

[Islamabad]

Before Ashfaq Ahmed Khan, Director

Order

In the Matter of
M/s Pakistan PVC Limited

Number and date of notice	EMD/233/506/2002 dated March 03, 2005
Date of final hearing	December 6, 2005
Present	Mr. Reyaz Shaffi Chief Executive Officer Mr. Mohammad Afzal on behalf of Sheikh Aftab Ahmed Nominee Director IDBP

The case before me pertains to the proceedings initiated against the chief executive and directors of M/s Pakistan PVC Limited (hereinafter referred to as the “Company”) under Section 227 of the Companies Ordinance, 1984 (the “Ordinance”).

2. In order to dispose of the aforesaid matter, it is necessary to go into the background facts leading to the issue of show cause notice by the Enforcement Department of the Commission. It was noticed from examination of annual accounts of the Company for the year ended June 30, 2004 that an amount of Rs.29,509,216 was payable by the Company to the Employee’s Provident Fund (hereinafter referred to as the “Fund”) as compared to Rs. 26,478,954 as on June 30, 2003. The auditors’ report on the accounts for the year ended June 30, 2004 was found qualified on various issues including violation of Section 227 of the Ordinance.

3. The Enforcement Department noticed violation of the statutory provisions of the Ordinance and consequently issued a show cause notice dated March 03, 2005 to all the directors of the Company who, *prima facie*, had contravened the provisions of Section 227 of the Ordinance.



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4. The replies to the show cause notice were received, after several reminders, from the Chief Executive Mr. Reyaz Shaffi, directors Mr. Arif Shaffi and Mr. Asif Shaffi and the nominee director of IDBP Sheikh Aftab Ahmed. The Chief Executive and directors of the Company submitted that the Company was privatized in the year 1992 when the management of the Company was handed over to present Board of Directors. Immediately after the takeover, the management started facing various problems relating to workers, political pressures and particularly financial constraints. Due to these multifaceted problems the unit became sick and as such the main plant at Gharro had to be closed down in the year 1995. Moreover, due to acute financial crises, the Company was even not been able to pay salaries amounting to Rs. 39.859 million and also provident fund contributions amounting to Rs. 2,384,895 to its employees. These dues are under litigation. They further submitted that management is in process of reviving the Company and as soon as the revival process is completed, the dues of most of the ex-employees will be paid. Mr. Sheikh Aftab Ahmad, nominee director of IDBP replied to the show cause notice vide his letter dated June 18, 2005. He submitted that in the capacity of nominee director, he has been emphasizing upon the sponsoring directors to run the Company's affairs in accordance with the relevant rules and regulations. In support of his claim he has attached a letter dated March 19, 2004 written to Company Secretary pointing at the observations raised by the auditors and advising the management to rectify the problems mentioned by the auditors.

5. As replies were not considered satisfactory, the matter was fixed for hearing which had to be adjourned for a number of times due to non-compliance. The sponsoring directors initially showed their inability to appear for hearing in Islamabad due to financial crisis of the Company. A final opportunity of hearing was fixed for December 06, 2005. On the said date Mr. Reyaz Shaffi, CEO and Mr. Muhammad Afzal on behalf of Mr. Sheikh Aftab Ahmed (nominee director) appeared for hearing. Mr. Shaffi reiterated the same arguments as were made earlier in his written reply. He, while admitting the default, requested for a lenient view in the matter. He further submitted that being the chief executive officer, he is responsible for the default and rest



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of directors may not be penalized. He assured in writing that the management of the Company is ready to payback the provident fund dues with in shortest possible time.

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

227. Employees' provident funds and securities:

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

(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.

7. The aforesaid provisions of law are clear and explicit. The objective of these provisions is to secure the amounts collected from the employees of company and the company, as contributions to a Provident Fund constituted by the company for the use and benefits of its employees. The law requires that all moneys contributed by the



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employees and company towards the Fund including the profit thereon must be deposited within 15 days of the contributions in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. The Company cannot withhold such moneys on the pretext of liquidity constraints.

8. Reverting to the submissions made on behalf of the directors, I would first consider the arguments advanced by Mr. Reyaz Shaffi, the Chief Executive. His contention that the Company has been in severe financial crisis ever since its privatization and therefore management has never been able to comply with the provisions of Section 227 is not tenable because of the following reasons:

- Since the year 2003 (when payable towards provident fund was disclosed for the first time in the accounts), the Company has disclosed very nominal expense regarding staff retirement benefits i.e. Rs. 79,831 in the year 2003 and Rs. 34,420 in year 2004 as per annual accounts for the said years. Company could have easily complied with requirements of Section 227 during these periods by depositing these amounts with the Fund as sufficient cash was available as per year end cash flow statements.
- Chief executive and two directors were drawing salaries and perquisites of about Rs. 3 million annually from the Company during these two years despite closure of main business operations of the Company.
- Company has apparently not made any effort to pay the liability towards Fund even after the issue of show cause notice, which is evident from the annual accounts of the Company for the period ended June 30, 2005. (As per annual accounts for the year 2005 company's expense in this regard was only Rs. 17,734)

Moreover, the contention that some of the dues are under litigation has also not been found cogent as the copies of law suits provided show that these pertains to the employees whose services were terminated by the Company in the year 1996. The Company is apparently continuously piling up the liability regarding provident fund which have been increased from Rs. 26,478,954 in the year 2003 to Rs. 30,285,119 in the year 2005. These facts indicate continuous violation of the provisions of Section 227 by the management. I would like to point out in this regard that the underlying purpose



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of Section 227 of the Ordinance is to protect the funds of the employees by obligating the company/trustees to deposit contributions in the safe/secured modes of investment/deposits permitted in sub-section (2) of Section 227 of the Ordinance. Such amounts are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. Further, from the continuous increase in amount payable to the Fund, it is evident that the directors of the Company did not make any effort to rectify the default. As regards Mr. Sheikh Aftab Ahmad nominee director (IDBP), it has been observed that he brought the default to the notice of the Company.

9. Considering the circumstances of the case, I am of the view that the directors have breached the mandatory requirements of Section 227 of the Ordinance as they have failed to ensure timely payments on account of provident fund, to the Fund. Breach of mandatory provisions of the Ordinance cannot be encouraged. An action, therefore, is necessary under Section 229 of the Ordinance, which provides that whosoever contravenes or authorizes or permits the contravention of any of the provisions of Section 227 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the employees on account of such contravention. I, therefore, proceed to order that as the Chief Executive has accepted the sole responsibility and Company has shown inclination to repay the outstanding amount to the Fund as early as possible, 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.

10. The chief executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and to furnish receipted challan to the Commission. The chief executive and directors shall remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance till repayment of total outstanding amount to the Fund. It should also be noted that the said penalty is imposed on the chief



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executive in his personal capacity and he is required to pay the said amount from his personal resources.

Ashfaq Ahmed Khan
Director (Enforcement)

Announced:
December 08, 2005
ISLAMABAD