



Corporate Supervision Department  
Company Law Division  
Before Amina Aziz – Director

*In the matter of*

**Gharibwal Cement Limited**  
(In respect of GCL Officers' Provident Fund)

Number and date of notice: CSD/ARN/230/2015-4369-70, dated May 17, 2016  
Date of Hearing: May 25, 2016  
Present: Mr. Muhammad Shamail Javed, Company Secretary and  
authorized representative of the trustees and directors

**ORDER**

**UNDER SECTION 229 AND EMPLOYEES' PROVIDE FUND (INVESTMENT IN LISTED  
SECURITIES) RULES, 1996 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE,  
1984**

This order shall dispose of the proceedings initiated against the directors of **Gharibwal Cement Limited** (the "Company") and trustees of the Company's Officers' Provident Fund Trust (together referred to as "respondents"). These proceedings were initiated through show cause notice ("SCN") dated May 17, 2016 under the provisions of sections 229 and the Employees' Provide Fund (Investment in Listed Securities) Rules, 1996 read with section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that examination of annual audited financial statements ("Accounts") of the Company for the year ended June 30, 2015 submitted with the Commission in pursuance of section 233 of the Ordinance and information subsequently provided by the Company through letter dated March 1, 2016, revealed as under:

- As disclosed under note 36 to the Accounts, the GCL Officers Provident Fund Trust ("OPFT") has made investment of Rs.6.4 million in a single mutual fund i.e. National Investment Trust ("NIT") which constitutes 34% of total size of the OPF of Rs.18.844 million; and
- OPFT was registered on May 28, 2015 and its bank account was opened on June 28, 2015. All employer's and employee's contributions till May 28, 2015 should have been deposited into the trust's bank account within fifteen days i.e. by June 12, 2015. However Rs.10.39 million was deposited in OPFT's account on June 29, 2015 i.e. with a delay of 17 days and Rs.1.85M was deposited on 8.7.2015 with a delay of 25 days. Moreover, payment of Rs.1.14 million for the month of July, 2015 was also made to OPTF's account with delay of 5 days on August 20, 2015.

SECURITIES AND EXCHANGE  
COMMISSION OF PAKISTAN  
NIC Building, 63 Jinnah Avenue,  
Islamabad, Pakistan



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3. It appeared that the trustees of the OPFT, prima facie, violated the Commission's SRO 261 (I)/ 2002 issued under rule 4 of the Rules by making investment in a single mutual fund of National Investment Trust ("NIT") in excess of the prescribed limit of 20%. Furthermore, the directors of the Company, prima facie, violated the provisions of sub-section (2) of section 227 of the Ordinance, by not depositing the amounts of contributions of provident fund into the account of OPFT within the prescribed time of fifteen days. Consequently, the SCN was issued to all the respondents calling upon them to show cause as to why penalty may not be imposed on them for the aforesaid alleged contraventions.

4. In response to the SCN, the respondents submitted reply through letter dated May 19, 2016. A brief of submissions of the respondents with reference to the contents of the SCN is summarized below:

## Delay in Opening of Bank Account

- Till June 30, 2014, company had gratuity scheme for its all permanent employees other than CBA. The Company decided to introduce provident fund scheme on March 31, 2015 to be applicable with effect from July 01, 2014 for its permanent management cadre employees in place of gratuity fund scheme.
- The Company started the process to register provident fund trust and accordingly OPFT was registered on May 28, 2015. To open OPFT's bank account, the Company applied for certified copy of trust deed, recognition of OPFT by Commissioner of Income Tax and opening of bank account.
- Completion of this process took time and OPFT was recognized by the Commissioner of Income Tax on December 29, 2015 though it was applied for recognition on May 23, 2015 (copy of letter attached). It was also a reason for delay in opening of bank account as bank was initially insisting on this certificate.

## Delay in Payment of Contribution

- The bank account of the Trust was opened on June 28, 2015, and on next day Company had deposited the whole amount of outstanding contributions into the Trust's bank account and thereafter, the Company is depositing contributions within the stipulated time from the date of payroll processing, which is normally done on 4<sup>th</sup> or 5<sup>th</sup> day of every month. The due date



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is, therefore, normally 20<sup>th</sup> of each month i.e. within 15-days from the date of collection.

- The above minor violation was only in initial stage of opening and operation of OPFT and thereafter company is regular in payment of contributions. Therefore, a lenient view is requested.

## **Investment in Mutual Fund**

- After start of fund, the trustees of OPFT have taken investment decisions based on long term prospective of the fund. Since, the fund was in its initial phase so some investment decisions were taken based on following few assumptions:
  - (i) All investment to be made in Islamic instruments only.
  - (ii) In case of investment in banks, the banks normally offer good rates on larger amounts.
  - (iii) In case of mutual fund scheme, upfront fee reduces return.
- At initial stage of the fund, investment decisions based on above basic guidelines were in employees' interest. It was agreed that as the size of fund expands, compliance with the law regarding investments will be made.
- During June 2015, NIT offered new Islamic Equity Fund with waiver of upfront fee of 2%, therefore to avail the benefit, the Trustees decided to invest in the scheme for long term period. Initially, the CEO and a director opted to join OPFT and made contributions, which were substantial part of total contributions but later on they suspend their membership for the time being during the year. Therefore, expected total contributions decreased at year end affecting investment ratios under various heads.
- All trustees are fully committed to comply with the guidelines of the SECP, but due to initial stage few decisions which were apparently in violation of the Rules, were taken. However, the non-compliance will be automatically rectified as the size of fund expands.
- Considering above circumstances a lenient view may be taken.

5. Subsequently, the case was fixed for hearing on May 25, 2016 and Mr. Muhammad Shamail Javed, the Company Secretary appeared before the undersigned on behalf of the respondents. He mainly reiterated the earlier stance as per the written submissions and further stated that the investment of OPFT in the NIT has reduced to 30% of the size of the provident fund



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and will gradually become within the prescribed limits gradually as no further investment of OPFT will be made in excess of the prescribed limit. He requested for a lenient view in the matter.

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

Sub-section (2) of section 227 of the Ordinance provides as under:

*Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund, 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 a 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; or*

(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.*

Sub-section (3) of section 227 of the Ordinance provides as under:

*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 contributions 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.*

Section 229 of the Ordinance provides that *whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 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 depositor of security or the employee on account of such contravention.*

The Commission's SRO 261 (I) / 2002 dated May 10, 2002 read with rule 3 of the Rules, inter alia, prescribes that *the total investment in any one unit trust scheme registered under Asset Management Companies Rules, 1995, shall not exceed twenty percent of the provident fund.*



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In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

7. Having gone through the facts of the case, submissions of the respondents and applicable legal provisions, I have concluded that the provisions of section 227 of the Ordinance have been violated by the directors of the Company in respect of delays in payment of amounts of provident fund in to the OPFT's bank account, as the same were not deposited within prescribed time of fifteen days. The respondents have pleaded that initially the delays were caused due to formalities of approval of income tax commissioner and in opening of bank account etc. and subsequently, all the contributions have been paid within the prescribed time. In respect of alleged violation of the Rules by the trustees of the OPFT who made investments in a single mutual fund in excess of the prescribed limit of 20%, it is established that the limit has been breached. Although, there can be no excuse of violation of the mandatory provisions of the law, the mitigating factors cited by the trustees need to be taken into consideration before deciding the matter.

8. It must be made clear that the provisions of section 227 of the Ordinance are clear and explicit. Where a trust has been established to manage employees' provident fund provident fund, it is mandatory for the Company and its directors to deposit all the amounts collected in relation to the EPF to the trust within fifteen days' time. The law does not provide any exception in this regard. The intention of the legislature appears to be safeguarding the post-employment / retirement benefits of the employees from the liquidation risk of the Company. Likewise, the Rules and the Commission's notification issued thereunder, prescribe limits for investment of provident fund in various avenues and those limit must be strictly observed. Therefore, compliance with provisions of section 227 and the Rules, which provide safeguards for the employees by separating their funds from those of the Company and by prescribing the limits of investments to mitigate risk, is of utmost importance.

9. In the instant case, the respondents have submitted that they have regularized the payments of provident fund's contributions to the OPFT Trust to ensure timely payments to the trust within the prescribed time of fifteen days. Moreover, it has been stated that the trustees of



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OPFT are now ensuring that no further investments are made in NIT's units to gradually bring down the OPFT's investment in NIT within the prescribed limit of 20%. While it must be understood that subsequent compliance and regularization of provident fund's contributions and investment does not absolve the respondents of their liability arising out of previous non-compliances of the law, subsequent remedial measures taken by the respondents show their willingness for compliance with applicable legal provisions and to avoid any future non-compliance.

10. In view of the aforementioned facts, I have concluded that the respondents have violated the provisions of section 227 of the Ordinance and the Rules, respectively. However, I take cognizance of the respondents' submissions that they have now started paying the EPF's contributions to the EPF Trust within prescribed time and no further investments are being made in NIT's units. I also consider the fact that any direction to abruptly divest from NIT might lead to potential losses to the employees. Therefore, in exercise of the powers conferred by section 229 of the Ordinance, instead of imposing fine, I hereby conclude the proceedings with a stern warning to the respondents to be careful in future and ensure meticulous compliance with applicable legal provisions. It may also be noted that the respondents will be liable under the law in case any misstatement or concealment of any facts is revealed in future regarding the submissions and statements made by them during the instant proceedings.

**Amina Aziz**  
Director (CSD)

**Announced:**  
September 1, 2016  
Islamabad