



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	M/s. Octopus Digital Limited
Show Cause Notice No. & Date:	Adj-I/ARN/26/2022-426 dated September 19, 2024
Respondent:	M/s. Octopus Digital Limited
Date(s) of Hearing(s):	December 04, 2024
Case represented by:	(i) Mr. Ahsan Khalil (Company Secretary), and (ii) Mr. Faisal Nadeem Sheikh (Chief Financial Officer) (as the Authorized Representatives)
Provision of law involved:	Section 218 read with Section 219 and 479 of the Companies Act, 2017
Order Dated:	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 Adj-I/ARN/26/2024-426 dated September 19, 2024 (**the SCN**) issued under Section 218 read with Section 219 and 479 of the Companies Act, 2017 (**the Act**) against Octopus Digital Limited (**the Respondent/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 December 31, 2023 (**the Account-2023**) and information provided by the Company vide letter dated August 23, 2024 in response to the Commission's letter dated July 18, 2024 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 are as tabulated below:

Sr. #	Month	Employee Contribution (Rs.) (A)	Employer Contribution (Rs.) (B)	Total (Rs.) (A)+(B)	Date of Collection	Date of Deposit	Accumulated Balance Payable (Rs.)
1	Jan-23	534,133	534,133	1,068,266	22/1/2023	-	1,068,266
2	Feb-23	576,288	576,288	1,152,576	22/2/2023	-	2,220,842
3	Mar-23	717,399	717,399	1,434,798	22/3/2023	-	3,655,640
4	Apr-23	732,166	732,166	1,464,332	22/4/2023	-	5,119,972
5	May-23	1,302,053	1,302,053	2,604,106	22/5/2023	-	7,724,078
6	Jun-23	1,254,820	1,254,820	2,509,640	22/6/2023	-	10,233,718
7	Jul-23	1,036,987	1,036,987	2,073,974	22/7/2023	-	12,307,692
8	Aug-23	1,064,876	1,064,876	2,129,752	22/8/2023	-	14,437,444
9	Sep-23	1,068,076	1,068,076	2,136,152	22/9/2023	-	16,573,596
10	Oct-23	1,147,883	1,147,883	2,295,766	22/10/2023	-	18,869,362
11	Nov-23	1,196,632	1,196,632	2,393,264	22/11/2023	-	21,262,626
12	Dec-23	1,210,186	1,210,186	2,420,372	22/12/2023	31/12/2023	18,637,707

3. The relevant provisions of the law are reproduced hereunder:

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"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."

4. Taking cognizance of the alleged non-compliance of law, SCN was served upon the Company through its Chief Executive Officer on September 19, 2024 and in response the Company Secretary vide letter dated September 26, 2024 filed a written reply *inter alia* stating that currently the Company is making provident fund payment promptly and is committed to have no liability remain pending for Provident Fund in the Company. It was further submitted that the provident fund is charging interest against receivables to compensate any loss that may arises to the fund, hence no loss has been incurred by the provident fund or its members due to the actions taken by the Company.

5. In order to meet the ends of justice and provide an opportunity of being heard to the Respondents, hearing in the matter was fixed for December 04, 2024, which was attended by Mr. Ahsan Khalil (Company Secretary) and Mr. Faisal Nadeem Sheikh (Chief Financial Officer) as the Authorized Representatives on behalf of the Company. The Representatives reiterated the written submissions made in response to the SCN and admitted the questioned delay in making payments to the trustees of the provident fund. The Representatives further assured that the Company is making efforts to ensure that the pending payments for the period under review are settled at the earliest.

6. Subsequently, the Company vide email dated December 15, 2024 (enclosing therewith a letter dated December 13, 2024) while referring to the matter maintained that the company pays Provident Fund interest at the current market rate (KIBOR) to mitigate the impact of delayed payments and compensate for the lost profit opportunities of the fund and its members. The Company further submitted that full settlement is expected by the first quarter of 2025.

7. I have gone through the relevant provisions of Section 218 of the Act, and considered the facts of the case and the written and verbal submissions of the Respondent. 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. 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...*" In 2010 CLD 60 [Dandot Cement Company Ltd.], it was pointed out that "*...The provisions of section 227 of the Ordinance are meant to protect the funds of employees by obligating the Company/trustees to deposit contributions in the safe/secured modes of investment/deposits permitted thereunder...*" Similarly, in 2009 CLD 951 [Bawanyair Products Ltd.], it was echoed that "*...the objective of the provisions of section 227 of the Ordinance is to secure the amount of the provident fund of the employees from the Company and this fund is for the use and benefit of the employees only.*"

8. In 2012 CLD 1423 [Appeal No. 36 of 2008 decided on April 05, 2012], the obligations of trust of the provident fund were discussed; however, emphasis was on the indisputable obligation on part of

the company to ensure compliance with the regulatory requirements entailed under the provisions of Section 218 of the Act. It was held therein that "Section 227(3) of the Ordinance [*pari materia* to Section 218 of the Act] deals with the Trust and specifically states that, where a Trust is constituted for managing provident fund, the obligations laid on a company under Section 227(2) of the Ordinance shall devolve on the trustees and shall be discharged by them instead of the company. By virtue of this provision, the onus for managing the affairs of the Trust are completely devolved on the trustee, who are bound to deal with the fund in accordance with the requirements of Section 227(2) of the Ordinance.

9. 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...*" Therefore, it is evident that by not paying the provident fund's contribution amounts to the trustees in a timely manner, the Respondent restricted the ability of the respective trustees to perform their due responsibilities as envisaged in sub-section (2) of Section 218 of the Act.

10. Moreover, the foremost contention put forward by the Respondent is that it pays interest at the current market rate (KIBOR) to the provident fund so as to mitigate the impact of delayed payments and compensate for the lost profit opportunities of the fund and its members, meaning that no loss has been incurred by the provident fund or its members. However, the Respondent has failed to provide any documentary evidence to substantiate its stance that it has paid (or pays) a compensation rate at the current market rate (i.e., KIBOR) for the questioned period of delay. Be that as it may, the commitment to settle the outstanding amounts and pay interest thereupon cannot be taken as a sole ground to absolve the Respondent from its regulatory obligation imposed under Section 218 of the Act. It was rightly held in 2010 CLD 1725 [Appeal No. 08 of 2006 decided on January 14, 2010] that "*...In cases 2008 CLD 731, 2007 CLD 1667 and 2006 CLD 454...section 227 of the Ordinance was violated as the companies were not making timely payments to the provident fund and there was outstanding balance payable to the provident fund... The violators of section 227 should not have been left scot free merely on the ground that they are willing to pay the outstanding liability towards the provident fund...*"

11. It is also pertinent to note that although Section 218 of the Act does not, in any way, grant any dispensation from the stringent requirement to deposit the contribution amounts within the prescribed timeline of 15 days, the Respondent has not tendered any adequate justification, grounds or basis for withholding the contribution payments to the trustees, and has merely referred the same to be a 'temporary issue'. 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*

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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."

12. At this juncture, it is also considered important to highlight the delay in number of days for which the default of the Respondent continued during the period under review as below:

Date of Collection (A)	Total Contribution by the Employees and Employer (Rs.)	Due Date for payment to the Trustee (B=A+15 days)	Cut-off Date for Period Under Review (C)	No. of Days Default (C)-(B)
22/01/2023	1,068,266	06/02/2023	31/12/2023	328
22/02/2023	1,152,576	09/03/2023	31/12/2023	297
22/03/2023	1,434,798	06/04/2023	31/12/2023	269
22/04/2023	1,464,332	07/05/2023	31/12/2023	238
22/05/2023	2,604,106	06/06/2023	31/12/2023	208
22/06/2023	2,509,640	07/07/2023	31/12/2023	177
22/07/2023	2,073,974	06/08/2023	31/12/2023	147
22/08/2023	2,129,752	06/09/2023	31/12/2023	116
22/09/2023	2,136,152	07/10/2023	31/12/2023	85
22/10/2023	2,295,766	06/11/2023	31/12/2023	55
22/11/2023	2,393,264	07/12/2023	31/12/2023	24
22/12/2023	2,420,372			
Total number of days of default				1944

13. 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.

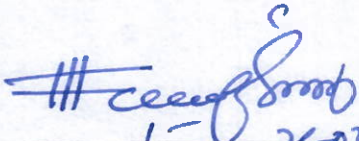
14. After careful consideration of all the facts of the case in light of the relevant provisions of the law and the written and verbal submissions made by the Respondent, I am of a considered view that the Respondent has clearly contravened the provisions of sub-section (3) of Section 218 of the Act and is liable to 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 06, 2019, hereby impose a penalty of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** on the Respondent on account of the aforesaid established default and further hold them liable to duly pay the loss suffered by the employees on account of delay in payment without fail.

15. Furthermore, in exercise of powers as conferred under in Section 475 of the Act read with S.R.O 1545(I)/2019 dated December 06, 2019, the Respondent is directed to settle all outstanding payments to the trustees of the Provident Fund, including both employee contributions and the Company's own contributions along with the promised rate of return on pending/delayed payments for the subject review period, by remitting the full and final amounts to the trustees of the Provident Fund within a period not

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exceeding thirty (30) days from the date of this Order and provide an auditor's certificate verifying payments made in this regard. The Respondents are further directed to report compliance of this direction to the Commission within the stipulated time without fail.

16. The Respondent 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.



1-26-03-2025

Sohail Qadri
Director/ HOD
Adjudication Department-I

Announced:
March 26, 2025
Islamabad.

