



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

The Crescent Textile Mills Limited

Number and date of show cause notice:	CSD/ARN/505/2017/385 dated August 05, 2024
Date(s) of hearing(s):	August 26, 2024; and September 09, 2024
Present:	Mr. Rashid Ibrahim, Managing Partner-Saafin Global Consulting; as the Authorized Representative

ORDER

Under Regulations 1(5), 3(1)(c) and 3(7) of Employees Contributory Funds (Investment in Listed Securities) Regulations, 2018 read with Sections 218(2) and 219 of the Companies Act, 2017

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") against Mr. Asim Siddique, Mr. Eitzaz Ahmad and Mr. Abid Iqbal, Trustees of the Crescent Textile Mills Limited (the "Company") Provident Fund Trust (collectively referred to as the **Respondents/Trustees**) through Show Cause Notice No. CSD/ARN/505/2017/385 dated August 05, 2024 ("SCN") issued under regulations 1(5), 3(1)(c) And 3(7) of Employees Contributory Funds (Investment in Listed Securities) Regulations, 2018 (the **Regulations**) read with sections 218(2) and 219 of the Companies Act, 2017 (the **Act**).

2. Brief facts of the case are that:

- i. Review of the annual audited accounts for the year ended June 30, 2023 (the **Accounts**) of the Company revealed that the investment in listed equity securities made from the provident fund trust exceeds the limit prescribed in the Regulations, promulgated on February 22, 2018.
- ii. The Commission taken up the matter with the Company vide letter dated April 18, 2024. The Company vide letter dated May 10, 2024, *inter alia*, submitted that:

"Primarily the investments referred in to your letter are made in securities of the Company i.e. the Crescent Textile Mills Limited, which on June 30, 2023 is 5.75% of the fund. It is however



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clarified and mentioned that investments were made during the period 2012-2018 prior to promulgation.....

It is further provided that the cut-off date for the purpose of applicability of regulation 3 is the date of the investment and at the relevant time i.e. date of investment the regulations were not field and thus are not applicable to the investments made prior to promulgation of the regulations."

- iii. Regulation 3(7) of the Regulations states that total investment, at the time of making investment in listed equity securities of constituting company or its associated companies out of Fund or Trust **shall not exceed ten per cent of the investment limit provided in clause (c) of sub-regulation 3(1).**
 - iv. The investment in listed equity securities of an associated/constituting company shall not exceed 3% of the size of the fund. However, in the instant case, the investment in listed securities of the Company constitutes 5.75% of the fund.
 - v. The response of the Company was not found cogent that the investments were made prior to promulgation of the Regulations as regulation 1(5) of the Regulations requires that the investment shall be brought in conformity with the provisions of the Regulations within three years from the date of promulgation of the regulations.
 - vi. The aforesaid transpires that the Respondents, *prima facie*, have contravened the requirements of regulations 3(1)(c) and 3(7) of the Regulations read with section 218(2) and 219 of the Act.
3. In order to take cognizance of the aforesaid contraventions, SCN was issued to the Respondents requiring them to show cause in writing within fourteen (14) days, as to why penalty may not be imposed on them for the aforesaid non-compliance. In response to the SCN, Mr. Rashid Ibrahim, Managing Partner-Saafin Global Consulting as the Authorized Representative (**the Representative**) vide letter dated August 28, 2024 on behalf of the Respondents submitted, *inter alia*, as under:
- The allegation that the Investment in listed equity securities made from the provident fund trust exceeds the limits prescribed by the Employees Contributory Funds (Investment in Listed Securities) Regulations, 2018 as on June 30, 2023, is vehemently denied. The details of investment made out of the provident fund as of June 30, 2023, by the trust has been provided vide letter dated July 31, 2023, as under:

Particulars	Unaudited	Audited
	30.6.2023	30.6.2022
	Rs.000	Rs.000
Size of Fund-Total Assets	687,101	680,093
Cost of Investments out of Provident Fund/Trust	604,853	612,321
Fair Value of Investments out of Provident Fund/Trust	665,201	669,108
Percentage of Investments out of Provident Fund/Trust		



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Break-up of Fair Value of Investments was as follows;

Particulars	30.6.2023		20.6.2022	
	Rs.000	% of investment	Rs.000	% of investment
Investment in Listed Debt Securities	22,273	3.35	32,819	4.9
Investment in Listed Equity Securities	79,664	11.98	114,850	17.16
Investment in listed Debt Collective Investment	-	-	31,327	4.68
Investment in Money Market Collective Investment Schemes	16,270	2.45	49,761	7.44
Investment in Listed Equity Collective Investment Schemes	19,084	2.87	12,192	1.82
	473,80			
Investment in Government Securities	0	71.23	355,575	53.14
Bank Balances	26,082	3.92	44,560	6.66
Others	28,028	4.21	28,024	4.19
Total	665,201	100	669,108	100

- It is clearly evident from the above that investment of provident fund trust did not exceed the prescribed limit, of thirty percent in listed equity securities, given in the Regulation 3(1)(c) of the Regulations.
- As per Regulation 3(7) of the Regulations total investment, at the time of making investment in listed equity securities of constituting company or its associated companies out of Fund or Trust, as the case may be, shall not exceed ten per cent of the investment limit provided in clause (c) of sub-regulation 3(1).
- The allegation is accepted but corrective action has already been taken even before the issuance of show cause notice on August 5, 2024.
- The Company in its letter dated May 10, 2024 in response to the SECP letter dated April 18, 2024 clarified that investment in shares of the Company as on June 30, 2023 was 5.75 percent of the size of the fund as opposed to prescribed limit of 3 percent.
- It may please be noted that as soon as the matter came to the knowledge of the Trustees, corrective action was immediately taken, and the aforesaid investment percentage was 3.06 percent as of June 30, 2024.
- The Response of the Company vide letter dated May 10, 2024 in reply to the Commission letter dated April 18, 2024 was not found cogent in terms of



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Regulation 1(5) of the Regulations. The allegation is correct to the extent that the response given is not correctly framed in the light of the legal requirements of the law.

- The Company has violated the requirements of Regulations 3(1)(c) and 3(7) of the Regulations, read with Section 218(2) and 219 of the Companies Act, 2017. The allegation is denied. The investments in listed securities out of the provident fund trust always remained within the limits prescribed for different types of investments, except for the one instance, which has been reported in Note 38 of the audited financial statements for the year ended June 30, 2023. It may be noted that corrective action has already been taken and that the investment has also been brought within the prescribed limits.
 - It can be observed that the Company has always made timely payments to the provident fund trust and the provident fund trust has always complied with the requirements of Regulations and the investments made by the provident fund trust in listed securities were within the prescribed limits except for the one equity investment which is an inadvertent omission. The trustee has taken the corrective action soon after the omission was came to the knowledge of the Trustees and the investments were brought within the prescribed limit.
 - The Commission in the recent pass has taken lenient view in a parallel case in respect of the trustees of Burshane LPG (Pakistan) Limited Provident Fund Trust vide Order dated April 21, 2022.
4. In order to provide opportunity of personal representation, hearing in the matter was fixed for August 26, 2024 which was adjourned on the request of the Representative. Another hearing in the matter was fixed for September 09, 2024 wherein the Representative appeared and, *inter alia*, submitted that:
- The earlier reply submitted vide letter dated August 28, 2024 is reiterated;
 - No further investment in listed equity securities of associated/constituting company;
 - Will dispose of the additional percent within few months to reduce the investment below 3%;
 - Default occurred due to Inadvertent omission;
 - Assured the compliance with the regulatory requirements in future;
 - Corrective measures have already been taken; and
 - Requested to take a lenient view.

5. Relevant provisions of the Act and Regulations are reproduced as under:

"The Regulations

1. Short title, commencement and application-

(5) Within three years from the date of commencement of notification of these regulations, all investments from the provident fund or any other contributory retirement fund constituted by



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a company or where a trust created by a company with respect to provident fund or any other contributory retirement fund, as the case may be, which are beyond the investment limits provided in these regulations shall be reduced gradually and brought in conformity with the provisions of these regulations

3. Limit for investment in listed securities. - (1) Where the company or Trust decide to make an investment out of the Fund or Trust, -

(c) total investment, at the time of making investment in listed equity securities and equity collective investment schemes, registered as notified entity with the Commission under Non-Banking Finance Companies and Notified Entities Regulations, 2008, shall not exceed thirty per cent of the size of the Fund or Trust, as the case may be.

(7) Total investment, at the time of making investment in listed equity securities of constituting company or its associated companies out of Fund or Trust, as the case may be, shall not exceed ten per cent of the investment limit provided in clause (c) of sub-regulation (1).

The Act

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

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

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."

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



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(i) **Whether the Investment was made in accordance with the law:**

Regulation 3(7) of the Regulations stipulates that total investment, at the time of making the investment in listed equity securities of the constituting/associated company out of the Fund or Trust, shall not exceed ten percent of the investment limit provided in clause (c) of sub-regulation 3(1) of the Regulations.

The investment made by the Trustees in listed equity securities of the constituting/associated company exceeded the maximum investment limit of the Fund or Trust size, as prescribed under regulation 3(7) read with regulation 3(1)(c) of the Regulations. The Trustees' investment exceeding this threshold contravene the regulatory requirements.

(ii) **Whether the Legal Framework provide any exception for non-compliance with the prescribed limits of investments of Provident Fund:**

The legal framework does not provide any exceptions for non-compliance with the maximum prescribed limit for investing Provident Fund contributions in listed equity securities of the constituting/associated company. Compliance with these limits is mandatory, and Trustees are required to adhere strictly to these investment thresholds without any exemptions.

(iii) **Whether the Trustees were required to comply with the investment limits after the promulgation of the Regulations?**

Yes, under regulation 1(5) of the Regulations, which mandates that investments exceeding the prescribed limits must be gradually reduced to conform within three years from the date of the commencement of Regulations, the Trustees were required to bring the investments within these prescribed limits. The investment was made prior to the promulgation of the Regulations i.e. on June 06, 2018 and accordingly, the excess investment should have been reduced within this transition period.

It has been observed that the Trustees failed to fully comply within the stipulated time frame, as non-compliance persisted. By June 30, 2023, the investment remained at 5.75%, and by June 30, 2024, it was reduced to 3.06%. Despite this reduction, the investment still exceeded the prescribed limits, indicating continued violations of the investment thresholds.

(iv) **Importance of regulation 3(7) of the Regulations in limiting the investment of Provident Fund to constituting/associated companies:**

Regulation 3(7) of the Regulations is crucial as it specifically limits the investment in listed securities of the constituting/associated company to a maximum of 10% of the total investment allowed under regulation 3(1)(c) of the Regulations. This limitation is designed to ensure that Provident Funds are not overly concentrated in the listed equity securities of associated company, thereby promoting portfolio diversification.



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The regulation helps reduce financial risk and protects employees' retirement funds from undue exposure to the performance of associated company's securities.

(v) Whether the Trustees' reference to the Commission's past decisions, where fines were not imposed for similar violations, holds merit as a defense in this case:

No, the Trustees' reference to the Commission's past decisions, where fines were not imposed for similar violations, does not hold merit. Each case is evaluated based on its own unique circumstances, and past decisions do not create binding precedents. Compliance with statutory obligations remains imperative, regardless of previous regulatory practices.

In the instant case, the Trustees' exceeding of the investment limit prescribed by law constitutes contravention of the legal requirements.

(vi) Whether subsequent compliance absolve the Trustees from their responsibility to comply with the legal framework:

No, subsequent compliance does not absolve the Trustees from their obligation to comply with the legal framework. While the Trustees have made efforts to reduce the investment in listed equity securities of the constituting/associated company from 5.75% to 3.06%, this figure still exceeds the statutory limit, as prescribed under regulation 3(7) read with regulation 3(1)(c) of the Regulations. The law mandates strict adherence to provided limits, and even a marginal excess constitutes a violation.

Furthermore, the Trustees have ensured that they will further reduce the investment in associated company's listed equity securities to brought it within the prescribed limit in the next three months, but this does not negate the fact that the violation has already occurred. Non-compliance, even if followed by corrective actions, remains a breach of legal requirements. The regulatory framework demands strict compliance at all times, and any deviation, regardless of subsequent compliance, is still subject to violation of regulatory requirements.

7. In view of the aforesaid, it is established that the Trustees have breached the investment limit in listed equity securities of the constituting/associated company and have also failed to reduce the excess investment within the three-year period following the promulgation of the Regulations, contrary to the requirements of regulations 1(5), 3(1)(c), and 3(7) of the Regulations read with sections 218(2) and 219 of the Act at the relevant point in time and the same has been admitted by Trustees and their Representative. Therefore, I, in exercise of the powers conferred under section 219 and section 479 of the Act, hereby, conclude the proceedings initiated through the SCN by imposing an aggregate penalty of **Rs.15,000/- (Pak Rupees Fifteen Thousand Only)** on the Respondents/Trustees in the following manner and advise them to ensure compliance with the applicable legal framework in letter and spirit in future.



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Sr. #	Name of Respondents	Penalty
1.	Mr. Asim Siddique	5,000
2.	Mr. Eitzaz Ahmad	5,000
3.	Mr. Abid Iqbal	5,000
	Total	15,000

8. 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.

9. 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
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Announced:
Dated: September 24, 2024
Islamabad