



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Company:	M/s. Buxly Paints Limited
Show Cause Notice No. and Date:	CSD/ARN/512/2017-527 dated June 04, 2025
Name(s) of Noticee(s):	(i) Mr. Shamshad Ali, Chairman; (ii) Mr. Bashir Ahmed, Chief Executive; (iii) Mr. Adnan Iqbal, Director; (iv) Mr. Fakharul Arfin, Director; (v) Sheikh Asim Rafique, Director; (vi) Mr. Muhammad Hanif Idress, Director; (vii) Major (R) Naseer Ahmed, Director; (viii) Mrs. Rubina Rizvi, Director; and (ix) M/s. Buxly Paints Limited, through the Chief Executive.
Date(s) of Hearing(s):	July 14, 2025
Case represented by:	(i) Mr. Abdul Hanan, Head of Corporate Affairs; and (ii) Mr. Abid Hussain, Chief Executive (M/s. Hussain Corporate Advisors) As the Authorized Representatives on behalf of the Noticee(s).
Provision of law involved:	Section 218 read with Section 219 and Section 479 of the Companies Act, 2017
Date of Order:	July 18, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the “Commission”) through Show Cause Notice No. CSD/ARN/512/2017-527 dated June 04, 2025 (“SCN”) issued under Section 218 of the Companies Act, 2017 (the “Act”) read with Sections 219 and 479 thereof, against M/s. Buxly Paints Pakistan Limited (the “Company”) and its Board of Directors (“BOD”) including the Chief Executive Officer (CEO), hereinafter collectively referred to as the “Noticee(s)”, for contravention of the requirements of Section 218 of the Act.

2. The brief facts of the case are that the Company has been maintaining the Provident Fund Trust and was required under sub-section (3) of Section 218 of the Act to pay the provident fund contributions collected from its employees along with its own contributions to the trustees of the provident fund within fifteen (15) days from the date of collection. An examination of Annual Audited Financial Statements for the year ended June 30, 2024 (the “Accounts”) of the Company and the information provided by the Company through its letters dated December 13, 2024 and February 27, 2025, in response to Commission’s letters dated December 02, 2024 and February 20, 2025, respectively, revealed that the Company maintains a provident fund trust (the “Trust”). The Commission, vide letter dated December 02, 2024, requested the Company to provide details of the provident fund contributions to the Trust. The response of the Company vide letter dated December 13, 2024 revealed that the Company has not been depositing its provident fund contributions from July 2023 till November 2024 on a monthly basis. Instead, all monthly provident fund contributions were accumulated and consolidated into a single cheque amounting to Rs. 2.733 million dated December 16, 2024 (cleared on February 26, 2025), evidencing significant and persistent/recurring delays in the timely deposit of provident fund contributions. Details of the aforementioned information are tabulated as under for ready reference:

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S No.	Month	Employee's PF Contribution deduction date	Due Date (15 days after the deduction of PF Contribution)	Delays (in days) w.r.t. payment date of 26-Feb-2025
1.	July 2023	27-Jul-2023	11-Aug-2023	565
2.	August 2023	29-Aug-2023	13-Sep-2023	532
3.	September 2023	28-Sep-2023	13-Oct-2023	502
4.	October 2023	30-Oct-2023	14-Nov-2023	470
5.	November 2023	30-Nov-2023	15-Dec-2023	439
6.	December 2023	28-Dec-2023	12-Jan-2024	411
7.	January 2024	29-Jan-2024	13-Feb-2024	379
8.	February 2024	27-Feb-2024	13-Mar-2024	350
9.	March 2024	28-Mar-2024	12-Apr-2024	320
10.	April 2024	30-Apr-2024	15-May-2024	287
11.	May 2024	29-May-2024	13-Jun-2024	258
12.	June 2024	27-Jun-2024	12-Jul-2024	229
13.	July 2024	31-Jul-2024	15-Aug-2024	195
14.	August 2024	27-Aug-2024	11-Sep-2024	168
15.	September 2024	30-Sep-2024	15-Oct-2024	134
16.	October 2024	30-Oct-2024	14-Nov-2024	104
17.	November 2024	29-Nov-2024	14-Dec-2024	74

**Delayed payments settled through a Cheque dated December 16, 2024; cleared on February 26, 2025 as per the bank statement.*

3. The relevant provisions of the Act stipulate as under:

"218. Employees' provident funds, contributory retirement funds and securities.— (3) Where a trust has been created by a company with respect to any provident fund or a contributory pension funds or any contributory retirement 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."

"219. Penalty for contravention of section 217 or 218.— Any contravention or default in complying with requirements of sections 217 or 218 shall be an offence liable to a penalty of level 1 on the standard scale and shall also be liable to pay the loss suffered by the depositor of security or the employee, on account of such contravention."

4. Taking cognizance of the aforesaid alleged violation of law, SCN was served upon the Noticee(s) to show the cause in writing as to why a penal action may not be taken for non-compliance of the Act. In response to SCN, the Company Secretary of the Company vide letter dated June 16, 2025 requested an extension of fifteen (15) days in submitting the reply to SCN, which was duly acceded to.

5. Subsequently, Mr. Abdul Hanan, Head of Corporate Affairs, M/s. Hussain Corporate Advisors, on behalf of the Noticee(s), vide letter dated July 05, 2025 *inter alia*, submitted as under:

- (i) *The Company acknowledges the delay in depositing monthly Provident Fund (PF) contributions for the period July 2023 to November 2024. We assure the Commission that this delay was neither intentional nor reflective of disregard for statutory obligations.*
- (ii) *The primary reason for the delay was operational constraints arising from employee loan disbursements, withdrawals and final settlement from the Trust. Several employees availed loans*

Order in the matter of M/s. Buxly Paints Limited dated July 18, 2025

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against their PF balances, leading to liquidity constraints within the Trust. Final settlement of certain employees was made during the period;

- (iii) To avoid forced encashment of the Trust's long-term investments (which would have eroded returns for all beneficiaries), the Management temporarily held the accumulated contributions until sufficient liquidity was restored. This decision aimed to protect the financial interests of employees by preserving the Trust's asset value. The delay was a fiduciary measure and not a willful negligence. The delay was purely procedural and driven by prudent financial management considerations to protect employee benefits and avoid erosion of the PF corpus due to premature encashment losses.*
- (iv) All outstanding contributions (totaling Rs. 2.733 million) were consolidated and paid via cheque dated December 16, 2024. Due to this financial management no employee suffered financial loss, as the long-term investment remained intact, resulting in earning more profits, and the contributions remained secured within the Company's accounts until transfer. To ensure future compliance a dedicated payroll account has been established for immediate segregation of PF contributions. Monthly transfers will now be made within 15 days of deduction as required under the law. The management has approved enhanced oversight protocols, including quarterly audits of PF compliance.*
- (v) The Company admits technical non-compliance; there was no malintent or financial harm to employees occurred. The delay stemmed from a bona fide effort to safeguard Trust assets. We request the Commission to consider these mitigating factors and the proceedings may be closed without imposing penalties under Section 219 of the Act. We seek an opportunity for a personal hearing to present further clarifications.*

6. In order to provide an opportunity for personal representation and to meet the ends of justice, hearing in the matter was fixed for July 15, 2025, wherein Mr. Abdul Hanan, Head of Corporate Affairs, assisted by Mr. Abid Hussain, Chief Executive, both of M/s. Hussain Corporate Advisors, appeared as the "Authorized Representatives" on behalf of all the Noticee(s). The Authorized Representatives, during the hearing, reiterated the earlier furnished response and assured for future compliance with a request for leniency in the matter.

7. I have gone through the relevant provisions of Section 218 of the Act, considered the facts of the case and the written and verbal submissions of the Company and its Authorized Representatives. I have also perused Section 219 of the Act, which stipulates penal and compensatory provisions for contravention of the afore-referred provision of law. It is observed that the provisions of Section 218 of the Act are clear and unambiguous. The objective of these provisions is to secure and separate the amounts collected from the employees for the provident fund and the contribution made by the employer so as to ensure that the same are not utilized by the management, and are not exposed to any unwarranted risk. Especially where a Trust has been established, the separation of assets and contributions is essential to achieve the bankruptcy remote model to safeguard the rights and claims of the employees. In case cited as 2010 CLD 1725 [Appeal No. 08 of 2006 decided on January 14, 2010], it was held that "...the provident fund belongs to the employees and not to the Company. The objective of section 227 of the Ordinance [pari materia to Section 218 of the Act] is to secure the provident fund of the employees and to ensure that the provident fund is not depleted due to any exigency of the Company. The directors are under a duty to protect the provident fund..."

8. It is also important to observe that the amounts collected from employees along with Company's own contributions in pursuance of the contracts of their service are in the nature of trust moneys in the hands of a company and the same must be paid to the Trustees within the prescribed timelines. In a case cited as 2010 CLD 60 [Dandot Cement Company Ltd.], the company failed to pay the provident fund contributions to provident fund trust within 15 days of collection as required under section 227 of the then Companies Ordinance, 1984 and failed to repay its past liabilities towards provident fund trust. It was thus correctly observed therein that "...the amounts collected from employees as contributions to a provident

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fund constituted by the company are in the nature of trust moneys in the hand of a Company and the same must be paid to the trustees within the stipulated time...” [reliance also placed on 2009 CLD 951]. It is crucial that such payments are made by a company to the trustees in a timely manner in order to enable the trustees to fulfill their obligations of managing/ investing such amounts in accordance with the law. In this respect, an order passed by the Appellate Bench of the Commission [Appeal No. 75 of 2021] is considered relevant, where it was held that “...*Section 218 of the Act prescribes a clear timeline for the deposit of all monies into the requisite account within 15 days...*”. It is, therefore, evident that in the instant matter by not paying the provident fund’s contribution amounts to the trustees in a timely manner, the Company restricted the ability of the respective Trustees to perform their due responsibilities as envisaged in sub-section (2) of Section 218 of the Act. It is also important to observe that immediately upon the deduction of the amounts from the salaries and contributions made by the Company, the same are actually beyond the scope of the Company’s management and stand vested into the Trustees who then, in their sole discretion and as per provisions of law/by-laws, may allow grant of loans out of the same or make final settlements to the employees/members of the Trust. It is, in no manner whatsoever, allowed for the Company’s management to net-off such contributions against the dues payable to the employees directly; and the Trustees are expected to act vigilantly and independently to safeguard such rubicon.

9. Moreover, as submitted by the Authorized Representatives, the Company does not have any existing policy or practice of compensating the provident fund, i.e. employees who are its members, for the loss incurred due to delay in payment of contribution which is necessary to mitigate the impact of delayed payments and to compensate for the lost profit/accumulation opportunities of the provident fund and its members.

10. In the instant matter, it is also observed that provisions of Section 218 of the Act do not, in any way, grant any exception or walk away from the stringent requirement to deposit the contribution amounts within the prescribed timeline of 15 days, the Company has not tendered any plausible justification, grounds or basis for withholding the contribution payments to the trustees and/or using the same for other purposes. In 2010 CLD 60 [Dandot Cement Company Ltd.], cruciality of Section 218 of the Act was aptly discussed by stating that “...*Compliance with the said provisions of the Ordinance also become important due to the fact that such amounts are unsecured and in case a Company goes insolvent, the employees would be the worst victims. The Companies therefore cannot be allowed to withhold such moneys on any pretext whatsoever and any default in this regard cannot be ignored.*”

11. It is evident from the above that contrary to the mandatory requirement of Section 218 of the Act to pay the collected amounts within 15 days, the amounts were not paid to the trust and remained outstanding for extended periods. The law clearly requires that when a trust has been created by a company with respect any provident fund, the company has an obligation to pay the contributions including its own contributions to the trustees within fifteen days from the date of collection.


12. After careful consideration of all the facts of the case in light of the relevant provisions of the law and the written and verbal submissions made by the Company and its Authorized Representatives, I am of a well-considered view that the Noticee(s) have contravened the provisions of sub-section (3) of Section 218 of the Act at the relevant points in time and are liable for penal and compensatory action under Section 219 of the Act read with Section 479 thereof. I, therefore, in exercise of the powers conferred under Section 219 of the Act in terms of S.R.O. 1545(I)/2019 dated December 6, 2019, hereby impose a penalty of **Rs.25,000/- (Pak Rupees Twenty-Five Thousand Only)** on the Company/Noticee No. ix on account of the aforesaid established default and further hold it liable to duly pay the loss suffered by the employees on account of delay in payment without fail while WARNING the remaining Noticee(s) with a strict advice to ensure meticulous compliance with all applicable laws in the future.

13. Furthermore, in exercise of powers as conferred under in Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 6, 2019, the Company is **DIRECTED** to compute the loss incurred by the provident fund due to delayed payments of both employee contributions and the Company’s own contributions in the instant matter. The said computation should be based on the promised rate of return on

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pending payments for the subject review period and the Company/Noticee No. ix shall remit the same to the trustees of the provident fund within a period not exceeding thirty (30) days from the date of this Order and provide an auditor's certificate verifying such compensation so made. The Company is further **DIRECTED** to report compliance of this direction to the Commission within the afore stipulated time without fail.

14. The Company is, hereby, further **DIRECTED** to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue pursuant to provision of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.


18-07-2025
Sohail Qadri
Director/ HOD
Adjudication Department-I

Announced:
July 18, 2025
Islamabad.

