



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Adam Sugar Mills Limited

Number and date of show cause notice: CSD/ARN/227/2016/337 dated May 27, 2024

Date of hearing: September 23, 2024

Present: Mr. Muhammad Waseem FCA-Partner, Rahman Sarfaraz Rahim Iqbal Rafi Chartered Accountants; as the Authorized Representative

ORDER

Under Section 218 of the 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 No. CSD/ARN/227/2016/337 dated May 27, 2024 ("SCN") issued under section 218 of the Companies Act, 2017 (the "Act") read with sections 219 and 479 thereof against Adam Sugar Mills Limited (the "Company").

2. Brief facts of the case are that:

- i. Review of the audited financial statements for the year ended June 30, 2023 (the Accounts) of the Company revealed that the Company has outstanding provident fund (PF) balance amounting to Rs. 4,267,808 (2022: Rs. 9,265,273).
- ii. The Commission vide letter dated March 11, 2024, sought clarification relating to compliance with section 218 of the Act along with monthly statement of collection and deposits of PF contributions. The Company vide letter dated April 30, 2024 provided the details of collection and deposit of PF contributions and submitted that "the board of directors of the Company is considering the registration of PF Trust Deed under the Punjab Trust Act, 2020. As soon as the PF Deed is registered, separate bank account will be opened in the name of PF in a scheduled bank in due course of time. However, for the time being the Company is opening a separate bank account in its name for timely deposit of PF contribution by the Company and employees."



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- 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 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 be deposited or invested in accordance with section 218 of the Act or regulations made there under.
- iv. In view of above, the Company, *prima facie*, has contravened the provisions of section 218 of the Act by failing to deposit/invest PF contributions as per requirement of aforesaid provision of the Act.

3. In order to take cognizance of the aforesaid contraventions, SCN was issued to the Company requiring it to show cause in writing as to why penalty may not be imposed on it for the aforesaid non-compliance. In response to the SCN, Chief Executive Officer (CEO) of the Company vide letter dated June 12, 2024, *inter alia* submitted as under:

- As mentioned in our previous letter dated April 30, 2024, the Company has given task to its Corporate Advisors for the registration of our Provident Fund;
- The process has started, and once the Provident Fund Deed is registered, a separate bank account will be opened in the name of the Provident Fund in a scheduled bank;
- In the interim, the Company is opening a separate bank account in its name for the timely deposit of Provident Fund contributions by the Company and Employees;
- Requested to condone the above matter, as this error/mistake was unintentionally incurred without any intention to defy or malign the law

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for September 23, 2024 wherein Mr. Muhammad Waseem FCA-Partner, Rahman Sarfaraz Rahim Iqbal Rafi Chartered Accountants appeared on behalf of the Company as its Authorized Representative (**the Representative**). The Representative, *inter alia*, submitted that:

- The earlier reply submitted vide letter dated June 12, 2024 is reiterated;
- PF Trust has not been established yet;
- Non-compliance at the moment, but responsibility is given to corporate advisors for the registration of the same; and
- Requested to condone the default.



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5. Subsequent to the hearing, CEO of the Company vide letter dated October 03, 2024 submitted additional response, *inter alia*, as under:

- The Board of Directors have decided to transfer the amount of balance of PF that will be reflected in the books of the company as of October 31, 2024 to a separate bank account of the company to comply with the requirement of section 218 of the Act;
- The Board has passed the resolution in this respect directing the management to do the needful in this respect on or before October 31, 2024;
- Assuring that the Company shall in future ensure compliance in line with the requirement of the section 218 of the Act and considered this submission leniently in view of the small size of the fund involved.

6. Relevant provisions of the Act are reproduced as under:

Section 218 of the Act:

"218. Employees' provident funds, contributory retirement funds and securities.--

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

(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;

(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



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listed securities including shares of companies, bonds, redeemable capital, debt securities and equity securities, subject to the conditions as may be specified.

(3) Where a trust has been created by a company with respect to any provident fund or a contributory pension fund 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."

Section 219 of the Act:

"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."

7. I have reviewed the facts of the case, considered the written and verbal submission made by the Representative in light of the applicable legal provisions and records placed before me. At this juncture, it is imperative to address the following:

(i) Whether the Company violated Section 218 of the Act, by failing to deposit PF contributions in a separate account?

Yes, the Company violated section 218 of the Act. As section 218 of the Act mandates that all PF contributions must be either deposited in a separate special account in a scheduled bank or invested according to the prescribed regulations. The Company failed to do this, as it had not opened a separate account for the PF, which constitutes contravention of this provision.

(ii) Whether the Company's interim solution of opening a separate account in the Company's name fulfils the requirements of section 218 of the Act?

No, the Company's interim solution of opening a separate bank account in its own name does not fulfil the requirements of section 218 of the Act. As the law explicitly states that PF contributions must either be deposited in a special account specifically opened for the PF in a scheduled bank or invested according to the prescribed requirement as provided under section 218 of the Act.

The rationale behind this legal requirement is to ensure that the PF contributions remain entirely separate from the Company's own funds and cannot be utilized or accessed for any purpose other than the benefit of the employees. Opening an account in the Company's name could create hassle over ownership and use of the funds, and it fails to provide the legal safeguards that protect employee contributions.

(iii) Whether the Board's resolution to transfer the outstanding balance of the PF by October 31, 2024, absolves the Company for prior non-compliance?

The Board's resolution to transfer PF balances to a separate account by October 31, 2024, is a subsequent action and does not retroactively absolve the Company from its prior non-compliance. The Company remains liable for the period during which the



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contributions were not handled according to the requirements of section 218 of the Act.

8. In view of the aforesaid, it is established that the Company has contravened the provisions of section 218 of the Act by failing to deposit/invest outstanding PF contributions, at relevant point in time and is liable for penalty under section 219 of the Act read with section 479 thereof. Therefore, I, in exercise of the powers conferred under sections 219 and 479 of the Act, hereby, conclude the proceedings initiated through the SCN by imposing a penalty of **Rs. 20,000/- (Rupees Twenty Thousand Only)** on the Company and advise it to ensure compliance with the applicable legal framework in letter and spirit in future.

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: October 08, 2024
Islamabad

