



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	M/s. Leiner Pak Gelatine Limited
Show Cause Notice No. & Date:	CSD/ARN/321/2016-942 dated February 24, 2025
Respondent:	M/s. Leiner Pak Gelatine Limited
Date(s) of Hearing(s):	March 18, 2025
Case represented by:	Mr. Asad Ali, Director Finance (As Authorized Representative)
Provision of law involved:	Section 218 read with Section 2019 and Section 479 of the Companies Act, 2017
Date of Order:	March 26, 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/321/2016-942 dated February 24, 2025 ("SCN") issued under Section 218 of the Companies Act, 2017 (the "Act") read with Sections 219 and 479 thereof, against M/s. Leiner Pak Gelatine Limited (the "Company").

2. The brief facts of the case are that the Company was required under 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 the annual audited financial statements of the Company for the year ended June 30, 2024 (the "Accounts") and information provided by the Company vide letter dated January 27, 2025 in response to the Commission's letter dated January 16, 2025 revealed that the Company, *prima-facie*, failed to pay the contributions collected from the employees combined with its own contributions to the trustees of the provident fund in a timely manner i.e. within 15 days from the date of collection, in contravention of the requirements of Section 218(3) of the Act. The details of payments of contributions to the provident fund are tabulated below:

Sr. #	Month	Date of PF Deduction	Date of Payment to Fund	Difference (Days)	Delay (No. of Days)
1	July 2023	31-07-2023	10-08-2023	10	0
2	August 2023	31-08-2023	12-10-2023	42	27
3	September 2023	30-09-2023	20-04-2024	203	188
4	October 2023	31-10-2023	26-04-2024	178	163
5	November 2023	30-11-2023	24-05-2024	176	161
6	December 2023	31-12-2023	24-05-2024	145	130
7	January 2024	31-01-2024	24-06-2024	145	130
8	February 2024	28-02-2024	24-06-2024	117	102
9	March 2024	31-03-2024	24-06-2024	85	70
10	April 2024	30-04-2024	24-06-2024	55	40
11	May 2024	31-05-2024	24-06-2024	24	9
12	June 2024	30-06-2024	13-07-2024	13	0

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

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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."

4. Taking cognizance of the alleged non-compliance of law, SCN was served upon the Company and in response its Chief Executive Officer, vide letter dated March 07, 2025, filed a written response to SCN, *inter alia*, acknowledging the delay in making payments to the trustees of provident fund during the year ended June 30, 2024 and stated that the same occurred due to negligence of the relevant staff member and without any intent to breach the relevant provisions of law. He further assured future compliance with the relevant provisions of law and requested lenient view in the matter.

5. In order to meet the ends of justice and to provide an opportunity of being heard to the Company, hearing in the matter was fixed for March 18, 2025, which was attended by Mr. Asad Ali (Director Finance) as Authorized Representative on behalf of the Company. The Authorized Representative reiterated the written submissions made in response to SCN and admitted the delay in making payments to the trustees of the provident fund. The Authorized Representative informed that the said delay occurred due to certain operational constraints and the Company has achieved compliance with the requirements of Section 218(3) of the Act as no payment to the trustees of provident fund is currently outstanding

6. I have gone through the relevant provisions of Section 218 of the Act, considered the facts of the case, the written and verbal submissions of the Company and its Authorized Representative. I have also perused Section 219 of the Act, which stipulates penal and compensatory provisions for contravention of the afore-referred provision of law. I have noted 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 so as to ensure that the same is not utilized by the management or is exposed to any undue risk. 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..."

7. It is not out of place to mention 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 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 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.

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8. Moreover, it has been observed that the Authorized Representative clearly admitted that as per existing policy there is no practice of compensating the provident fund, i.e. employees who are its members, for the loss of interest income caused by delay in payment of contribution which is necessary to mitigate the impact of delayed payments and to compensate for the lost profit opportunities of the provident fund and its members.

9. It is also pertinent to note that although Section 218 of the Act does 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 has merely referred that the same was inadvertent and occurred due to operational issues. The Company also stressed on subsequent compliance by clearing all the outstanding amount of provident fund contribution. 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."

10. At this juncture, it is also considered important to highlight the delay in number of days in respect of each of the monthly payments for which the default of the Company continued during the period under review as below:

Sr. #	Month	Date of PF Deduction	Date of Payment to Fund	Difference (Days)	Delay (No. of Days)
1	August 2023	31-08-2023	12-10-2023	42	27
2	September 2023	30-09-2023	20-04-2024	203	188
3	October 2023	31-10-2023	26-04-2024	178	163
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9	April 2024	30-04-2024	24-06-2024	55	40
10	May 2024	31-05-2024	24-06-2024	24	9
Total Number of Days Default					1,020

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. 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. Further subsequent compliance does not absolve the Company from its responsibility to ensure compliance with the legal provisions relating to payment of provident fund contributions in accordance with the prescribed timeframe.

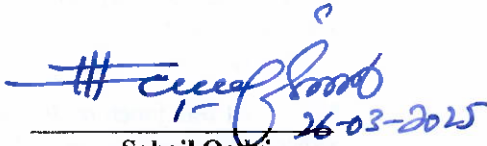
12. After careful consideration of all the facts of the case in light of the relevant provisions of the law and the written and verbal submissions made by the Company and its Authorized Representative, I am of a well considered view that the Company has clearly contravened the provisions of sub-section (3) of Section 218 of the Act at the relevant points in time and is liable for a 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 on

[Signature]
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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.

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. The said computation should be based on the promised rate of return on pending payments for the subject review period, and the Company must remit the same to the trustees of the provident fund within a period not exceeding fifteen (15) 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 stipulated time without fail.

14. The Company is, hereby, 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.


Sohail Qadri
Director/ HOD
Adjudication Department-I

Announced:
March 26, 2025
Islamabad.