



Securities and Exchange Commission of Pakistan  
*Enforcement Department*

[Islamabad]

*Before Ashfaq Ahmed Khan, Director*

*Order*

*In the Matter of*  
M/S Moonlite (Pak) Limited

Number and date of notice	EMD/Enf-II/296/2003 dated September 29, 2003
Date of hearing	October 11, 2004
Present	Mr. Ghulam Akber CFO & Company Secretary  Mr. Haseeb Ahmed NIT
Date of Order	November 03, 2004

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The case before me pertains to the proceedings initiated against the chief executive and directors of M/S Moonlite (Pak) 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 was noticed from examination of Annual Accounts of the Company for the years ended June 30, 2000, 2001 and 2002, that amounts of Rs.1,245,710, Rs. 1,312,000 and Rs.2,180,280 respectively were payable by the Company to the Moonlite (Pak) Limited Employee’s Provident Fund Trust (hereinafter referred to as the “Fund”).

3. In view of the above, the Enforcement Department apprehended violation of the statutory provisions of Section 227 of the Ordinance and consequently, a



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show cause notice dated September 29, 2003 was issued to the following directors, who *prima facie* had contravened the provisions of Section 227 of the Ordinance:

- i. Mr. Tar H. Ismail, Chairman & Chief Executive,
- ii. Mr. M. Sohail Umer, Director
- iii. Mr. Ashraf T. Ismail, Director
- iv. Mr. Shahid Umer, Director
- v. Mrs. Nasreen Ashraf, Director
- vi. Mrs. Parsa Sohail, Director
- vii. Mr. Gul Nawaz, Director (NIT Nominee)

4. The reply to the show cause notice was received from the Company Secretary vide his letter dated October 11, 2003. He, while admitting the default, submitted that the Company is utilizing the provident fund amounts under an agreement made between the Company and the Fund. The Fund regularly payoff its retired members/those members who left the Fund. He further contended that the agreement is in the public interest and therefore the penalty may not be imposed. Mr. Firasat Ali, Head of Corporate Governance, NIT replied on behalf of Mr. Gul Nawaz vide his letter dated October 13, 2003. He submitted that the Company has very poor record of Corporate Governance and that Mr. Gul Nawaz advised the Company at various occasions to comply with the requirements of the law. He further stated that Mr. Gul Nawaz did not attend the Board of Directors (the 'BOD') meeting in which the accounts for the year ended June 2002 were approved. However, he subsequently wrote a letter on December 10, 2002 to the Company Secretary and advised him to submit a status report on the compliance of Section 227 of the Ordinance, which was not submitted till our nominee resigned on January 8, 2003 from the board of the Company. After his resignation, Mr. Abdul Samad was Co-opted in place of Mr. Gul Nawaz and he also wrote a letter for compliance of the provisions of Section 227 of the Ordinance, which was not responded till he raised the issue during BOD meeting held on 30-09-03. Mr. Firasat further contended that ex and



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current nominee directors of NIT have played their role, therefore, they should be absolved from the responsibility of subject violation.

5. In order to provide an opportunity of personal hearing, the case was fixed for October 11, 2004. On the date of hearing, Mr. Ghulam Akbar appeared on behalf of all directors of the Company except Mr. Gul Nawaz and argued the case. Mr. Akbar reiterated the same arguments as were made earlier in his written reply. He, while admitting the default, again submitted that due to working capital shortage the Company was utilizing the provident fund amounts under an agreement made between the Company and the Fund. According to the agreement it was agreed that the Fund will give loan to the Company and the Company shall pay compound markup @ 15% per annum on all outstanding amounts. He further stated that the Company has given credit to the Fund with a mark up which is higher than what it would get from investment in government securities. He urged that the agreement is in the best interest of the Company and its employees. He however assured that the management of the Company is ready to take decision/action under the direction of the SECP. He requested for a lenient view in the matter. He was advised to submit his submissions in writing which were received in the Commission on October 22, 2004.

6. Before proceeding further, it is necessary to advert to the provision of law, which has 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

(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

(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 law are clear and explicit. 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 company with respect to any Provident Fund has created a Trust, 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 pretext of liquidity constraints or payment of higher returns as compared to government securities.



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8. Reverting to the submissions made on behalf of the directors, I would first consider the arguments advanced by Mr. Ghulam Akbar, the Company Secretary. His contention that the Company was using the Fund amounts under an agreement is not tenable because any agreement contrary to the provisions of the law is *ultra vires*. Further, the argument that the moneys were not paid to the Fund due to liquidity constraints is also not cogent because of the reason that the law makes it obligatory for the Company to pay the contributions to the Fund within fifteen days from the date of its collection. The Company has attempted to justify the above default by claiming that the interest charged on outstanding amounts at 15% 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. Such amounts are unsecured and if the Company goes insolvent, the employees would be the worst sufferers. Further, the amounts payable to Fund have been increased to Rs. 3, 346, 862 as on June 30, 2003 and to Rs. 4, 656, 182 as on June 30, 2004. It is evident that the directors of the Company did not make any effort to rectify the default despite issuance of show cause by the Commission. In respect of Mr. Gul Nawaz, Nominee Director (NIT) it has been observed that he brought the default to the notice of the Company and therefore he has not been found guilty in this regard.

9. Considering the circumstances of the case, 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 Fund. 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



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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 shown inclination to repay the outstanding amount to the Fund, therefore, taking a lenient view of the default, I impose a fine of Rs. 5000/- (Rupees five thousand only) on the chief executive of the Company under Section 229 of the Ordinance. The other directors of the company are reprimanded to be careful in future.
- ii) A notice shall be issued to the Company to make good the default in terms of Sub-section (1) of Section 472 of the Ordinance.

10. 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 to furnish receipted challan to the Commission. The chief executive and directors shall remain liable for any loss suffered by the employees on account of contravention of Section 227 of the Ordinance till repayment of total outstanding amount to the Fund. It should also be noted that the said penalty is imposed on the chief executive in his personal capacity and he is required to pay the said amount from his personal resources.

**Ashfaq Ahmed Khan**  
Director (Enforcement)

**Announced:**  
November 03, 2004  
ISLAMABAD