



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Packages Limited Employee Provident Fund

Number and date of notice:	No. CSD/ARN/380/2016-1261-63, dated October 13, 2016
Date of hearing:	February 6, 2018
Present:	Khurram Raza Bakhtayari, Trustee, PLEPF Bilal Naeem, Trustee, PLEPF Moudood Ahmad Khan, Orr, Dignam & Co. (Authorized Representative)

ORDER

Under Section 227 and the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996 read with Section 229 & 476 of the Companies Ordinance, 1984.

This Order shall dispose of the proceedings initiated against the Trustees (the "Respondents") of Packages Limited Employees Provident Fund (the "EPF") of Packages Limited (the "Company"), through Show Cause Notice (the "SCN") dated October 13, 2016 issued under the provisions of Section 227 of the Companies Ordinance 1984 (the "Ordinance") and the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996 (the "Rules").

2. The brief facts leading to the case are that, review of annual audited financial statements for the year ended June 30, 2015 ("Accounts") of the Company revealed that the Respondents invested 68.75 % (2014: 74.37 %) of the EPF investments in the shares of listed companies, as tabulated below (Note 6 to the Accounts):

(Amount in thousand)

Year	2015	%	2014	%
Size of the EPF	Rs. 2,152,893	100	Rs. 2,311,341	100
Fair Value of Investments of EPF	Rs. 2,125,249	98.72	Rs. 2,297,324	99.39
Investment in shares of Listed Companies	Rs. 1,480,216	68.75	Rs. 1,719,020	74.37



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Rule 3 (i) of the Rules, framed under Section 227 of the Ordinance require that where it is decided to make investment out of the provident fund constituted for the employees of a company, in securities of the companies listed on any stock exchange in Pakistan, the total of such investment if made in listed securities shall not exceed thirty per cent of the provident fund. In this regard it was observed that the Respondents, *prima facie*, violated the provisions of Rule 3 (i) of the Rules by making the EPF investments in excess of prescribed limit of 30%, in the listed securities.

Moreover, Rule 3 (iii) prescribes the maximum limit of 5 % in case of equity investment in the shares of a Company, whereas the investment made by EPF in the shares of the Company is Rs. 129.49 million (14.65 % of the paid-up capital of the Company i.e. Rs. 883.80 million) which is beyond the prescribed limit.

3. Consequently, a SCN dated October 13, 2016 was issued to the Respondents, to show cause as to why penalty may not be imposed on them for contravention with Rule 3 of the Rules read with Section 227 of the Ordinance. The Respondents replied to the contents of the SCN vide letter dated October 25, 2016, brief of which is stated below:

Rule 3(i) of the Rules

The Trustees have not made EPF investments in listed securities in excess of the prescribed limit of 30%. The trustees made last investment in year 2011, when the cost of investment of EPF in the listed securities was actually 28.60% (inclusive of listed shares and TFCs). Subsequent to this investment, the ruling price of the shares increased steeply in years 2013 to 2015, which increased the fair value of the investments of EPF in listed shares. As a consequence, the size of the EPF increased, as well as the notional amount of the value of the shares of listed companies owned by EPF, to 68.75 % of the EPF, which necessarily fluctuates daily with the market price. This amount does not reflect the percentage of total investment actually made in listed shares by the Trustees which is Rs. 137,623,714, as of 31 December 2015, being only 17.1% of the size of the EPF.

Rule 3(i) of the Rules prescribe words "total investment" and not "total value of investment", which are not defined in the Ordinance. The plain and ordinary meaning of the term "total investment" is the money used at the time of investing. Further, Black's



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Law Dictionary (7th Edition) defines "investment" as "An expenditure to acquire property or assets to produce revenue." On this basis, as mentioned above, the actual investment, i.e. the expenditure to acquire shares of listed companies, whenever made was less than 30% at the time of investment.

Rule 3(iii) of the Rules

EPF does not hold 5% of the shares of the Company. The actual number of shares of the Company held by EPF is 2,067,893 constituting 2.34 % of the total number of paid up ordinary shares of the Company and 1.95% of the total number of ordinary and preference paid-up shares of the Company. Even if calculated on a value basis, the EPF's investment is 3.05% of the ordinary paid up share capital (i.e. Rs. 883,795,040 and preference paid-up share capital i.e. Rs. 3,360,499,980 totaling Rs. 4,244,295,020). This amount also does not exceed the prescribed limited of 5%.

The Trustees are not in violation of Rule 3(i) or (iii) of the Rules and the Commission is requested to kindly dispose of the Show Cause Notice on the basis of the explanation set out above.

4. In view of the submission of the respondents, a hearing was fixed on February 6, 2018, which was attended by Khurram Raza Bakhtayari, Bilal Naeem ("Trustee") and Mr. Moudood Ahmad Khan, Advocate, Ms. Mishal Nasir, Advocate, Orr Dignam & Co. (the "Authorized Representative") who reiterated their written arguments in the hearing.

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

Rule 3 of the Rules states that;

"Where it is decided to make investment, out of the provident fund constituted for the employees of a company, in securities of the companies listed on any stock exchange in Pakistan, such investment shall be subject to the following conditions, namely:-

(i) Total investment in listed securities shall not exceed thirty per cent of the provident fund"

(iii) investment in shares or other listed securities of a particular company shall not exceed five per cent of its paid up capital;...



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Rule 5 of the Rules provides that *whoever fails or refuses to comply with or contravenes any provision of these rules, or knowingly and wilfully authorises or permits such failure, refusal or contravention shall, in addition to any other liability under the ordinance, be also punishable with fine not exceeding two thousand rupees, and, in case of continuing failure, refusal or contravention to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues..*

Section 229 of the Ordinance provides that *whoever 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 liable to pay the loss suffered by the employee on account of such contravention.*

6. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 227 and rules prescribed thereunder have been delegated to the Executive Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the Respondents. I would tend to agree to the contentions made by the Respondents. I may take this opportunity and express that the purpose of these restrictions is to ensure better risk management controls to be employed in the investment decision of trust assets. I therefore conclude the proceedings against the respondents without any adverse order.

Abid Hussain
Executive Director
Corporate Supervision Department

Announced:
February 19, 2018
Islamabad