



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

*Before*

**Shahzad Afzal Khan, Director/ Head of Department**

*In the matter of*

**Avanceon Limited**

Number and date of show cause notice: No. CSD/ARN/319/2016-89 dated February 02, 2024

Date of hearing: February 28, 2024

Present: Mr. Muhammad Adnan, Group Corporate Officer

### 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 ("SCN") dated February 02, 2024 issued under Section 218 of the Companies Act, 2017 (the "Act") read with Sections 219 and 479 thereof against Avanceon Limited (the "Company").

2. Brief facts of the case are that:

- (i) examination of the annual audited financial statements of the Company for the year ended December 31, 2022 ("FY 2022"), revealed that under Note 28 to the Accounts the provident fund (PF) payable by the Company has substantially increased from Rs. 3.958 million (2021) to Rs. 24.891 million (2022). This indicates that the Company failed to comply with the requirement of section 218 of the Companies Act, 2017 (the Act) w.r.t. payment of employees' and employer's contributions to the fund within fifteen (15) days from the date of collection thereof;
- (ii) The Commission vide letter dated January 11, 2024, sought clarification relating to payment of contributions of provident fund to the trustees within the prescribed time. The Company in its response dated January 17, 2024, *inter-alia*, submitted that due to recent fluctuations in currency exchange rates and the associated dollar burn, there was a deliberate delay in processing the provident fund. The Company assured that during that delay, it was committed to compensate any inconvenience by paying a mark-up on market competitive rates and plans to repay all outstanding amounts in first quarter of current year;



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 1 -

- (iii) The aforesaid admission by the Company transpires that the Company, *prima facie*, has contravened the provisions of Section 218 of the Act by failing to pay provident fund contributions to the trustees account within fifteen days from the date of collection.

3. In order to take cognizance of the aforesaid contravention, SCN dated February 02, 2024 was issued to the Company seeking justification for its failure to pay employees' contributions to the trustees of PF within the stipulated time period. The Company vide letter dated February 16, 2024 admitted the aforesaid non-compliance and made its written submissions, relevant extract thereof is provided hereunder:

- There has been slight delay in making PF payments however the Company strategically disbursed funds on priority to the PF account and is committed to have no pending liability for PF by February - March 2024.
- No loss incurred to the PF or its members due to the delayed payment as the PF is charging interest against receivables at market rate to compensate any loss that may arise to the fund, therefore, it is requested to condone the delay by taking lenient view.

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for February 28, 2024 wherein Mr. Muhammad Adnan, Group Corporate Officer appeared on behalf of the Company as its Authorized Representative (AR) and reiterated aforesaid written response and informed that the outstanding balance of Rs. 24.841 million as of December 31, 2022 has been deposited in PF account however as of December 31, 2023, almost similar amount is outstanding which will be cleared till March 31, 2024.

5. Subsequently the AR vide letter dated March 01, 2024 submitted the assurance that outstanding balances against the PF will be disbursed by March 31, 2024. He further informed that no loss incurred to the PF or its members as the PF charges interest on receivables to the employer to compensate for any potential losses that may arise for the fund and submitted copy of ledger of PF for the years 2021, 2022 and 2023.

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

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





# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 2 -

*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, considered the written and verbal submission made by the AR in light of the applicable legal provisions and records placed before me and state that the Company is bound to collect the PF contributions of the employees concerned and pay such contribution as well as its own contributions, to the trustees within fifteen days from the date of collection as stipulated in Section 218 of the Act and there is no exception provided in the aforesaid section. The Company has cited that the outstanding balance as of December 31, 2022 has subsequently been deposited and provided copy of ledger of PF in support thereof.

The provisions of Section 218 are clear and unambiguous and the objective of these provisions is to collect the amount and to secure the amounts collected as contributions for the benefits of the employees. The amount collected are in the nature of trust moneys in the hand of the company and the same must be paid, to the trustees within fifteen days from the date of collection.

In view of the aforesaid, it is noted that the Company failed to pay to the trustees of PF within the stipulated time of fifteen days from the date of collection hence default of the legal provisions at relevant point in time is established and the same has been admitted by the Company in its written submissions as well as by the AR during the hearing. Further subsequent compliance does not absolve the Company from its responsibility to pay the deducted PF contributions to the trustee within the stipulated time.

8. After careful consideration of all the facts of the case, I am of the considered view that the Company has contravened the provisions of subsection (3) 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. 25,000 (Rupees twenty five Thousand only) on the Company.



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Continuation Sheet - 3 -

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: March 07, 2024

Islamabad