



**SECURITIES AND EXCHANGE COMMISSION OF  
PAKISTAN**  
*Company Law Division*  
*(Enforcement Department)*

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**Before Mr. Tariq Bakhtawar, Director Enforcement (Company Law Division)**

**In the matter of**

**M/s Nazir Cotton Mills Limited**

**UNDER SUB-SECTION (2) & (3) OF SECTION 227 READ WITH SECTION 229 AND  
SECTION 476 OF THE COMPANIES ORDINANCE, 1984**

Number and date of notice	EMD/233/163/2002
Date	March 16, 2007

**ORDER**

This order shall dispose of the proceedings initiated against M/S Nazir Cotton Mills Limited (hereinafter referred to as “the Company”) and its directors under Sub-section (2) of Section 227 read with Section 476 of the Companies Ordinance, 1984 (the “Ordinance”):

2. The facts leading to this case, briefly stated, are that it was noticed from the review of annual accounts of the Company for the year ended June 30, 2006 that an amount of Rs. 597,832 (2005: Rs. 302,750) was shown payable to Provident Fund Trust by the Company. The amount further increased to Rs. 967,026 in the accounts for the half year ended December 31, 2006. The aforesaid amount was over and above monthly liability towards the Company and its auditors also qualified their opinion on account of company’s failure to deposit these in the trust account in time.

3. The aforesaid review of accounts and audit reports categorically identified that the funds were withheld by the Company and payments were not made to the Provident Fund Trust (“Fund”) as required under the law. The Company 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.

4. Consequently, a show cause notice dated March 16, 2007 (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:



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1.	Mian Shahzad Aslam, Chief Executive Officer
2.	Mian Farrukh Naseem, Director
3.	Mian Aamir Naseem, Director
4.	Maqbool Hussain Bhutta, Director
5.	Syed Arif Husain, Director
6.	Mr. Khurram Abbas, Director
7.	Mr. Naseem Anjum, Director

The aforesaid directors were called upon to show cause, in writing, within fourteen days of the date of notice as to why penalties, as provided in the statute, may not be imposed on them for the aforesaid contraventions and why they may not be directed to comply with the same. They were also advised to indicate their intention, if any to appear in person to clarify the points raised in the Notice.

5. In response to the Show cause notice, the representative of the Company admitted the default and stated that due to shortage of funds the Company could not pay its liability towards the Provident Fund within the prescribed time. It was informed that finally the directors paid the provident fund payable by the Company from their own pocket and enabled the Company to discharge its liability. A certificate from the Company auditors was also submitted in support of the statement and request was made that no cohesive measure may be taken against the Company.

6. 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.*



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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.*

*(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 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 collection and the contributions shall be invested in securities referred to in Clause (a) to (c) of Subsection (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 held in trust by the company and the same must be paid to the trustees within stipulated time and any failure thus constitutes breach of trust.

8. I have given due consideration to the submissions of the Company Secretary on behalf of the directors as well as to the fact that the amount now stands deposited in the trust account. I am of the view that payment towards the Fund is not prioritized by the Company and it does not take compliance of the law seriously as no effort was made to comply with law in spite of auditors’ qualification until Show Cause proceedings were initiated by this office.

9. 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 liability disclosed in the financial statement at the end of the year make it clear that the mandatory provisions of the law were breached. 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. However, considering that the default is rectified, I hereby, instead of imposing fine on the Company, its Chief Executive and Directors, only



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impose fine of Rs. 5,000 on the Chief Executive of the Company and reprimand all the Directors of the Company to remain careful in future in compliance with the mandatory statutory provisions.

10. The Chief Executive of the Company is hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fine of Rs.5,000 (Rupees Five thousands Only) in the Commission's designated bank account with Habib Bank Limited 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 in his personal capacity; therefore, he is required to pay the said amounts from his personal resources.

**Tariq Bakhtawar**  
Director  
Enforcement

**Announced:**  
**September 07, 2007**  
**Islamabad.**