



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before Ali Azeem Ikram, Director (Enforcement)

In the matter of

Dandot Cement Company Limited

Under Section 229 and Section 495 read with Section 476 of Companies Ordinance, 1984

Number and date of notice	No. EMD/233/373/2002-3094 dated May 8, 2009
Date of hearing	July 6, 2009
Present	Mr. Dawood Ahmad, CFO Mr. Abdul Khabir, Company Secretary

## ORDER

This order shall dispose of the proceedings initiated through show cause notice No. EMD/233/373/2002-3094 dated May 8, 2009 against the directors of Dandot Cement Company Limited (the "Company") under the provisions of Section 229 and Section 495 read with Section 476 of the Companies Ordinance, 1984 (the "Ordinance") for failure to transfer provident fund contributions to provident fund trust within the timeline specified in the statute and for non-compliance with the order of the Commission dated May 14, 2003 under Section 227 of the Ordinance (the "Order").

2. The Company was required, in terms of the provisions of Section 227 of the Ordinance, to pay the provident fund contributions to provident fund trust within 15 days of collection. The Company was also required under our Order to repay its past liabilities towards provident fund trust amounting to Rs.54.887 million outstanding as on June 30, 2002 in installments of Rs.1.00 million per month by June 30, 2008. Examination of the annual audited accounts of the Company for the year ended June 30, 2008 (accounts) revealed that the Auditors of the Company had qualified their report on the accounts for Company's failure to transfer current provident fund contributions and past dues to the provident fund trust within the stipulated time.

3. Consequently, a show cause notice under Section 229 and Section 495 read with Section 476 of the Ordinance (SCN) was issued to the directors of the Company to explain as to why action may not be taken against them for their failure to comply with the provisions of Section 227 of the Ordinance and the Order of the Commission. They were further advised to furnish audited accounts of provident fund trust

*Ali Azeem*

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for the last three years. The SCN was responded by Mr. Dawood Ahmad, Chief Financial Officer of the Company, vide letter dated May 25, 2009, who made following submissions:

- i. *We reiterate our earlier representation on this issue in our meeting with you and Mr. Tahir Mahmood, in the hearing of Dandot Cement's fund issue, in which we have submitted our inability to repay outstanding amount to the fund as ordered in the Commission's order dated May 14, 2003.*
- ii. *In order to update on the current relationship of Dandot Cement's management with CBA, we would like to apprise the Commission that we have entered into a peace agreement with the CBA during the current month. Among other things, past overdue payments of provident fund contributions have also been discussed and payment of the same has been agreed.*
- iii. *Recently we have also completed major overhauling of the plant which we are confident will provide consistent and sustained production and continuity of cash flows.*
- iv. *In view of current development, we are confident of fulfilling our commitments towards Commission and repayment of all other pending liabilities/dues. During this time, we need extension of cooperation for some more time so that we could perform as we have planned.*
- v. *Further with reference to fund's audited accounts, it is to report that the fund has appointed a firm of Chartered Accountants who are currently auditing the accounts pertaining to past five years. Since the audit under review is for a period of past 5 years it would take some time to conclude. We however, assure as soon as we receive the audit reports we will forthwith submit the same with the Commission for reference and review.*

4. Hearing in the matter was held on July 6, 2009. Mr. Dawood Ahmad, Chief Financial Officer (Authorized Representative) along with Mr. Abdul Khabir, Company Secretary appeared before me to plead the case. Mr. Dawood stressed that the default was not intentional but an outcome of poor financial position of the Company. He averred that it was almost impossible for the Company to make timely payments due to negative operating cash flows of the Company. He however assured that the management is very serious about payment of Company's liabilities towards the provident fund trust, however, he requested that time should be allowed to the Company. He also committed that besides regularization of current contribution the Company shall also start paying previous outstanding amounts from October 2009 onward. In this respect he agreed to submit a proper request along with plan for payment of past outstanding liabilities of the provident fund trust which as confirmed by him amounted to Rs.32.8 million. He requested that the matter should not be viewed in isolation and the circumstances of the Company should be given due consideration while deciding the case. He asked for a lenient view of the matter. Regarding audited accounts of provident fund he stated that the same were in finalization process and will soon be submitted to the Commission.

5. Subsequently Mr. Dawood Ahmed vide his letter dated August 6, 2009 submitted that in view of unusual circumstances of the Company and huge accumulated losses the Company has only limited cash flows barely enabling its survival. He further stated that negotiations are in progress for restructuring of debts and the Company would be able to generate cash flows that would help to pay its accumulated liabilities. He requested that keeping in view the current scenario the Company may be allowed to pay the

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outstanding liabilities of the provident fund in installment of Rs.0.5 million per month from October 2009 onwards.

5. I have thoroughly considered both written and verbal submissions of the authorized representative of the directors. While I understand the financial and operating problems faced by the new management of the Company, I also realize 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 stipulated time. The provisions of Section 227 of the Ordinance are meant to protect the funds of employees by obligating company/trustees to deposit contributions in the safe/secured modes of investment/deposits permitted thereunder. Compliance with the said provisions of the Ordinance also becomes 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 can not be ignored.

6. The case in hand is an established default whereby the directors of the Company have failed to comply with the requirements of Section 227 of the Ordinance by failing to pay the provident fund contribution in the manner prescribed thereunder. The directors have also failed to ensure compliance with the Order of the Commission as contributions relating to previous years have not been *completely* paid off by June 30, 2008 as required by the Order and markup thereon is also not being provided since 2007. The directors thus have made themselves liable for action under Section 229 and Section 495(1) of the Ordinance. Nevertheless, considering Company's financial condition as well as commitment for future compliance I am inclined to take a lenient view of the default and instead of imposing maximum fine impose penalties on the directors in the following manner;

S.#	Name of Directors	Section 229	Section 495	Total
1	Mrs. Tanveer Rasheed, Chairperson	5,000	30,000	35,000
2	Mr. Muhammad Rasheed, Chief Executive	5,000	30,000	35,000
3	Mr. Mansoor Rasheed, Director	5,000	30,000	35,000
4	Mr. Saud Rasheed, Director	5,000	30,000	35,000
5	Ms. Rizwana Rasheed, Director	5,000	30,000	35,000
6	Mrs. Ayesha Mansoor, Director	5,000	30,000	35,000
7	Mrs. Amina Saud, Director	5,000	30,000	35,000
		35,000	210,000	245,000

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7. The directors of the Company are hereby directed to deposit the aforesaid fines in bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or pay through a demand draft in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission failing which proceedings for recovery of fines as an arrear of land revenue will be initiated. It may also be noted that the said penalties are imposed on the directors in their personal capacity; hence, they are required to pay the said amounts from their personal resources.

8. Since the Company has undertaken to pay the outstanding liabilities of the provident fund in installment of Rs.0.5 million per month from October 2009 I therefore proceed to direct the Company to:

- a) immediately regularize current contributions of provident fund;
- b) pay the entire amount including mark-up thereon, not less than the rate of return on investments made by the provident fund in the approved securities, in installment of Rs.0.5 million per month from October 2009. The Company shall also provide markup on outstanding amounts for 2007 and 2008.
- c) submit auditors' certificate regarding total amount (contributions and mark-up thereon) payable to the Fund as of July 30, 2009 within 30 days of the date of this order. A quarterly progress report shall be submitted by the Company to the Commission on the 7th of the month following the close of the relevant quarter, the first such report shall be filed by the Company on January 7, 2010; and
- d) submit auditor's certificate within 15 days of the repayment period verifying the repayment of the entire outstanding amount including mark-up thereon; and
- e) furnish audited accounts of provident fund trust for the last three years within 30 days.

9. At the end it may be noted that default in compliance with the directives of the Commission would attract the provisions of Section 495(2) of the Ordinance.



**Ali Azeem Ikram**  
Director (Enforcement)

**Announced**  
August 13, 2009  
Islamabad.