



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

ORDER	
Name of Company:	M/s. Dewan Cement Limited
Show Cause Notice No. & Date:	CSD/ARN/371/2016-355 dated August 12, 2024
Respondent:	Dewan Cement Limited
Date(s) of Hearing(s):	(i) December 05, 2024 (ii) January 23, 2025
Case represented by:	(i) Mr. Muhammad Hanif German (<i>Company Secretary</i>) (ii) Mr. S. M. Raza (<i>Director Group Taxation and Corporate Affairs</i>) (iii) Mr. Mehmood-ul-Hassan Asghar (<i>Director</i>) (As Authorized Representatives)
Provision of law involved:	Section 218 read with Section 2019 and Section 479 of the Companies Act, 2017
Date of Order:	March 27, 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/371/2016-355 dated August 12, 2024 (“SCN”) issued under Section 218 of the Companies Act, 2017 (the “Act”) read with Sections 219 and 479 thereof, against M/s. Dewan Cement 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, 2023 (the “Accounts”) and information provided by the Company vide letter dated May 18, 2024 in response to the Commission’s letter dated February 26, 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 of payments of contributions to the provident fund are tabulated below:

S No.	Month	Due Date	Date of Deposit	Delays (in days)
1.	July 2022	15-Aug-2022	17-Jan-2023	155
2.	August 2022	15-Sep-2022	01-Feb-2023	139
3.	September 2022	15-Oct-2022	07-Feb-2023	115
4.	October 2022	15-Nov-2022	08 to 14-Feb-2023	85-91
5.	November 2022	15-Dec-2022	22-Feb-2023	69
6.	December 2022	15-Jan-2023	23-Feb-2023 to 07-Mar-2023	39-51
7.	January 2023	15-Feb-2023	08-13-Mar-2023	21-26
8.	February 2023	15-Mar-2023	20-Jul-2023	127
9.	March 2023	15-Apr-2023	22-Aug-2023	129
10.	April 2023	15-May-2023	23-Aug-2023	100
11.	May 2023	15-Jun-2023	19-Sep-2023 to 04-Oct-2023	96 – 111
12.	June 2023	15-Jul-2023	06 to 10-Oct-2023	83– 87

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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 matter, the SCN was issued to the Respondent to show the cause in writing as to why a penal action may not be taken for non-compliance of the Act. Although no reply to the SCN was received, to provide an opportunity of personal representation, hearing in the matter was fixed for December 05, 2024, however, no one appeared.

5. Subsequently, second opportunity for personal representation was fixed for January 23, 2025. Mr. Muhammad Hanif German (*company secretary*), Mr. S. M. Raza (*Director Group Taxation and Corporate Affairs*) and Mr. Mehmood-ul-Hassan Asghar (*Director*) appeared on behalf of the Company as the Authorized Representatives (**the “Authorized Representatives”**) admitting the oversight due to financial constraints on the Company and with a request for a leniency in the matter.

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 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. 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

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of the respective trustees to perform their due responsibilities as envisaged in sub-section (2) of Section 218 of the Act.

8. Moreover, it has been observed that the Authorized Representatives 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 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 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 been referred that the same was inadvertent and occurred due to operational issues which also resulted in delay of payment of salaries. 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:

S No.	Month	Due Date	Date of Deposit	Delays (in days)
1.	July 2022	15-Aug-2022	17-Jan-2023	155
2.	August 2022	15-Sep-2022	01-Feb-2023	139
3.	September 2022	15-Oct-2022	07-Feb-2023	115
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12.	June 2023	15-Jul-2023	06 to 10-Oct-2023	83- 87
Total Number of Days Default				1,158-1,200

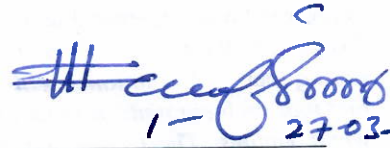
11. It is evident from the above that contrary to the mandatory requirement of Section 218 of the Act to pay the collected amounts within 15 days, the amounts were not paid to the trust and remained outstanding. The law clearly requires that when a trust has been created by a company with respect any 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.

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 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 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.

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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.


1-27-03-2025

Sohail Qadri
Director/ HOD
Adjudication Department-I

Announced:
March 27, 2025
Islamabad.