



Securities and Exchange Commission of Pakistan  
*Enforcement Department*

[Islamabad]

*Before Imran Bashir, Director Enforcement*

*In the Matter of*  
M/S United Sugar Mills Limited

Number and date of notice	EMD/Enf-II/ 367/2003 dated December 11, 2003
Date of final hearing	April 07, 2004
Present	Mr. Ghulam Hussain Malik, FCA
Date of Order	June 09, 2004

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The case before me pertains to the proceedings initiated against the directors of M/S United Sugar Mills 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 the show cause notice by the Enforcement Department of the Commission. It has been noticed from the examination of the Annual Accounts of the company for the years ended September 30, 2000, 2001 and 2002, that an amount of Rs.16,793,041, Rs.22,986,920 and Rs.22,515,006 respectively were payable by the Company to the Employees Provident Fund (hereinafter referred to as the “Fund”) and interest @ 16% per annum was credited to the Fund.

3. In the above circumstances, the Enforcement Department apprehended violations of the statutory provisions of Section 227 of the Ordinance and consequently, a show cause notice dated December 11, 2003 was issued to the



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following directors, who *prima facie* had contravened the provisions of Section 227 of the Ordinance:

- i. Sh. Abdul Wahid, Chairman,
- ii. Sh. A Rauf, Director
- iii. Mr. Bahir Ahmed, Chief Executive
- iv. Mrs. Qaiser Begum, Director
- v. Sh. Mohammad Saeed, Director
- vi. Mrs. Abida Saeed, Director
- vii. Mrs. Nasreen Wahid, Director

4. The reply to the show cause notice was received from the Chief Executive of the Company vide his letter dated December 23, 2003 on behalf of all the directors admitting the default and submitted that it was due to the financial and liquidity problems in the years 1998-2001, the mill could not perform well and Company was unable to pay the dues to the Fund. It was stated that the Company has, however, provided provident fund liabilities and accrued interest at higher rate.

5. In order to provide an opportunity of personal hearing to the directors, the case was fixed for hearing on January 21, 2004, which was adjourned and re-fixed on January 27, 2004 which was again adjourned to February 10, 2004. On the date of hearing, Mr. Ghulam Hussain Malik, FCA appeared on the said date and requested further time till February 20, 2004 for the submission of detailed reply. The case was again fixed for hearing on February 26, 2004. On February 24, 2004 a reply was received from the Mr. Ghulam Hussain Malik on the behalf of the directors wherein the previous contentions were repeated. It was further averred that the new management took over the mill on January 17, 2001 and it has given credit to the Employees Provident Fund Trust with a mark up which is higher than what it would get from investment in government securities. It is further contended that the fault is on the part of the old management and the new



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management is complying with the law and will pay off the Employees Provident Fund to its members by or before September 30, 2005. It is further informed that the new management has discontinued the Employees Provident Fund scheme from January 2002 and has introduced defined benefit (Gratuity) Scheme. On the date of hearing on February 26, 2004 no one appeared. In the meantime, the Commission vide its notification No. S.R.O. 161 (1)/2004 dated March 17, 2004 delegated the powers under Section 229 of the Ordinance to the undersigned. The case, therefore, was fixed for hearing. Mr. Ghulam Hussain Malik appeared before me on April 07, 2004 on behalf of directors and argued the case. He placed on record the reconciliation of the amounts due and paid to the Fund/Employees and the accounts of the provident fund for the years 2000 to 2003. While admitting the default, it was submitted that the default occurred as the Company was facing financial problems. He averred that the outstanding amount, which was Rs. 22 million on December 31, 2002 has now been reduced to Rs. 16 million as on December 31, 2003, which would be paid to the Fund by September 30, 2005. He requested that a lenient view of the default may be taken. He also assured that the directors would ensure strict compliance of this statutory provision in future.

6. Before proceeding further, it is necessary to advert to the provision of law, which have been violated by the directors of the Company. These 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



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(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 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 constituted by the Company for the use and benefits of the employees of the Company through the mechanism of trustees. The law requires that all moneys contributed by the employees as well as the company's contributions 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. 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 constituted by the Company are in the nature of trust moneys in the hand of the company and the same must be



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paid to the trustees within stipulated time. 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. Ghulam Hussain Malik, FCA. His contention that the moneys were not paid to the Fund due to liquidity constraints is not tenable because of the reason that the law makes it obligatory for the Company to pay the employees contributions as well its own contributions within fifteen days from the date of collection thereof. The Company has attempted to justify the above default by claiming that the interest charged on its contribution at 16% per annum ensured a higher return to the Fund than return on government securities. I would like to point out in this regard that the underlying purpose of Sub-section (2) and (3) 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. Mr. Ghulam Hussain Malik, FCA has admitted that there has been delay in payment of amounts due to the Fund. Such amounts are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. The directors, therefore, have violated the provisions of Section 227 of the Ordinance.

9. I have noted that the management of the Company changed on January 17, 2001. Although, the new management has been able to reduce the liability towards the Provident Fund and has also undertaken to rectify the default by September 30, 2005, however, they have failed to abide by the provisions of law and failed to make timely payments during the period since the management took over the company till the discontinuation of the Provident Fund Scheme. It is also added that when the new management took over the charge on the aforesaid



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date, the amount due to the fund was Rs. 19.804 million, which was increased to Rs. 22.515 million on September 30, 2002. Due to the aforesaid, the directors of the new management have breached their fiduciary duty by not exercising due care while transferring the contributions to the Provident Fund.

10. For the forgoing, 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 to the Provident Fund. The outstanding amounts reflected at the end of every year evidently make it clear that the mandatory provisions of the law were breached for a long period of time. Breach of mandatory provisions of the Ordinance meant to secure the funds of the employees 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 as follows:

- i) The new management of the Company has paid a major portion of liability of the Provident Fund and has also assured that the balance amount shall be paid by September 30, 2005. Therefore, taking a lenient view of the default, a token fine of Rs.5,000 (Rupees five thousand only) is imposed on the Chief Executive namely Mr. Bashir Ahmed of the Company under Section 229 of the Ordinance. The other directors of the company are reprimanded to be careful in future.
- ii) As the directors have committed to pay the balance amount by September 30, 2005, the office may wait till the expiry of the said deadline and in default a notice shall be issued to the Company to make good the default in terms of the Sub-section (1) of Section 472 of the Ordinance.
- iii) Submit a report to the Commission within fifteen days of the close of the period ending on September 30, 2005 regarding amount due by the Company has been paid. A certificate from statutory auditors may also be submitted in this regard.



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11. 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 furnish receipted challan to the Commission. They shall also remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance.

12. The office is also directed to initiate actions against the previous management of the company for violating the mandatory provisions of Section 227 of the Ordinance.

Imran Bashir  
Director (Enforcement)

**Announced:**  
June 09, 2004  
ISLAMABAD