

Before Tariq Bakhtawar, Director Enforcement

In the matter of

M/s. Johnson and Phillips (Pakistan) Limited

(Under Sub-Section (2) and (3) of Section 227 read with Section 229 and 476 Of the Companies Ordinance, 1984)

No. and date of show cause notice	EMD/233/461/200-3732-3739 Dated October 17, 2005
Date of final hearing	December 01, 2005
Present:	Mr. Anjum Saleem, Advocate
Date of Order	December 29, 2005

Order

The case before me pertains to the proceedings initiated against M/S Johnson and Phillips (Pakistan) Limited (“Company”) and its present directors under Sub-section (2) and (3) of Section 227 read with Section 229 and 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case, briefly stated, are that it has been noticed from the examination of annual accounts of M/s Johnson & Phillips (Pakistan) Limited (“Company”) for the year ended June 30, 2004 that an amount of Rs. 3.589 million is payable to Provident Fund by the Company. The financial statements of June 30, 2004, note 14.4 stated that

“The Company obtained loan amounting to Rs.6.93 million which is repayable in full after a period of five years commencing from December 03, 1999 upto June 30, 2004. The Company has paid 3.34 million. The rate of interest is 9 % per annum (2003: 13% per annum).”



3. Amounts Payable towards Provident Fund under the heads of Long term and current liabilities is as follows;

Rupees In thousands

Particulars	2004	2003
Staff P.F. Payable- Long term	3,589	3,589
Provident Fund Payable- Other Liabilities	5,706	5,745

4. The Auditors have qualified their report and expressed following opinion on the irregularity;

“The Company has obtained long term loan from Staff Provident Fund Trust, at terms disclosed in Note 14.4. In our opinion, section 227 of the Companies Ordinance, 1984 does not have any provision authorizing such loan”

5. The Directors addressed the aforementioned qualification in Director’s report by stating that

“The long term loan out of Provident Fund Account obtained was for the purpose of Company business, the loan has partially been paid back. The Company has paid interest to the Provident Fund regularly as per prevailing bank rate”

6. The aforesaid notes and the Auditor’s qualification categorically pointed out that the Company has withdrew the funds and has not made payments to the Provident Fund Trust (“Fund”) as required under the law. The Company has thus contravened the provisions of Section 227 of the Ordinance. In view of the facts and circumstances narrated before it was considered necessary to ascertain the extent of violations committed by the Company and loss sustained in consequence of violations of Section 227 of the Ordinance.

7. Consequently, a show cause notice dated October 17, 2005 (the “SCN”) was issued under Sub-sections (2) and (3) of Section 227 and 229 read with Section 476 of the Ordinance to the following persons, who prima facie had authorized and permitted the contravention of the provisions of Section 227 of the Ordinance:



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Enforcement Department

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|----|---|--------------|
| 1. | Mr. S hehryar Saeed, | Chairman/CEO |
| 2. | Mr. Nadeem S. Qureshi, | Director |
| 3. | Sardar Muhammad Muzafar Sukera | Director |
| 4. | Mr. Abdul Rafiq, | Director |
| 5. | Mr. Rehan Sadiq, | Director |
| 6. | Mr. U.U. Khawaja, | Director |
| 7. | Mr. Buriar Haider Naqvi, | Director |
| 8. | M/s Johnson and Phillips (Pakistan) Limited | |

8. In response to the Show cause notice, the Company submitted that the Company has constituted an employees provident fund to which both the employer and the employee contribute 8.33% of the basic salary every month. The Company has been complying with the provisions of Section 227 (2) and (3) of the Ordinance by depositing the contributions of its employees provident fund in a special account maintained with Habib Bank Limited. As regards the loan obtained from the employee's provident fund by the Company it is submitted that the Company has been paying interest on the said loan. As a result, the value of the provident fund has not been diminished in any manner and the employees have not suffered any loss. The Company has been regularly repaying the principal amount of the loan. Moreover, in light of notice of the Commission, the Company has decided to repay the outstanding principal amount of the loan along with all accrued interest. The Company also submitted that no penalty or other liability should be levied against the Company.

9. Hearing in the matter was fixed on December 01, 2005. Mr. Anjum Saeed, Advocate represented the case on behalf of the Company and its directors. The learned counsel admitted the default on part of the Company and requested for a time frame for the repayment of outstanding amount towards the fund. He requested that the Company may be allowed to pay the outstanding amount in the next nine months and the Company, its Chief Executive and all directors will give undertaking in this regard The Chief executive gave the undertaking that the principal amount of Rs. 3.189 million and markup amounting to Rs. 3.399 million will be paid back to the provident fund in the following manner.



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Year	Month	Installment No.	Total Amount	Installment	Balance
2006	January	1	6,588,800	732,089	5,856,711
2006	February	2	5,856,711	732,089	5,124,622
2006	March	3	5,124,622	732,089	4,392,533
2006	April	4	4,392,533	732,089	3,660,444
2006	May	5	3,660,444	732,089	2,928,356
2006	June	6	2,928,356	732,089	2,196,267
2006	July	7	2,196,267	732,089	1,464,178
2006	August	8	1,464,178	732,089	732,089
2006	September	9	732,089	732,089	0
Total Payment				6,588,800	

10. Before proceeding further, it is necessary to advert to the provision of law, which has been violated by the Company, and its directors. These provisions are contained in Section 227 of the Ordinance and are, to the extent relevant, reproduced as follows:

“227. Employees’ provident funds and securities:

(2) *Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such funds, whether by the company or by the employees, 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 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 Government securities.*

(c) *in bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Commission.*

(3) *Where a trust has been created by a company with respect to any provident 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.”*



11. The aforesaid provisions of the law are clear and unambiguous. The objective of these provisions is to secure the amounts collected from the employees of the company as contributions to a Provident Fund for the benefits of the employees of the Company. The law requires that all moneys contributed by the employees as well as the company's contributions, if any, including the profit thereon must be deposited within fifteen days of the contributions shall be invested in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. When a Trust has been created by a company with respect to any Provident Fund, the company has an obligation to pay the contributions including its own contributions to the trustee within fifteen days from the date of collection. In the latter case, the trustees are responsible to invest the moneys of the Provident Fund in accordance with the provisions of Law. The amounts collected from the employees as contributions to a Provident Fund are in the nature of trust moneys in the hand of the company and the same must be paid to the trustees within stipulated time. The Company on the pretext of higher returns cannot, therefore, withhold such moneys.

12. I have given due consideration to the submissions of the directors as well as the arguments advanced by the representatives of the Company and Directors at the time of hearing but none of them justified the default. The law does not permit any Company to utilize the funds of Provident fund for its commercial purposes and the argument that the value of the fund has not diminished is not justified. It appears that payment towards the Fund is not prioritized by the Company and it does not take compliance of the law seriously.

13. For the forgoing, I am of the view that the Company and its directors have breached the mandatory requirements of Section 227 of the Ordinance. The outstanding contributions disclosed at the end of every year make it clear that the mandatory provisions of the law were breached since long. Breach of mandatory provisions of the Ordinance meant to secure the funds of the employees cannot be allowed. An action, therefore, is necessary under Section 229 of the Ordinance. I therefore, proceed to impose a fine of Rs. 5,000 (Five thousand only) on the Company and each of its Directors under Section 229 of the Ordinance:



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1.	Mr. S hehryar Saeed,	Chairman/CEO	Rs. 5,000
2.	Mr. Nadeem S. Qureshi,	Director	Rs. 5,000
3.	Sardar Muhammad Muzafar Sukera	Director	Rs. 5,000
4.	Mr. Abdul Rafiq,	Director	Rs. 5,000
5.	Mr. Rehan Sadiq,	Director	Rs. 5,000
6.	Mr. U.U. Khawaja,	Director	Rs. 5,000
7.	Mr. Buriar Haider Naqvi,	Director	Rs. 5,000
8.	M/s Johnson and Phillips (Pakistan) Limited	Company	Rs. 5,000

14. The Company, its Chief Executive and Directors are hereby directed under section 472 of the Ordinance to settle the entire outstanding amount by September 2006 and pay the installments as per the agreed timeframe. Moreover, the Auditors certificate on the settlement of the liability and quarterly compliance report in respect of the repayment plan should also be furnished to Commission.

15. The Company, its Chief Executive and Directors are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines totaling to Rs.40,000 (Rupees forty thousands Only) in the Commission's designated bank account No. 75010-6 maintained at Habib Bank Limited, Central Branch, 102/ 103, Upper Mall, Lahore or pay by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the Directors in their personal capacity; therefore, they are required to pay the said amounts from their personal resources.

Tariq Bakhtawar
Director Enforcement