

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 13 of 2019

Ms. Zahidjee Textile Mills Ltd Provident Fund Trust

...Appellant

versus

Executive Director, SECP

...Respondent

Date of Hearing:

4/11/19

Present:

For the Appellant

- i. Mr. Zahid Imran, Legal Advisor
- ii. Mr. Naveed Ashraf, Company Secretary

For the Respondent:

- i. Mr. Tariq Ahmad, Additional Director (CSD)
- ii. Mr. Amir Saleem, Joint Director (CSD)

ORDER

1. This Order is passed in the matter of Appeal No. 13 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 16/01/19 passed by the Executive Director, Corporate Supervision Department (Respondent).
2. The brief facts of the case are that examination of the annual audited accounts of Zahidjee Textile Mills Limited (Company) for the year ended 30/06/16 (Accounts) revealed that the Company had a provident fund balance of Rs. 86.634 million. The Company vide letter dated 07/09/17 provided a copy of the certificate which showed that balance of the provident fund as on 30/06/16 is Rs. 82.616 million and the



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SECP

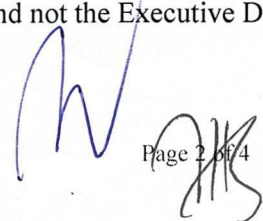
amount was with the Trustees (Trustees) of Zahidjee Textile Mills Limited Provident Fund Trust (Appellant) in the form of cash and cash equivalent. Subsequently, the Company, vide its letter dated 16/02/18, provided the breakup of Rs 82.616 million reflecting that Rs. 17.826 million was held in cash and Rs. 30.705 million was kept in the form of prize bonds. In view of the aforesaid information provided by the Company, the Trustees of the Appellant were *prima facie* found in violation of provisions of section 227(2) of the Companies Ordinance, 1984 (Ordinance) by not depositing provident fund in the specified manner.

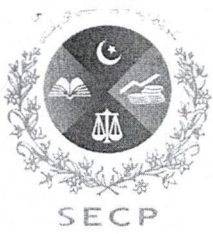
3. The Show Cause Notice dated 05/09/18 (SCN) was issued to the Trustees of the Appellant for non-compliance with the provisions of section 227 of the Ordinance. Hearing in the matter was held on 14/11/18 and Mr. Shahab ud Din appeared as the Authorised representative on behalf of the Trustees and made his submissions.
4. The Respondent, dissatisfied with the response, held that the Trustees breached the provisions of section 227 of the Ordinance by maintaining huge amounts of funds in the form of cash and cash equivalent. Furthermore, the Respondent held that the Trustees are duty bound to deposit the fund amount in the special savings account to be opened for the said purposes in a scheduled bank. The Respondent was of the view that the non-compliance was willful and in exercise of powers conferred under section 229 of the Ordinance, and an aggregate fine of Rs 15,000 was imposed on the Trustees in the following manner:

S. No.	Trustees	Amount
1.	Mr. Muhammad Zahid - Trustee	Rs. 5,000
2.	Ms. Ayesha Shehyar - Trustee	Rs. 5,000
3.	Mr. Shahab-ud-din Khan - Trustee	Rs. 5,000

Furthermore, in terms of section 475 of the Companies Act, 2017 (Act), the Trustees were directed by the Respondent to submit the Auditors' Certificate, within 30 days from the date of the Order, confirming that the Trust has complied with the provisions of section 218 of the Act, failing which Trustees shall be liable for proceedings under section 499 of the Act.

5. The Appellant has preferred the instant appeal on the grounds that the only judicial/quasi-judicial authority to adjudicate matters under the Ordinance is the Commissioner and not the Executive Director.

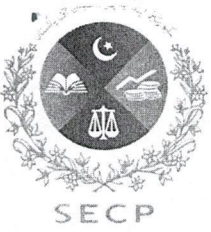




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The Appellant further argued that the Respondent ignored the fact that the default was not intentional and that all cash has been deposited subsequently in the bank.

6. The Respondent rebutted the arguments of the Appellant on the grounds that in terms of the Commission's SRO 1003(1)/2015 dated 15/10/15 and SRO 751 (I)/2017 dated 02/08/17 (SROs), the powers to impose penalty under section 229 of the Ordinance for contravention of section 227 have been delegated to the Respondent. The Respondent argued that the Appellant is keeping a huge amount of cash but not maintaining proper record as the Appellant did not provide supporting evidence in the form of bank statements or copies of investment instruments to substantiate that the funds have been invested as per the provisions of section 227 of the Ordinance. Furthermore, the Respondent argued that keeping such a huge fund balance in the form of prize bonds raised serious concerns regarding legitimate utilization of the fund and whether benefits have been transferred to members of the fund or not. The Respondent further argued that the Company submitted that the said prize bonds are placed in a fireproof safe at the mills and no return was earned on these, however, such claim of the Company or the Authorized Representative cannot be deemed satisfactory.
7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the Respondent had the power to adjudicate and pass the Impugned Order under section 227 of the Ordinance as the SROs had delegated the powers to the Respondent. Furthermore, Section 227 of the Ordinance is very clear and unambiguous which provides that, "*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 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.*" In the instant case, the Appellant breached provisions of section 227 of the Ordinance by maintaining substantial amount of funds in the form of cash and cash equivalent when they were duty bound to deposit the fund amount in the special savings account. Furthermore, the Appellant's argument that the violation was unintentional and that all funds have subsequently been deposited in the bank holds no merit whatsoever as no evidence has been provided to that effect.



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8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order, therefore, is upheld with no order as to cost.


Shaukat Hussain

Commissioner (CCD, Insurance)


Farrukh H. Sabzwari

Commissioner (SCD, AML)

Announced on: **13 JAN 2020**