



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

ORDER	
Name of Company:	M/s. The Searle Company Limited
Show Cause Notice No. & Date:	CSD/ARN/372/2016-329 dated April 15, 2025
Noticee(s):	M/s. The Searle Company Limited
Date(s) of Hearing(s):	May 15, 2025
Case represented by:	(i) Mr. Mobeen Alam (CFO); (ii) Mr. S. Asim Raza Zaidi (Financial Controller); (iii) Mr. Zubair Razzak Palwala (Director); and (iv) Mr. Mikael Azmat Rahim (Legal Counsel from Mohsin Tayebaly & Co.). (As the Authorized Representatives)
Provision of law involved:	Section 218 read with Section 2019 and Section 479 of the Companies Act, 2017
Date of Order:	May 20, 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/372/2016-329 dated April 15, 2025 ("SCN") issued under Section 218 of the Companies Act, 2017 (the "Act") read with Sections 219 and 479 thereof, against M/s. The Searle Company Limited (the "Company").

2. 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 February 13, 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.	Jul-23	04/08/2023	10/10/2023	67	52
2.	Jul-23	04/08/2023	30/10/2023	87	72
3.	Jul-23	04/08/2023	24/11/2023	112	97
4.	Jul-23	04/08/2023	30/11/2023	118	103
5.	Jul-23	04/08/2023	14/12/2023	132	117
6.	Aug-23	01/09/2023	14/12/2023	104	89
7.	Aug-23	01/09/2023	21/12/2023	111	96
8.	Aug-23	01/09/2023	22/12/2023	112	97
9.	Aug-23	01/09/2023	02/01/2024	123	108
10.	Aug-23	01/09/2023	03/01/2024	124	109
11.	Sep-23	04/10/2023	03/01/2024	91	76

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12.	Sep-23	04/10/2023	05/01/2024	93	78
13.	Sep-23	04/10/2023	08/01/2024	96	81
14.	Oct-23	08/11/2023	08/01/2024	61	46
15.	Oct-23	08/11/2023	08/01/2024	61	46
16.	Oct-23	08/11/2023	16/02/2024	100	85
17.	Nov-23	12/12/2023	16/02/2024	66	51
18.	Nov-23	12/12/2023	22/03/2024	101	86
19.	Nov-23	12/12/2023	08/04/2024	118	103
20.	Nov-23	12/12/2023	26/04/2024	136	121
21.	Nov-23	12/12/2023	09/05/2024	149	134
22.	Nov-23	12/12/2023	09/05/2024	149	134
23.	Dec-23	03/01/2024	09/05/2024	127	112
24.	Dec-23	03/01/2024	20/05/2024	138	123
25.	Dec-23	03/01/2024	23/05/2024	141	126
26.	Jan-24	03/02/2024	23/05/2024	110	95
27.	Jan-24	03/02/2024	23/05/2024	110	95
28.	Jan-24	03/02/2024	24/05/2024	111	96
29.	Feb-24	01/03/2024	24/05/2024	84	69
30.	Feb-24	01/03/2024	24/05/2024	84	69
31.	Feb-24	01/03/2024	30/05/2024	90	75
32.	Mar-24	01/04/2024	04/07/2024	94	79
33.	Mar-24	01/04/2024	10/07/2024	100	85
34.	Mar-24	01/04/2024	19/07/2024	109	94
35.	Mar-24	01/04/2024	19/07/2024	109	94
36.	Apr-24	17/05/2024	19/07/2024	63	48
37.	Apr-24	17/05/2024	23/07/2024	67	52
38.	Apr-24	17/05/2024	24/07/2024	68	53
39.	Apr-24	17/05/2024	26/07/2024	70	55
40.	May-24	05/06/2024	11/09/2024	98	83
41.	May-24	05/06/2024	03/10/2024	120	105
42.	May-24	05/06/2024	14/10/2024	131	116
43.	May-24	05/06/2024	17/10/2024	134	119
44.	May-24	05/06/2024	24/10/2024	141	126
45.	May-24	05/06/2024	05/11/2024	153	138
46.	Jun-24	15/07/2024	05/11/2024	113	98
47.	Jun-24	15/07/2024	07/11/2024	115	100
48.	Jun-24	15/07/2024	29/11/2024	137	122
49.	Jun-24	15/07/2024	09/12/2024	147	132

3. In view of the above, the Noticee(s), *prima-facie*, failed to comply with the requirements of Section 218(3) of the Act which attract penal and compensatory provision as stipulated in terms of Section 219 of the Act. The relevant provisions of the Act are reproduced as under for ready reference:

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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.

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 alleged non-compliance of law, SCN dated April 15, 2025 was served upon the Company to show the cause in writing as to why a penal action may not be taken against it for non-compliance of the requirement of the Act. In response to SCN, Mr. Zubair Razzak Palwala, Director and Company Secretary vide letter dated April 24, 2025 requested an extension of fifteen (15) days to submit the response to SCN which was duly granted. Later Syed Asim Raza Zaidi, Financial Controller of the Company, vide letter dated May 13, 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 an oversight on part of the Company. He further informed that said delays were compensated through markup payment of Rs. 7,310,583/- (Rupees Seven Million Three Hundred Ten Thousand Five Hundred Eighty Three), as disclosed in Note 37 of the Accounts. He further stated that no detriment or loss has been caused to any party as a consequence of the inadvertent delay in this respect, therefore, a lenient view in the matter is requested.

5. In order to provide an opportunity of being heard to the Company, hearing in the matter was fixed for May 15, 2025; which was attended by Mr. Mobeen Alam (CFO), Mr. S. Asim Raza Zaidi (Financial Controller) Mr. Zubair Razzak Palwala (Director) and Mr. Mikael Azmat Rahim (Legal Counsel) as the “**Authorized Representatives**” on behalf of the Company. The Authorized Representatives 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 Representatives informed that the said delay occurred due to cash flow issues faced by the Company during the last two years on account of hardship condition faced by the pharmaceutical industry. The Company, therefore, by taking the employees in confidence prioritized the timely payment of salaries. The Authorized representatives further assured that 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 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...”

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7. It is also apt to observe 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. It is however observed that the Company has claimed that the loss to the members of provident fund caused due to said delays was compensated during the year through markup payment of Rs. 7,310,583/- (Rupees Seven Million Three Hundred Ten Thousand Five Hundred Eighty Three).

8. It is also observed that although Section 218 of the Act does not, in any way, grant any exception or departure 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 delay mainly occurring due to cashflow issues. The Company also stressed on subsequent compliance by clearing all the outstanding amount of provident fund contribution along with the compensation. 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."

9. 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 as below:

Sr. #	Month	Date of PF Deduction	Date of Payment to Fund	Difference (Days)	Delay (No. of Days)
1.	Jul-23	04/08/2023	10/10/2023	67	52
2.	Jul-23	04/08/2023	30/10/2023	87	72
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48.	Jun-24	15/07/2024	29/11/2024	137	122
49.	Jun-24	15/07/2024	09/12/2024	147	132
Total Number of Days Default					4,540

10. 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

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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 (15) days from the date of collection. Further in light of established principle of law 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.

11. 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, beyond doubt, 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.20,000/- (Pak Rupees Twenty 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.

12. 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 Chief Executive Officer of the Company is directed to recompute the loss incurred 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 respective period of delay in respect of each month, and in case of difference, if any, arises between the compensation already made and the compensation recomputed, the Company must remit the same to the trustees of the provident fund within a period not exceeding thirty (30) days from the date of this Order and provide an auditor's certificate verifying the computation of such compensation and its payment to the trustees. The Company is further directed to report compliance of this direction to the Commission within the stipulated time without fail.

13. The Company is, hereby, further 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:
May 20, 2025
Islamabad.