



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan – Director
Head of Department
Adjudication Department-I

In the matter of

TPL Properties Limited

Show Cause Notice No. & Date: No.CSD/ARN/394/2016/218 dated April 19, 2024

Date of hearing: June 4, 2024

Hearing attended by: Mr. Sameer Tayebaly, Ms. Shayan Mufti Company Secretary, Mr. Adnan Quaid Johor Chief Financial Officer and Mr. Nauman Saeed

ORDER

Under Section 218 & 219 of the Companies Act, 2017 read with Section 479 thereof

This order shall dispose of the proceedings initiated through the Show Cause Notice (the SCN) No. CSD/ARN/394/2016/218 dated April 19, 2024 issued under Section 218 of the Companies Act, 2017 (the Act) read with Section 219 and Section 479 thereof against TPL Properties Limited (the Company) through the Chief Executive, hereinafter referred to as the Respondent.

2. The brief facts of the case are that:

- (i) on review of the annual audited financial statements for the year ended June 30, 2023 (the Accounts) of the Company it was, *inter alia*, transpired that under note 19 to the Accounts, the Provident Fund (PF) balance was increased significantly from Rs. 2,764,530 (2022) to Rs. 28,997,388 (2023). Relevant note, *inter alia*, disclosed that:

Note 19:

<i>Trade and other payables</i>	2022	2023
<i>Payable to provident fund (Amount in Rupees)</i>	2,764,530	28,997,388

- (ii) the Securities and Exchange Commission of Pakistan (the Commission) through a letter dated February 20, 2024 sought an explanation along evidence of compliance of Section 218 of the Act with respect to investment made out of provident fund contribution. The Company in its response dated March 08, 2024, *inter alia*, stated that:



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“Investment made out of provident fund contribution in JS Investment, the accounts statement is attached for ready reference. During the year the bank had asked for the Fund to be registered under the Sindh Trust Act, 2020 and suspended the Account. Due to the time consuming and expensive nature of individual company registration we opted to establish collective provident fund, wherein employee from each company could participate. Since the Fund was not formed during the specified period, the company retained the funds in its own account. The same is shown as payable to the fund in Note 19 to the Accounts.”

- (iii) in view of the above, the Company admittedly failed to deposit the aforementioned PF contributions in separate bank account maintained for the purpose, *prima facie*, contrary to the provisions of Section 218 of the Act.

Hence, the proceedings were initiated through the aforesaid SCN against the Respondent, under Section 218 of the Act read with Section 219 and Section 479 thereof. The Respondent was called upon to show cause in writing, within fourteen (14) days of the date of the SCN, as to why penalty may not be imposed in term of the requirements of the Act for the aforesaid violation.

3. In this regard, the Company Secretary through a letter dated May 3, 2024, *inter alia*, submitted in the following manner:

- It is admitted that a separate account was not active for the PF during the relevant time period, as the Company was still in the process of setting up a PF account to work across its group companies. This would provide employees with better safety protocols, diversification of risks and benefits to the employees.
- The PF was retained by the Company in its own account, and was accounted for and highlighted as a payable amount in note 19 to the Accounts. So, there is no loss to the employees as once the account is active the payable amounts would be disbursed to the PF. Soon the PF account would be active.
- The Company engaged a chartered accountant firm to establish and employee provident trust fund for its entire business group. This would result better safety protocols and diversification of risks.
- The process for registration of the trust and account was commenced under the Sindh Trust Act, 2020 for which relevant applications were made to the relevant authorities. In the intervening period there was no separate PF bank account and the Company was maintaining up to date accounts as highlighted.
- The payables were highlighted as liabilities of the Company and would be settled immediately upon the PF trust and account becoming active.
- The delay was entirely unintentional, which is in the process of being duly complied with.
- It is requested to withdraw the SCN.

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 4, 2024. On the date of hearing, Mr. Sameer Tayebaly, Ms. Shayan Mufti Company Secretary, Mr. Adnan Quaid Johor Chief Financial Officer and Mr. Nauman Saeed appeared on behalf of the Respondent Company. They iterated stance as was given in writing through the letter dated May 3, 2024. It was submitted that the provident fund account of the Company was debit



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blocked by the bank, therefore, the Company was not able to withdraw funds from the said account. Due to the cited reasons the payments were not being made in that account. Moreover, subsequent to the hearing, through letter dated June 20, 2024, the Company Secretary, *inter alia*, submitted that: *"Please note that the bank account will be opened by July 15, 2024, as a designed/ separate bank account for the provident fund, and the fund will be transferred into it accordingly. The Company is actively striving to comply with the requirements of the applicable law and anticipates achieving the aforementioned plan effectively. In the mean time, the Company kindly requests leniency in fulfilling the aforementioned requirement."*

5. The following questions are relevant to be addressed in the instant proceedings:
- Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?
 - Whether the Company made delays in payment of contributions amounts into a separate bank account?
 - Whether the defaults of the provisions of Section 218 of the Act are admitted?

6. I have reviewed the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:

(i) **Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?**

At the outset, I am of the view that the requirements of Section 218 of the Act mandatorily require that the company is bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, within fifteen days into the separate bank account maintained for the purpose.

The Respondent is of the view that to avoid expenses, the group opted to establish collective provident fund, however, such fund was not formed during the year and the Company retained funds in its own account. Moreover, debit block of the provident fund account of the Company was stated another reason for the delays in making payment of the contributions of the provident fund.

The aforesaid reasons cited by the Respondent that the delays were attributable to debit block of bank account and operational issues of the bank account on group basis; are not tenable, as the Company cannot withheld such amounts of provident fund contributions contrary to the provisions of Section 218 of the Act.

I am of the view that the Respondent failed to discharge its obligation in terms of Section 218 of the Act and the amounts of the contributions of the PF for the financial year 2023 were not deposited in a separate bank account in violation of Section 218 of the Act.



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(ii) **Whether the Company made delays in payment of contribution amounts into a separate bank account?**

Yes. As stated in para 2 above, the Company's payable on account of the provident fund has increased from Rs. 2,764,530 (2022) to Rs. 28,997,338 (2023). The significant increase in the aforesaid payable amount is evident to the fact that the delay in payment of the contributions of the provident fund was noticed in the financial year 2023 and the violation of the requirements of Section 218 of the Act persisted during the said year.

(iii) **Whether the defaults of the provisions of Section 218 of the Act are admitted:**

Yes. The Respondent has admitted the cited defaults in the SCN owing to the operational issues faced with the operations of the provident fund bank account. The Authorized Representative has assured to comply with the given provisions of the Act, however, have not yet furnished any evidence of compliance, subsequent to the issuance of SCN. The Respondent's assurance that a separate provident bank account would be opened by July 15, 2024 does not absolve from the cited non-compliance of Section 218 of the Act. Hence, the Respondent is liable for the penal action in terms of Section 219 of the Act.

7. Taking cognizance of the aforesaid contraventions/ non-compliances, I, in exercise of the powers conferred under Section 219 of the Act read with Section 218 thereof, hereby impose a penalty of **Rs. 20,000/- (Rupees Twenty Thousand only)** on **TPL Properties Limited**. The Respondent is advised to ensure the compliance of the legal provisions of the Act in letter and spirit.

8. The aforesaid Respondent is, hereby, directed to deposit the 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.

9. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced:

Dated: June 28, 2024

Islamabad