



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

WY

Adjudication Department-I
Adjudication Division

SAY NO TO CORRUPTION

Before

Ali Azeem Ikram – Executive Director/Head of Department

In the matter of

Bawany Air Products Limited

Show Cause Notice No. & Date

CSD/ARN/152/2015-22 dated
December 24, 2019

Dates of Hearings:

January 23, 2020 and February 18, 2020

Represented by:

M. Hanif Y. Bawany, Chief Executive
(Authorized Representative)

ORDER

Under section 499 read with section 479 of the Companies Act, 2017

This Order shall dispose of the proceedings initiated through Show Cause Notice ("SCN") No. CSD/ARN/152/2015-22 dated December 24, 2019, under section 499 read with section 479 of the Companies Act, 2017 (the "Act"), against following directors ("Respondents") of Bawany Air Products Limited (the "Company"):

- (i) Mr. Vali Muhammad M. Yahya
- (ii) Mr. M. Hanif Y. Bawany
- (iii) Mrs. Momiza Hanif Bawany
- (iv) Mr. Mikhail Bawany
- (v) Mr. Wazir Ahmed Jogezi
- (vi) Mr. Zakaria A. Ghaffar
- (vii) Mr. Siraj A. Kadir

2. The brief facts of the case are that review of annual audited financial statements of the Company for the year ended June 30, 2016 transpired that the Company was not timely transferring the provident fund contributions to the employees provident fund account, contrary to the requirements of section 227 of the Companies Ordinance, 1984 (the "Ordinance"). Note 18 to the annual audited financial statements for the year ended June 30, 2016 disclosed an amount of Rs. 4.978 million (2015: Rs. 3.189 million) as payable to employees provident fund. In view of the aforesaid, order dated November 19, 2018, under section 227 of the Ordinance was passed and Executive Director (Corporate Supervision Department), in exercise of powers conferred in terms of section 475 of the Companies Act, 2017 (the "Act") (corresponding section 473 of the Ordinance), directed the Company to make good the default by depositing the outstanding amount of provident fund within six months of the date of the order i.e. latest by May 19, 2019 and to submit evidence of compliance of direction. Relevant extract of order dated May 19, 2019 is reproduced as below:



“Before parting with the order, the directors are hereby directed in terms of provision of section 473 of the Ordinance, now section 475 of the Companies Act, 2017 to make good the default by depositing the outstanding amount of provident fund within six months of the date of this order i.e. by May 19, 2019 and submit evidence of compliance of direction, failing which necessary proceedings as provided in the law shall be initiated.”

3. The review of subsequent annual audited financial statements for the year ended June 30, 2019, revealed that the Company had failed to comply with the Commission’s direction given under section 475 of the Act. Moreover, the auditors of the Company namely S.M. Suhail & Co., chartered accountants, in their report to members on annual audited financial statements for the year ended June 30, 2019 rendered adverse opinion and also referred non-payment of contributions of employees provident fund in the following manner:

Quote:

The Company has not deposited the amount contributed by the employees to the employees provident fund (the Fund) resulting in non-compliance of section 218 of the Companies Act, 2017 whereas, mark-up expenses of 9% per annum is being charged. Total payable to the Fund as at reporting date is Rs. 8.28 million.

Unquote

4. This showed that the Company failed to comply with the directions given in terms of section 475 of the Act in the Commission’s order dated May 19, 2019, therefore proceedings section 499(1) read with section 479 of the Act were initiated vide SCN dated December 24, 2019.

5. The Company Secretary vide letter dated January 6, 2020 furnished reply, which is summarized in the following manner:

- a. The Company vide its reply letter BAP/SECP/1028/18 had requested to the Commission that the Company was unable to commit time for the payment and would try its best to settle the liabilities as soon as the financial situation so allowed;
- b. There had been no improvement in the financial position of the Company due to slow business and economic conditions and shut down of business at Gaddani;
- c. The Company had received on December 16, 2019 public announcement of intention from Fossil Energy Private Limited under the Securities Act, 2015 to acquire more than 50% of the paid up share capital of the Company. Fossil Energy is engaged in the business of storage of petroleum products in own storage facilities and to oil marketing companies and to other companies operating in the related field. Upon completion of takeover of the Company, it would carry sound and profitable business which would be beneficial for the shareholders of the Company;
- d. As soon as the deal is finalized, the full amount of outstanding payments of provident fund would be paid.

Seen



6. Considering the reply to the SCN, a hearing in the matter was scheduled to be held on January 23, 2020. The chief executive vide letter dated January 17, 2020 requested that hearing be fixed by end of February. Hearing in the matter was later fixed for February 18, 2020. Mr. M. Harif Y. Bawany, being authorized representatives, appeared before me. He, *inter alia*, submitted that:

- a. The Company was in financial problem. The employees of the Company, who left it and demanded their provident fund amount, it was paid to them despite financial problems.
- b. The Company hired a consultant for the purpose of financing to revive its operations and also an acquirer had shown his intention to acquire the substantial shareholding, and the matter was in process.
- c. The amount of payable to employees provident fund has also decreased over the period of time and it was Rs. 6.3 million as on the date.
- d. The management intended to pay entire outstanding amount of employees provident fund.

He requested that in view of financial problems faced by the Company, no penalties to be levied and requested to take a lenient view.

7. It is relevant to reproduce relevant contents of directors' report annexed with latest available annual audited financial statements for the year ended June 30, 2019, wherein directors made following statement about amount payable to employees provident fund, which is reproduced as below:

Directors' report:

"The Company has not deposited the amount contributed by the employees to the employees provident fund (fund) resulting non-compliance of section 218 of the Companies Act, 2017, whereas mark-up expense at 9% per annum is being charged. Total payable to the fund as at reporting date is Rs. 8.28 million."

8. Before proceeding further, it is necessary to refer to the following relevant provisions of section 499(1) of the Act, which state as under:

"(1) Where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the concerned Minister-in-Charge of the Federal Government under any provision of this Act, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, shall be liable to a penalty of level 3 on the standard scale."

9. In terms of notification S.R.O 1545(I)/2019 dated December 6, 2019, the power to adjudicate under section 499(1) of the Act have been delegated to the undersigned as Executive Director/HOD (Adjudication Department-I).

10. I have reviewed relevant record of the Company and reply submitted and arguments made during the course of hearing. It is pointed out that the directors' report annexed with annual audited financial statements for the year ended June 30, 2019 highlighted that an amount of Rs. 8.28 million was payable to employees provident fund and was outstanding, and also auditor S.M Suhail & Co.,



Chartered Accountants rendered adverse opinion on annual audited financial statements for the year ended June 30, 2019, which inter alia, included basis, for non-payment of contributions of employees provident fund. It is observed that despite period of six months was allowed vide order dated November 19, 2018 for making amounts payable to employees' provident fund, the Respondents, however, failed to comply with the direction of the Commission within given time. The Authorized Representative, admitted default for non-compliance of direction given under section 475 of the Act vide order passed dated November 19, 2018.

11. In view of the foregoing, I am of the considered view that direction given under section 475 of the Act (corresponding section 473 of the Ordinance), vide order dated November 19, 2018, has not been complied by the Respondents, hence, they are liable for penalty provided in terms of section 499(1) of the Act. Therefore, I, in term of sub-section (1) of section 499 of the Act, hereby impose a penalty of Rs. 70,000/- (Rupees seventy thousands only) on the Respondents for the aforesaid non-compliance, as per following scale:

S.No.	Names of Respondents	Amount (Rupees)
1	Mr. Vali Muhammad M. Yahya	10,000/-
2	Mr. M. Hanif Y. Bawany	10,000/-
3	Mrs. Momiza Hanif Bawany	10,000/-
4	Mr. Mikhail Bawany	10,000/-
5	Mr. Wazir Ahmed Jogezi	10,000/-
6	Mr. Zakaria A. Ghaffar	10,000/-
7	Mr. Siraj A. Kadir	10,000/-
Total		70,000/-

12. The aforesaid fine must be deposited in the designated bank account maintained with MCB 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 fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fine is imposed on each of the Respondents in his/her personal capacity; therefore, he/she is required to pay the said amount from personal resources.

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, violation of the Act.

Ali Azeem Ikram
Executive Director/HOD
Adjudication Department-I

Announced:
February 28, 2020, Islamabad