SECP

Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Ishaq Textile Mills Limited

Number and date of notice: CSD/ARN/99/2002-1500-1502 dated April 20, 2015

ORDER

UNDER SECTION 227 READ WITH SECTIONs 229 AND 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following trustees of (the "respondents") of Employees' Provident Fund Trust of **Ishaq Textile Mills Limited** (the "Company):

1. Mr. Aizad Amer
2. Mr. Ikram Elahi
3. Mr. Muhammad Amin

These proceedings were initiated through show cause notice ("SCN") dated April 20, 2015 under the provisions of section 227 read with sections 229 and 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that examination of annual audited financial statements ("Accounts") of the Company for the year ended June 30, 2014 submitted with the Commission in pursuance of Section 233 of the Ordinance revealed that the following was stated under note 37.2 to the Accounts:

> *"The investment out of provident fund has not been made in accordance with the provisions of section 227 of the Ordinance and the rules formulated for this purpose as the investment in unit trust scheme exceeded the limits prescribed in SRO 261(I)/2002 regarding investment in unit trust scheme."*

In response to the Commission's queries in this regard the Company vide letter dated February 16, 2015 provided the information, analysis of which revealed that as at June 30, 2014 the total assets of employees' provident fund ("EPF") were Rs28.348 million out of which Rs20.467 million (i.e. 72.2%) was invested in unit trust schemes (mutual funds) and another Rs6.587 million (23.24%) was receivable from the mutual funds. It appeared that the trustees of Company's EPF Trust, prima facie, contravened the provisions of section 227 of the Ordinance and the Rules, as the investment of provident fund in unit trust schemes was made in excess of the prescribed limit of 50%. Consequently, the SCN was issued to the respondents requiring them to submit reply within fourteen days.

3. In response to the SCN, the respondents through letter dated May 4, 2015 submitted reply, a brief of which with reference to the contents of the SCN is given below:

> *"As decided in the meeting of the board of directors of the Company held on April 29, 2015, the EPF scheme for the employees had been discontinued by the Company with effect from April, 2015. It was also decided to pay off the balances of EPF up till June 30, 2015. Staff retirement gratuity scheme would replace the EPF."*

The respondents also provided resolution of the BOD meeting along with the reply. Based on the above submissions, the respondents requested for conclude the proceedings without imposing any fines.

4. Subsequently a hearing in the matter was fixed on December 15, 2015, however, the respondents through letter dated December 12, 2015 submitted that they had already provided the information regarding discontinuation of the EPF and in case any further information was required, the same might be communicated. In response, the Commission responded on December 17, 2015 requiring the Company to submit evidence of:

i. Payment of entire amount of provident fund payable by the Company to the Provident Fund Trust; and
ii. Paying off the entire amount of provident fund to the members of the fund.

It was further communicated that the statutory auditors' certificate confirming the payments would also be accepted. Since, no response to the letter was received, the Commission through letter dated January 26, 2016 fixed another hearing on February 9, 2016. In response, the respondents through letter dated February 8, 2016 submitted the auditors' certificate whereby it was confirmed that:

(i) All the amount of provident fund payable by the Company has been deposited in the bank account of EPF Trust within the time period stipulated in section 227 of the Ordinance; and

(ii) Entire amount of EPF has been paid to the members of the Trust on or before June 30, 2015 and all of the payments have been encashed by the members up to December 18, 2015.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Sub-section (2) of section 227 of the Ordinance provides as under:

> *Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund, 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—*
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> *(a) be deposited—*
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> *(i) in a National Savings Scheme;*
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> *(ii) in a special account to be opened by the company for the purpose in a scheduled bank; or*
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> *(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*
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> *(b) be invested in Government securities; or*
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> *(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.*

Sub-section (3) of section 227 of the Ordinance provides as under:

> *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 contributions 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.*

Section 229 of the Ordinance provides that *whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 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 depositor of security or the employee on account of such contravention.*

Commission's SRO 261(I)/2002 dated May 10, 2002 issued under Rule 4 of the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996 (the "Rules"), inter alia, provides that *the total investment in unit trust schemes registered under Asset Management Companies Rules 1995 shall not exceed 50% of the provident fund.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

6. Having gone through the facts of the case, submission of the respondents and applicable legal provisions, I have concluded that the provisions of section 227 of the Ordinance and the Rules have been violated by the respondents as the investment of EPF in unit trust schemes was 72.2% of the fund which was in excess of the prescribed limit of 50%. However, taking cognizance of the fact that the Company has discontinued the EPF scheme and the entire amounts of EPF have been paid off to the members of the EPF Trust, instead of imposing fines I hereby conclude the proceedings against the respondents with a stern warning to them to be careful in future and ensure meticulous compliance with applicable legal provisions.

Amina Aziz
Director (CSD)

Announced:
February 12, 2016
Islamabad