contributory provident fund scheme for all eligible employees who have completed the minimum qualifying period of service."

3. The Securities and Exchange Commission of Pakistan (the Commission) through letter dated January 26, 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 letter dated March 13, 2024, the Company submitted monthly payment schedule in relation to the provident fund contributions and the relevant payment dates. The aforesaid information transpired delays, beyond 15 days period, in payment of the contribution amounts, which are given as hereunder:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

S. No.	Month	Employee PF Contribution deduction Date	Date of deposit of contribution in bank account	Difference (Days)	Delay in Days
1	Jul-2022	03-Aug-22	20-Oct-22	78	63
2	Jul-2022	03-Aug-22	28-Sep-22	56	41
3	Jul-2022	12-Aug-22	28-Sep-22	47	32
4	Aug-2022	09-Sep-22	24-Oct-22	45	30
5	Aug-2022	07-Sep-22	24-Oct-22	47	32
6	Aug-2022	06-Sep-22	27-Oct-22	51	36
7	Sep-2022	10-Oct-22	27-Oct-22	17	2
8	Sep-2022	10-Oct-22	27-Oct-22	17	2
9	Sep-2022	04-Oct-22	27-Oct-22	23	8
10	Oct-2022	01-Nov-22	29-Nov-22	28	13
11	Oct-2022	01-Nov-22	29-Nov-22	28	13
12	Oct-2022	01-Nov-22	24-Nov-22	23	8
13	Nov-2022	01-Dec-22	19-Dec-22	18	3
14	Jun-2023	27-Jun-23	21-Jul-23	24	9
15	Jun-2023	27-Jun-23	21-Jul-23	24	9
16	Jun-2023	27-Jun-23	21-Jul-23	24	9
17	Jun-2023	27-Jun-23	14-Jul-23	17	2

4. The 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. Taking cognizance of the matter, 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 June 3, 2024, *inter alia*, submitted that:

- Before delving into the legalities of this SCN and the response thereof, it is pertinent to notice that the delay period was considerably lowered since August 2022 so much so a mere 2 to 13 days range.
- The delay as mentioned in the SCN is duly noted and worked upon by the Company;
- The delay was caused due to severe cashflow issues caused due to default of Account receivables. A detailed list of trade debts written off by the Company was shared with earlier letter dated March 13, 2024. The amount of said trade debtors is Rs. 62,271,239/.
- As per the information provided by the Company through its letter dated March 13, 2024, the list of deductions and contributions mentioned 48 entries and delay was noted in only 17 entries, which is 35% of the deductions faced delays. Out of the 17, 4 entries have a delay of 2 to 3 days which should be exempted as public and weekly holidays.
- Considering that the Company has taken a strong notice of the delayed compliance, and have rectified the errors on its part comprehensively. Same is evident from considerable reduction in the delays as noticed and majority of months not facing delays as submitted.
- In view of the above, it is requested that lenient view be taken as no loss is suffered by the employees in this regard to the delayed contributions.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

6. In order to provide opportunity of personal representation, a hearing in the matter was fixed for August 13, 2024, which was attended by Mr. Rahat Aziz, on behalf of the Respondent. He iterated the stance as was given through the written reply dated June 3, 2024. He assured to comply with the given requirements of the Act in future.

7. 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 Respondent can absolve due to subsequent compliance?
- Whether the defaults of the provisions of Section 218 of the Act are admitted?

8. I have reviewed the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this regard, it is observed 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. The reasons cited by the Respondent that the delays were attributable to severe cash flow issues and the amounts due from the trade debtors of the Company. However, the said argument is not cogent as the Respondent is bound to pay such contributions within fifteen days into separate bank account.

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

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. It is observed that the delays are in the range of 8-63 days, involving 13 entries, as stated in para 3 above, which attract violation of Section 218 of the Act. The Respondent is of the view that no loss was incurred to the beneficiaries of the provident fund. In this regard, it is stated that it is obligatory to pay the amounts of the contributions within the stipulated time of fifteen days, therefore, the Company cannot delay such payments beyond the prescribed time period.

- (iii) **Whether the Respondent can absolve due to subsequent compliance?**

The Respondent is of the view that subsequent to the month of August 2022, there were no considerable delays in the payment of the contributions of the provident fund into a separate bank account. In this regard, it was noticed that subsequent to August 2022, a



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

total of 13 delays of the period in the range of 2-13 days were noticed. Therefore, the stance of the Respondent is not cogent and the subsequent compliance and action taken by the Company does not exonerate the default of Section 218 of the Act as stated above.

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

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

9. 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. **United Distributors Pakistan Limited**. The Respondent is advised to ensure the compliance of the legal provisions of the Act in letter and spirit.

10. 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.

11. 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
Adjudication Department-I

Announced:

Dated: August 21, 2024
Islamabad