

**Before Tariq Bakhtawar, Director Enforcement**

**In the matter of**

**M/s. Mehran Sugar Mills 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/233/351/2002-10672-10679 Dated May 17,2006
Date of final hearing	June 02, 2006
Present:	Mr. M. Hanif, General Manager Finance
Date of Order	June 30, 2006

**Order**

The case before me pertains to the proceedings initiated against M/S Mehran Sugar 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 Company is a public company limited by shares, incorporated in Pakistan on December 22, 1965 under the Companies Act, 1913 (now Companies Ordinance, 1984). The shares of the Company are quoted on Karachi Stock Exchange. The registered office of the Company is situated at Adamjee House, 8th Floor, I.I. Chundrigar Road, Karachi. It has authorized and paid up share capital of Rs. 500 million as per its audited accounts for the year ended September 30, 2005. The object for which the Company was established and its powers are contained in its Memorandum and Articles of Association. The Company is principally engaged in the manufacturing and sale of sugar. The manufacturing facility of the Company is located at Tando Adam Road, Distt: Tando Allahyar Sindh, Pakistan. The Company has 1,258 shareholders comprising individuals, joint stock companies, public sector institutions, financial institutions etc. as per pattern of shareholding annexed to the Directors’ Report on the accounts for the year September 30, 2005. Directors,CEO and their spouses and Minor Children hold around 75.25% of the paid up capital. This indicates that there is a substantial public interest in the shares of this Company.



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3. The facts leading to this case, briefly stated, are that it has been noticed from the examination of annual accounts for the year ended September 30, 2005 that an amount of Rs. 4.138 million is payable to Provident Fund by the Company. Note 22.2 of the financial statements of September 30, 2005 the Company stated that,

*“The Company was unable to pay the liability in time due to the cash flow problems and to keep the factory operational and to meet its obligations on time to the lenders, various government authorities and other creditors. The Company has requested the trustees of the fund to provide a facility of deferred payment in installments, to which the trustees have agreed”*

4. The Auditors have expressed following opinion on the irregularity;

*“Without qualifying our opinion we draw attention to note 22.2 to the financial statements, which states that the Company has not made payment to the trustees of the Employees provident fund within stipulated time. According to the requirement of Section 227 of the Companies Ordinance, 1984. It is required to be paid to the trustees within fifteen”*

5. The Director’s report do not addressed the aforementioned qualification of the Auditors in violation of Section 236 of the Ordinance. The aforesaid notes and the Auditor’s qualification categorically pointed out that the Company 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.

6. Consequently, a show cause notice dated May 17, 2006 (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:

1.	Mr. Mohammed Kasim Hasham	Chairman/ Director
2.	Mr. Mohammed Ebrahim Hasham	Chief Executive Officer/ Director
3.	Mr. Mohammed Hussain Hasham	Director
4.	Mr. Khurram Kassim	Director
5.	Mr. Ahmed Ebrahim Hasham	Director
6.	Mr. Muhammed Iqbal	Director
7.	Mr. Jamal Ahmed	Director
8.	M/s Mehran Sugar Mills Limited	Company



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7. In response to the Show cause notice, the Company submitted that
- The Sugar industry has passed through a difficult period in 2003-2004 and 2004-2005. The financial position of the Company deteriorated and key financial indicators fell short of minimum benchmark prescribed by the State Bank under Prudential Regulations for obtaining financial facilities from bank.
  - The Trustees of Provident Funds were requested to give a helping hand to the Company and defer the receivable contribution till the financial situation improved.
  - Nevertheless cheques were delivered to the trustees but were not presented to the bank. However, as soon as the position improved trustees were asked to present the cheques. The cheques were cleared as per following detail.

Contribution for Month	Amount (Rs.)	Date of Credit in Bank
December 2004	388,235	December 13, 2005
January 2005	389,029	December 20, 2005
February 2005	390,358	December 22, 2005
March 2005	408,485	January 17, 2006
April 2005	421,305	January 17, 2006
May 2005	426,758	January 20, 2006
June 2005	429,043	January 25, 2006
July 2005	421,318	January 30, 2006
August 2005	418,491	February 10, 2006
September 2005	445,696	February 17, 2006

- The Company regretted the above development and requested to condone the default.

8. Hearing in the matter was fixed on June 02, 2006. Mr. M. Hanif, General Manager Finance represented the case on behalf of the Company and its directors. The learned counsel admitted the default on part of the Company and reiterated the facts mentioned in their reply. He was asked to produce undertaking by the directors for fulfilling the loss incurred by the provident fund trust due to non payment of the amount. The Company with regard to assessment of loss suffered by the provident fund trust deliberated during the hearing sent following working based on the interest rates offered by PICIC Commercial Bank on six months deposit.



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Month	Contribution due Date	Payment Date	Outstanding Days	Minus allowed period (15 Days)	Amount	8%
Dec-04	Jan-05	Dec 13, 2005	346	331	388,235	28,165
Jan-05	Feb-05	Dec 20, 2005	322	307	389,029	26,176
Feb-05	Mar-05	Dec 22, 2005	289	274	390,358	23,442
Mar-05	Apr-05	Jan 17, 2006	291	276	408,485	24,710
Apr-05	May-05	Jan 17, 2006	261	246	421,305	22,715
May-05	Jun-05	Jan 20, 2006	233	218	426,758	20,390
Jun-05	Jul-05	Jan 25, 2006	208	193	429,043	18,149
Jul-05	Aug-05	Jan 30, 2006	182	167	421,318	15,421
Aug-05	Sep-05	Feb 10, 2006	162	147	418,491	13,483
Sep-05	Oct-05	Feb 17, 2006	132	117	445,696	11,429
<b>Total</b>					<b>4,138,718</b>	<b>204,093</b>
Month	Contribution due Date	Payment Date	Outstanding Days	Minus allowed period (15 Days)	Amount	8%
Oct-05	Nov-05	Feb 21, 2006	112	97	438,648	9,325
Nov-05	Dec-05	Feb 25, 2006	86	71	432,645	6,732
Dec-05	Jan-06	Mar 30, 2006	88	73	432,068	6,913
Jan-06	Feb-06	Apr 01, 2006	60	45	443,679	4,376
Feb-06	Mar-06	Apr 03, 2006	33	18	459,430	1,812
Mar-06	Apr-06	Apr 22, 2006	21	6	470,762	619
Apr-06	May-06	May 31, 2006	30	15	489,246	1,608
May-06	June-06	Jun 07, 2006	6	0	496,515	0
<b>Total</b>					<b>3,662,993</b>	<b>31,395</b>
<b>Grand Total</b>					<b>7,801,711</b>	<b>235,489</b>

9. 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.”*

10. 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 and 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.

11. 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 cheques have been delivered to the fund trustees is not in compliance with the law. It appears that that the Trustee members are not acting in the best interest of the fund. The payment was not made by the Company within stipulated time. It appears that payment towards the Fund is not prioritized by the Company and it does not take compliance of the law seriously.



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12. 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:

1.	Mr. Mohammed Kasim Hasham	Chairman/ Director	Rs. 5,000
2.	Mr. Mohammed Ebrahim Hasham	C E O / Director	Rs. 5,000
3.	Mr. Mohammed Hussain Hasham	Director	Rs. 5,000
4.	Mr. Khurram Kassim	Director	Rs. 5,000
5.	Mr. Ahmed Ebrahim Hasham	Director	Rs. 5,000
6.	Mr. Muhammed Iqbal	Director	Rs. 5,000
7.	Mr. Jamal Ahmed	Director	Rs. 5,000
8.	M/s Mehran Sugar Mills Limited	Company	Rs. 5,000

13. The Company, its Chief Executive and Directors are hereby directed to make good the loss suffered by the Provident Fund due to lack of payment. In this regard following actions are required from the Company within 30 days of this order:

- Due Diligently assessing the loss suffered by the provident fund,
- Evidence of payment of the amount lost by the provident fund,
- The Auditor's certificate in respect of compliance with above directions.

14. The Company, its Chief Executive and Directors are also directed to deposit the abovementioned penalty amounting to Rs. 40,000 (Rupees Forty thousands Only) within 30 days in the Commission's designated bank account 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.

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**Tariq Bakhtawar**  
Director Enforcement