



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Madina Jute Mills Limited

Number and date of notice: EMD/233/M/27/2009-1115 dated June 18, 2014
Date of hearings: November 23, 2015
Present: Mr. Muhammad Hafeez Shah, Company Secretary

ORDER

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

This order shall dispose of the proceedings initiated against the following directors including the Chief Executive (the “respondents”) of **Madina Jute Mills Limited** (the “Company”):

1. Mr. Muhammad Ali
2. Mr. Muhammad Siddique
3. Mr. Muhammad Farooq
4. Mr. Muhammad Hassan

These proceedings were initiated through show cause notice (“SCN”) dated June 18, 2014 under the provisions of section 227 read with section 229 and section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. The brief facts of the case are that examination of annual audited financial statements for the years ended June 30, 2011, June 30, 2012 and June 30, 2013 (the “Accounts”) of the Company filed with the Registrar of Companies pursuant to provisions of section 242 of the Ordinance revealed that the Company has been utilizing employees provident fund (“EPF”) contributions and paying a mark-up on it to the EPF. The detail of utilization of EPF amounts and payment of markup on it is given hereunder:

(Amounts in Rs million)

Particulars	Year 2011	Year 2012	Year 2013
Opening Balance EPF Liability	7.269	1.166	1.253
Provided for the year	1.624	1.763	2.108
Mark-up on Provident Fund	0.879	1.203	0.995
Received during the year	Nil	5.820	6.502
Paid during the year	(8.607)	(8.700)	(9.569)
Closing Balance	1.166	1.253	1.289



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It appeared that the Company, prima facie, contravened the provisions of section 227 of the Ordinance, as it utilized the amounts of EPF and failed to deposit or invest those amounts within fifteen days, as per requirements of section 227 of the Ordinance. Consequently, the SCN was issued to the respondents requiring them to show cause in writing as to why penal action may not be taken against them in terms of section 229 of the Ordinance.

3. The respondents failed to submit any reply to the SCN. The case was fixed for hearings on December 10, 2014, April 8, 2015 and November 17, 2015, however, each time the respondents requested for adjournment. Finally the hearing was held on November 23, 2015 before the undersigned. Mr. Muhammad Hafeez Shah, the company secretary, appeared on behalf of the respondents and made following verbal submission:

- EPF accounts has been maintained by the Company;
- The Company has been utilizing the EPF amounts and has been paying a return of around 17% to the EPF on the amounts utilized by it;
- If EPF is invested elsewhere, the approximate return is around 8% to 9% only; and
- Presently, the Company has continued utilizing the EPF amounts.

Based on the aforesaid statements, the respondents requested for a lenient view in the matter. However, when attention of the authorized representative was invited to the provisions of section 227 of the Ordinance which specifies the manners in which the EPF amounts can be deposited or invested, he agreed that the Company was not complying with the requirements of the law. The respondent also submitted a copy of financial statements of the EPF for the year ended June 30, 2013 perusal of which reveals that the Company has created a trust for management of the EPF. It further transpires that the auditor in his report to trustees of the EPF has qualified his report by stating that *Trust has not made any investments in accordance with the thresholds set by The Employees' Provident Funds (Investment in Listed Securities) Rules 1996, issued under the authority of section 227 of the Ordinance.*



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

Section 227 of the Ordinance, inter alia, provides as under:

Sub-section (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 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 —*

(a) *be deposited —*

- (i) *in a 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; or*

(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): *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.*

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).



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5. Having gone through the facts of the case, provisions of the law and submissions of the respondents, I have concluded that the provisions of section 227 of the Ordinance have been violated as the Company has not deposited the amounts of EPF to the trustees within fifteen days from the date of collection in terms of the law. The respondents' plea that the Company has been paying higher rate of return on the EPF amounts being utilized by it, is not a tenable justification for violation of legal provisions. The provisions of section 227 of the Ordinance are clear and explicit. Where a trust has been created for managing the EPF, it is mandatory for the Company and its directors to deposit all the amounts collected in relation to the EPF to the trust within fifteen days and there is no exception provided in the law in this regard. The intention of the legislature appears to be safeguarding the post-employment / retirement benefits of the employees from the liquidation risk of the Company. Hence, the respondents are liable for fines under section 229 for violating the provisions of section 227 of the Ordinance. Therefore, in exercise of the powers conferred by section 229 of the Ordinance, I hereby impose an aggregate fine of Rs10,000 (Rupees ten thousand only) on the respondents. The respondents are directed to deposit the fines in the following manner:

Name of Respondents	Amounts in Rupees
Mr. Muhammad Ali	2,500
Mr. Muhammad Siddique	2,500
Mr. Muhammad Farooq	2,500
Mr. Muhammad Hassan	2,500
Total	10,000

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fines, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid fines are imposed on the respondents in their personal capacities; therefore, they are required to pay the said amounts from personal resources.



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Before parting with the order, I hereby direct the respondents in terms of section 473 of the Ordinance to take transfer all the amounts of EPF to a the EPF Trust, as per requirements of section 227 of the Ordinance, within 60 days from the date of this order.

Amina Aziz
Director (CSD)

Announced:
November 26, 2015
Islamabad