Securities and Exchange Commission of Pakistan
(Enforcement Department)

[Islamabad]

Before Rashid Sadiq, Executive Director

In the Matter of
M/S Pangrio Sugar Mills Limited

Number and date of notice	EMD/Enf II/356/2004 dated January 12, 2004
Date of final hearing	March 04, 2004
Present	Mr. Faisal Latif, ACA, Consultant
Date of Order	March 11, 2004

The case before me pertains to the proceedings initiated against the directors of M/S Pangrio 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. While examining the audited accounts of the Company for the year-ended September 30, 2003 received at the Commission under Sub-section (5) of Section 233 of the Ordinance, it was observed that an amount of Rs. 4.768 million was shown as payable by the Company to the Employees Provident Fund (hereinafter referred to as the "Fund") under the head "Creditors, Accrued and Other Liabilities". This amount was increased from Rs. 3.502 million shown payable by the Company to the Fund in the Balance Sheet as on September 30, 2002. The auditors of the Company namely, M/S M. Yousaf, Adil, Saleem & Co., Chartered Accountants

have also drawn attention of the members of the Company towards the aforesaid contravention in their audit report signed by them on December 02, 2003 in the following manner:

> "Outstanding balance of Rs. 4.8 million in respect of amount due to Employees Provident Fund (shown under Creditors, accrued and other liabilities) has not been paid to the Fund on timely basis, which is violation of Section 227 of the Companies Ordinance, 1984."

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 January 12, 2004 was issued to the following directors, who *prima facie* had authorized and permitted the contravention of the provisions of Section 227 the Ordinance:

i. Mr. Sajid Hussain Naqvi, Chairman & Chief Executive,
ii. Ms Naheed Zafar Mirza, Director
iii. Mr. Abbas Ally Agha, Director
iv. Mr. Mazhar Ali Ansari, Director
v. Mr. Abdullah Kamran Soomro, Director
vi. Begum Akthar Abid, Director
vii. Mr. Asif Saeed, Director
viii. Mr. Akber Ali Mirza, Director
ix. Mr. Mohammad Asif, Director

4. The reply to the show cause notice was received from M/S Tariq Ayub Anwar & Co., Chartered Accountants (the "Consultants") vide their letter dated January 27, 2004 on behalf of all the directors except Mr. Muhammad Asif, Nominee Director NIT. In the reply, it was submitted that the Company has already paid the principal amount of contributions to the Fund and the outstanding amount represents the markup only. It was further stated that the Company would also pay the outstanding amount of markup to the Fund in installments. Subsequently, the Consultants vide their letter dated February 07, 2004 informed that the Company has been able to pay Rs 2.2 million to the Provident Fund out of total outstanding amount of Rs. 4.768 million. A written

reply was also received on behalf of Mr. Muhammad Asif wherein it was stated that the Nominee Director took up the matter of violation of Section 227 of the Ordinance in various board meetings. To substantiate this assertion, he also placed on record copies of the minutes of the relevant board meetings. It was prayed that the Nominee Director was not responsible for the default and, therefore, no fine may be imposed on him.

5. In order to provide an opportunity of personal hearing to the directors, the case was fixed for hearing on February 24, 2004, which at the request of the Consultants was adjourned and re-fixed on March 04, 2004. Mr. Shahid Aziz, Zonal Manager, NIT Islamabad, however, appeared on February 24, 2004 on behalf of Mr Muhammad Asif, Nominee Director NIT and argued the case. He did not submit any new arguments and repeated the contentions contained in the written reply to the show cause notice. On the date of hearing, Mr. Fasial Latif of M/S Tariq Ayub Anwar & Co., Chartered Accountants, appeared before the undersigned and made his submissions. While admitting the default, he submitted that the default occurred as the Company was facing financial problems due to the general downfall in the sugar industry. He averred that the amount shown as payable to the Fund was actually the markup and the Company has already paid the principal amount of contributions to the Fund. He further stated that the outstanding amount, which was Rs. 4.768 million on September 30, 2003, has now been reduced to Rs. 2.583 million, which would also be paid in a period of 30 days. 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
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> > (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
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> (b) be invested in Government securities.
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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.
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> (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 paid to the trustees within stipulated time. The Company cannot withhold such moneys on the pretex of liquidity constraints.

8. Reverting to the submissions made on behalf of the directors I would first consider the arguments advanced by Mr. Faisal Latif. 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. Mr. Faisal Latif 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. In respect of Mr. Mohammad Asif, Nominee Director, NIT it has been demonstrated that he took up the issue of default in various board meetings of the Company and the minutes of the meetings placed on record substantiated his concern over the violation of Section 227 of the Ordinance. In view of this fact of the matter, I am inclined to take a lenient view of the default in his case.

10. For the forgoing, I am of the view that 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) As the Company has made payment of the major portion of liability of the Provident Fund and has also assured that the balance amount shall be paid within a period of 30 days. Therefore, taking a lenient view of the default, a fine of Rs. 4,000/- (Four thousands only) is imposed on each of the following Directors under Section 229 of the ordinance:

- Mr. Sajid Hussain Naqvi, Chairman & Chief Executive,
- Ms Naheed Zafar Mirza, Director
- Mr. Abbas Ally Agha, Director
- Mr. Mazhar Ali Ansari, Director
- Mr. Abdullah Kamran Soomro, Director
- Begum Akthar Abid, Director
- Mr. Asif Saeed, Director
- Mr. Akber Ali Mirza, Director

ii) No fine is imposed on Mr. Mohammad Asif in view of the discussion in Para 9 of this order. He is, however, advised that the nominee director owes same duties and responsibilities as any other director of the Company. The law expects the nominee director to give full attention to the affairs of the companies where he is holding office of directorship. He must look after the interest of the Company as a whole and discharge the functions entrusted to him under the Ordinance with due care and prudence.

iii) As the directors have promised to pay the balance amount within 30 days and submit auditors' certificate thereof, 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.

11. The directors of the Company are directed to deposit the fine in the designated bank account of Securities and Exchange Commission of Pakistan within 30 days of the date of this order and submit a copy of the 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.

RASHID SADIQ
Executive Director (Enforcement)

Announced:
March 11, 2004
ISLAMABAD