



Securities and Exchange Commission of Pakistan
Enforcement Department

[Islamabad]

Before Ashfaq Ahmed Khan, Director

Order

In the Matter of
M/S Moonlite (Pak) Limited

Number and date of notice	EMD/Enf-II/296/2003 dated November 12, 2004
Date of hearing	December 15, 2004
Present	Mr. Ghulam Akber CFO & Company Secretary
Date of Order	December 24, 2004

This Order shall dispose of the proceedings initiated against M/s Moonlite (Pak) Limited (hereinafter referred to as “the Company”) and its Chief Executive under the provisions of Section 472 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. The facts leading to this case briefly stated are that examination of the annual accounts of the Company for the year ended June 30, 2002 revealed that an amount of Rs 2.180 Million was payable by the Company to Moonlite (Pak) Limited Employees Provident Fund Trust (hereinafter referred to as “the Fund”) which increased to Rs. 4.656 Million as on June 30, 2004. This amount was not paid by the Company to the Fund in accordance with the provisions of Section 227 of the Ordinance. Accordingly penal proceedings were initiated against the directors and the chief executive of the Company under Section 229 and the matter was disposed off vide Order dated November 03, 2004 as under:



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- i) As the Company has shown inclination to repay the outstanding amount to the Fund, therefore, taking a lenient view of the default, I impose a fine of Rs. 5000/- (Rupees five thousand only) on the chief executive of the Company under Section 229 of the Ordinance. The other directors of the company are reprimanded to be careful in future.
- ii) A notice shall be issued to the Company to make good the default in terms of Sub-section (1) of Section 472 of the Ordinance.

3. Accordingly, a notice in terms of the provisions of Section 472 of the Ordinance was issued to the Company and its Chief Executive on November 12, 2004 to make good the default by making payment of the entire outstanding amount of Rs. 4, 656, 182 as on June 30, 2004, to the Fund within 30 days of the date of the said notice.

4. The reply to the notice was received from the Company Secretary vide his letter dated November 29, 2004 wherein it was stated that the Company will pay back the entire outstanding amount in 12 equal quarterly installment and that the repayment schedule has been developed without disturbing working capital of the Company with the consent of the Trustee of the Fund. A Copy of the agreement dated October 18, 2004, with the CBA union and the Trustee of the Fund, to this effect was also provided to the Commission. It was also informed that subsequent to the Order under Section 229 of the Ordinance, the Company has started making regular payments including mark up to the Fund's accounts with effect from October 2004.

5. The reply of the Company was not found satisfactory as the company had itself devised a repayment schedule with the Trustee of the Fund without consulting/taking permission from the Commission and accordingly to provide an opportunity of hearing, the case was fixed for December 15, 2004. On the date of hearing, Mr. Ghulam Akbar appeared on behalf of the Company and its Chief Executive and reiterated that the Company is ready to repay the total outstanding



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amount to the Fund in 12 equal quarterly installments keeping view the liquidity position of the Company. It was further stated that the management has been successful in improving the performance of the Company and since the year 2003 it has once again started earning profit, thus reducing the accumulated losses from Rs. 22.423 million in the year 2002 to Rs. 9.912 million in 2004. He also informed that the Company is moving towards riba free financing and is in process of paying off the bank loans. During the year ended June 30, 2004 the Company had made payments to the tune of Rs. 16.680 million against the bank loans as can be evidenced from the cash flow statement of the said year. As per the repayment schedule agreed with the bank these payment will be enhanced to Rs. 3.00 million per month with effect from January 2005 and that any default in payment would revoke the rescheduling arrangement agreed with the banks which may invoke penal clauses of the agreement and en-cash the personal guarantees given by the Directors. Furthermore, he also informed that the due to seasonal nature of business, the Company has to keep large quantities of stocks for which huge working capital is required. The loan repayment installments and the investment in raw material stock have already put quite a strain on the available working capital resources of the Company and therefore, it is not possible to pay the entire outstanding of the fund in lump sum or in 12 monthly installments. However, during the course of hearing he agreed to repay the outstanding amount to the Fund in 4 quarterly installments. He was asked to provide an undertaking on behalf of the Company to this respect which was provided vide letter dated December 20, 2004. The undertaking to pay back the outstanding amount to the Fund within one year in 4 quarterly installments has been duly signed by two directors namely Mr. Ashraf T. Ismail and Mr. M. Sohail Umer. They have further undertaken that in case of any default the directors of the Company will be responsible to pay the entire outstanding amount in lump sum and that they will be personally responsible for any penalties imposed by the Commission in this regard.



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6. Before proceeding further, it is necessary to advert to the provision of law, under which the notice to undo the irregularity was given. Section 472 of the Ordinance, to the extent relevant, is reproduced as follows:

472. Enforcing compliance with provisions of Ordinance

- (1) If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Authority may, of its own motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.
- (2) Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by any officer of the company responsible for the default.

9. Considering the circumstances and the liquidity position of the Company I am of the view that it would be in the best interest of the workers and its shareholders that the Company continues to earn profit. In view of the commitments of the Company towards repayment of bank loans and other urgent requirements like purchase of huge quantities of stock at relevant point of time, it appears that the Company will not be in a position to pay the entire outstanding in one go without adversely affecting its performance. At the same time the repayment plan submitted by the Company which spread over a period of 3 years is not justified. However, the repayment plan with 4 quarterly installment spanning over a period of one year appears to be reasonable. The undertaking provided by the Company indicates its willingness to undo the irregularity and the intent to abide by the law. Therefore, in the circumstances of the case, I proceed to order as follows:



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- i The Company shall repay the entire outstanding amount to the Fund including the mark-up within a period of one year in 4 quarterly installments starting from March 31, 2005 and ending on December 31, 2005;
- ii A report shall be submitted by the Company to the Commission on the 7th of the month following the close of the relevant quarter along with the proof of payment of the installment;
- iii The Company shall submit auditors certificate by January 31, 2006 verifying the repayment of the entire outstanding amount including mark-up thereon to the fund;

Ashfaq Ahmed Khan
Director (Enforcement)

Announced:
December 24, 2004
ISLAMABAD