



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

*Before*

Shahzad Afzal Khan, Director/ Head of Department

*In the matter of*

**Clover Pakistan Limited**

Number and date of show cause notice: No. CSD/ARN/590/2020-214 dated April 17, 2024

Date of hearing: June 06, 2024

Present: Mr. Owais Ali Khan, Chief Finance Officer

### ORDER

#### Under Section 218 of Companies Act, 2017 read with Sections 219 and 479 thereof

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through Show Cause Notice ("SCN") dated April 17, 2024 issued under Section 218 of the Companies Act, 2017 (the "Act") read with Sections 219 and 479 thereof against Clover Pakistan Limited (the "Company").

2. Brief facts of the case are that:

- (i) examination of the annual audited financial statements of the Company for the year ended June 30, 2023 ("FY 2023"), revealed that under Note 20 to the Accounts Rs. 2.5 million (2022: Rs. 2.9 million) is payable to the provident fund (PF) by the Company. Further review of note 25.1 to the Accounts transpires that the Company has not recognized any amount of during FY 2023 (2022: Rs. 1.04 million) in respect of PF expense. This indicates that the Company failed to comply with the requirement of section 218 of the Companies Act, 2017 (the Act) w.r.t. depositing or investing contributions of PF;
- (ii) The Commission vide letter dated January 12, 2024, sought clarification relating to deposit/ investment of PF. The Company in its response dated February 13, 2024, *inter-alia*, submitted that due to challenging economic conditions effecting its business and country as a whole it laid off employees and paid them their share of provident fund directly along with full and final settlement. At present the company employs fewer than five individuals, prompting the termination of its provident policy. In light of this development, the management holds the prospective that the associated liability is no longer applicable and, as such intends to write it off in the current year's financial statements;
- (iii) The response of the Company was not found cogent as section 218 of the Act requires that where a provident fund, contributory pension fund or any other contributory retirement fund has been constituted by a company for its employees



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or any class of its employees, all moneys contributed to such fund, whether by the company or by the employees or by both, 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 separately deposited or invested in accordance with section 218 of the Act or regulations made there under;

(iv) The aforesaid transpires that the Company, *prima facie*, has contravened the provisions of Section 218 of the Act by failing to deposit/ invest PF contributions.

3. In order to take cognizance of the aforesaid contravention, SCN dated April 17, 2024 was issued to the Company seeking justification for its failure to deposit/ invest PF contributions.

4. The Company failed to submit written response to the SCN, hence, in order to provide opportunity of personal representation, hearing in the matter was fixed for June 06, 2024 wherein Mr. Owais Ali Khan, Chief Finance Officer appeared on behalf of the Company as its Authorized Representative (AR) and reiterated aforesaid written response by the Company submitted vide letter dated February 13, 2024 and informed that the outstanding balance of Rs. 2.5 million relates to 4-5 employees and the said amount has been written off in December 2023 accounts and PF discontinued. The AR was directed to submit the following by June 11, 2024:

- copy of board resolution approving discontinuation of PF;
- evidence for payment of Rs. 2.5 million; and
- certified copy of accounts of the Company for the half year ended December 31, 2023, duly reviewed by the statutory auditor.

It is however noted that the requisite information/ documents have so far not been submitted by the AR/ Company.

5. Relevant provisions of the Act provides that:

**"218. Employees' provident funds, contributory retirement funds and securities.- (2)**  
*Where a provident fund, contributory pension fund or any other contributory retirement 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 by both, 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;*



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(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 –

(i) Government securities; or

(ii) bonds, redeemable capital, debt securities or instruments issued by a statutory body, units of collective investment schemes registered as notified entities with the Commission, and in listed securities including shares of companies, bonds, redeemable capital, debt securities and equity securities, subject to the conditions as may be specified."

**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."

6. I have reviewed the facts of the case, considered the verbal submission made by the AR in light of the applicable legal provisions and records placed before me and state that the Company is bound to collect the PF contributions of the employees concerned and to deposit or invest the same in the manner as stipulated in Section 218 of the Act and there is no exception provided in the aforesaid section. The Company has cited that the outstanding balance was written off in the accounts for half year ended December 31, 2023. At this juncture, it is imperative to address the following:

• **Whether the PF contribution deposited/ invested by the Company:**

No, the PF contributions for FY 2023 was neither deposited nor invested by the Company rather the same was written off after the close of financial year.

• **Whether the Legal Framework provide any exception for non-compliance for deposit/ investment of PF contributions:**

No, the requirements prescribed under the applicable legal framework are absolute and does not provide any exception for not complying with the requirement of depositing/ investing the PF contributions and clearly requires that all moneys contributed to PF, whether by the company or by the employees or by both, 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 be either separately deposited or invested in accordance with the prescribed manner.



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- **Whether subsequent writing off the PF liability and termination of PF policy absolve the Company from its responsibility to comply with the requirements of law:**

No, subsequent termination of PF policy and writing off the PF liability does not absolve the Company from its responsibility to ensure compliance with the legal provisions relating to deposit/ investment of PF contributions in accordance with the prescribed manner.

7. I am of the view that the provisions of section 218 are clear and unambiguous. The objective of these provisions is to collect the amount and to secure the amounts collected as contributions for the benefits of the employees. The amount collected are in the nature of trust moneys in the hand of the company and the same must be deposited/ invested in the prescribed manner. It is noted that the Company failed to deposit/ invest the PF contributions hence default of the legal provisions at relevant point in time is established and the same has been admitted by the AR during the hearing.

8. After careful consideration of all the facts of the case, I am of the considered view that the Company has contravened the provisions of subsection (3) of section 218 of the Act at relevant point in time and is liable for penalty under Section 219 of the Act read with section 479 thereof. In view of the foregoing I hereby conclude the proceedings initiated through the SCN by imposing a penalty of **Rs. 20,000 (Rupees Twenty Thousand only)** on the Company.

9. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue in terms of Section 485 of the Act will be initiated.

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

(Shahzad Afzal Khan)  
Director/ HOD  
Adjudication Department-I

**Announced:**  
Dated: June 28, 2024  
Islamabad