

**Before Abid Hussain
Director (Enforcement)**

In the matter of

Pakistan PVC Limited

Number and date of notice	No. EMD/233/506/2002-2870-2879 dated February 15, 2008
Date of Hearing	March 13, 2008
Attended By	i. Mr. Reyaz Shaffi, Chairman & Chief Executive ii. Mr. Asif Shaffi Director Pakistan PVC Limited as authorized representative of Board of Directors

ORDER

Under Section 229 read with Section 476 of the Companies Ordinance, 1984

The case before me pertains to the proceedings initiated against all the directors including the Chief Executive of Pakistan PVC Limited (“the Company”) under provisions of Section 229 of the Companies Ordinance, 1984 (the “Ordinance”) for violating the provisions of Section 227 of the Ordinance.

2. The facts leading to this case, briefly stated, are that the examination of annual audited accounts (the “accounts”) of the Company for the year ended June 30, 2007 revealed that an amount of Rs.31.563 million (2006: Rs.30.941 million) is payable to Provident Fund Trust by the Company. At note 3.3 of the accounts it was stated that monthly contributions are made both by the company and employees to the fund at the rate of 8.33% of the basic salary. The record of the Company maintained with the Commission reflected that earlier a penalty of Rs.5,000 was imposed on the Chief Executive of the Company vide order dated December 08, 2005, on account of violation of the provisions of Section 227 of the Ordinance during the financial year ended on June 30, 2004. However, continuous increase in the amount payable to the fund reflected that the Company is not making any effort to rectify the default therefore, a show cause notice under the provisions of Section 227 read with Sections 229 and 476 of the Ordinance dated February 15, 2008 was issued to the following



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directors of the Company, who prima facie had authorized and permitted the contravention of the provisions of Section 227 of the Ordinance :

1. Mr. Reyaz Shaffi, Chairman/Chief Executive
2. Mr. Ijaz Ahmad Khan, Director
3. Mr. Adeel Shaffi, Director
4. Mr. Mohammad Iqbal, Director
5. Mr. Arif Shaffi, Director
6. Mr. Sheikh Aftab Ahmed, Director
7. Mr. Asif Shaffi, Director

3. Mr. Reyaz Shaffi, Chairman /Chief Executive, Mr. Asif Shaffi and Mr. Arif Shaffi directors of the Company responded the show cause notice separately vide letters dated February 29, 2008 on behalf of all the directors of the Company and expressed that the Company ever since its privatization in 1992, is facing severe financial crises. Both the directors referred their earlier letters dated June 13, 2005 and submitted that as a consequence of the political victimization, the Company was declared a sick unit and the plant was closed in 1995 and remained closed to date. Due to acute financial crises the Company had not been able to pay the salaries of its employees in the sum of Rs.46,373,681. This includes the salaries due to the Chief Executive Officer of the Company and two working Directors in the sum of Rs. 34,151,153. As the salaries have not been paid therefore, provident fund contributions of the employees and the Company amounting to Rs. 4,668,140 has not been paid. The amount of Rs.5,057,926 represents the Company's contribution of the provident fund of the dismissed employees which is under litigation in the court of law . The Company has accrued interest amount of Rs.21,836,674.00 on the unpaid part of the provident fund. It was further stated that the delay in payment of outstanding amount is due to the fact that Company is facing liquidity crunch. At the end it was requested to condone the default.

4. In order to provide an opportunity of hearing the matter was fixed on March 13, 2008 in which Mr.Reyaz Shaffi, Chairman /Chief Executive and Mr. Asif Shaffi director of the Company appeared as an authorized representative on behalf of all the directors. They reiterated the same arguments as were given in the written response besides admitting the default. They requested for a lenient view and further added that the Company is in litigation in the court of law with its ex-employees in the matter of the payment of their final dues



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including payment of provident fund therefore the matter has become subjudice for the Commission.

5. In order to facilitate the matter of making payment of the provident fund the Company, vide letter dated March 14, 2008 was asked to provide the year-wise break up of the liability of the provident fund describing the portion of provident fund which belongs to the Chief Executive and Directors of the Company and rest of the employees separately, disclosing the amount due in principal and the interest accrued thereon, the amount of the provident fund under litigation along with copies of the lawsuit pending in the Court and copy of any order passed in the matter, the documentary evidence of the payments made on account of provident fund in compliance of Section 227 of the Ordinance during the past five years, list of employees to whom the provident fund is due, list of employees to whom the payments are made along with copies of cheques issued to them and statement of the relevant bank account of the Company, how many employees of the company at present are entitled for the provident fund and whether the Company is complying with the requirements of Section 227 of the Ordinance for the present employees.

6. The Company vide its letter dated March 28, 2008 stated that the amount of provident fund under litigation is Rs.5,057,926 which represents the Company's contribution. It was stated that there is only one employee at present who is entitled for the provident fund. Bank account of the provident fund is being opened and as soon as all the formalities are completed, the Company will deposit the principal amount for the current year of this employee to this account under intimation to the Commission. The Chief Executive further stated that after revival of the Company, salaries of the employees along with their provident fund will be paid.

7. Before proceeding further, it is necessary to advert to the provision of law, which has been violated by the directors of the Company. These provisions are contained in Section 227 of the Ordinance, which is reproduced as follows:

"227. Employees' provident funds and securities:

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened



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by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned .

(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.

(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.”

8. The aforesaid provisions of the law are clear and unambiguous. The objective of these provisions is to keep the management away from utilizing any portion of the fund collected as contributions to a provident fund and to secure the amounts collected from the employees of the company only for the benefits of the employees of the Company. The law requires that 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. The amounts collected from the employees as contributions to a provident fund 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 whereas the trustees are responsible to invest the moneys of the fund in accordance with the provisions of law. Therefore the arguments advanced by the directors that the moneys were not paid to the trust due to liquidity crunch is not tenable. I believe that the spirit of law is to secure the hard



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earned money of the employees and securing the amount of the retirement benefits is more emphasized rather than attempting to earn a better return. It appears that payment towards the provident fund is not prioritized by the Company and instead was utilized as working capital in violation of the provisions of Section 227 of the Ordinance.

9. For the forgoing, I am of the view that the directors have failed to comply with the mandatory requirements of Section 227 of the Ordinance by not making timely payments to the provident fund trust. However, considering that the default is admitted by the directors and that the Chief Executive of the Company was already penalized for violating the provisions of Section 227 of the Ordinance, I hereby, taking a lenient view of the default, instead of imposing a fine on the Chief Executive and Directors of the Company under Section 229 of the Ordinance, hereby direct the Chief Executive of the Company in terms of Section 473 of the Ordinance to appoint statutory auditor to evaluate and verify the amount due to the Provident Fund Trust and also verify the amount of provident fund which is subjudice due to the matter pending in the court of law. The amount so accessed along with the interest due thereon, other than the amount which is subjudice, shall be deposited in a bank account as provided in Section 227 of the Ordinance. The Chief Executive shall submit a report to the Commission within 30 days of the date of this order. I hereby also feel it necessary to issue a stern warning to the trustees to the Provident Fund to be careful in future and not to indulge in any such transaction which is in violation of the law.

Abid Hussain

Director (Enforcement)

***Announced
April 28, 2008
Islamabad***