



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Enforcement Department

Continuation Sheet - 0

Before Mr. Tariq Bakhtawar, Director Enforcement

In the matter of

M/S Transmission Engineering Industries Limited

(Under Section 226 And 227 Read With Section 476 Of The Companies Ordinance, 1984)

Number and date of notice	EMD/233/432/2002/2435-2442 dated December 18, 2007
Date of hearing	July 3, 2008
Present	Mr. Riaz Ahmed Chughtai, Company Secretary
Date of Order	July 21, 2008

ORDER

This order will dispose of the proceedings initiated against M/s Transmission Engineering Industries Limited. (the "Company"), its Chief Executive and Directors, for utilizing the funds of Provident Fund Trust of the employees and not transferring the payments towards the funds within 15 days of collection and the balance of the fund at the month end during the financial year ended on June 30, 2007 is over and above monthly liability towards the Company which amounts to contravention of Section 226 and 227 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts leading to this case are that it has been noticed from the examination of annual accounts of the Company for the year ended June 30, 2007 that an amount of Rs.688,175 (2006: Rs. 674,121) is payable to Employees Provident Fund Trust as Trade and other payables in the balance sheet. It is also depicted in the financial statements of the Company for the year ended on June 30, 2007 that the Company has utilized the funds of provident fund and is providing mark up @ 14.5 % p.a.(2006: 14.5% p.a) on the outstanding balance of provident fund.

3. In view of the facts and circumstances narrated in the preceding paragraph, the Enforcement Department viewed that the Company is in contravention of the mandatory requirements of Section 226 and 227 of the Ordinance. It was, therefore, considered necessary to ascertain the extent of violations committed by the Company and loss sustained in consequence of violations of Section 227 of the Ordinance. Consequently, a show cause notice dated December 18, 2007 (the "SCN"), under Section 226, Section 227 and 229 read with Section 476 of the Ordinance, was issued to Mr. Ausaf Hussain Agha, Chairman/Chief Executive, Mr. Muhammad Aslam Khan, Deputy Managing Director, Mr. Tausif Hussain Agha, Director, Mr. Asif Hussain Agha, Director, Mr. Fasih Hussain Agha, Director, Mr. Uzair Ashir, Director, Ms. Sabahat Agha, Director and the Company.



4. Mr. Ausaf Hussain Agha, Chief Executive of the Company replied to the aforesaid SCN on behalf of the directors of the Company and submitted that:

- i) The Board of Trustees of the Provident Fund Trust had invested the money in the Company as per written contract with the Company.
- ii) In light of decision of board of trustees of the Trust and their written contract with the company there is no violation of the section 226 and 227 of the Ordinance on part of the Company.
- iii) In view of the above submissions, the SCN may be withdrawn.

5. An opportunity of hearing was provided on July 3, 2008, Mr. Riaz Ahmed Chughtai, Company Secretary appeared before the undersigned. He admitted the default and assured the Commission for future Compliance. He agreed to provide an undertaking of the Directors that the entire amount outstanding against the Provident Fund Trust will be paid to the Trust before July 31, 2008. The Directors have provided the aforesaid undertaking on July 16, 2008. In view of the submission, the Company Secretary requested that the default may be condoned and the show cause proceedings may be dropped. Mr. Riaz assured, on behalf of the above directors, that there will be strict compliance of Section 226 and 227 in future.

6. It is pertinent here to elucidate the provisions of the Ordinance, which has been violated. Section 226 of the Ordinance provides that no company, and no officer or agent of a company, shall receive or utilize any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank: Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing. In addition to the aforesaid, Section 227 of the Ordinance which requires that 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. The provisions of Sub-Section (2) of Section 227 of the Ordinance requires that where a provident 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 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 Government securities; or
- (c) in bonds, redeemable capital, debt securities or instruments issued by the Pakistan Water and Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Authority.

Moreover, the provisions of Sub-Section (3) of Section 227 of the Ordinance requires that where a Trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions 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.

7. The provisions of the Section 226 and 227 are clear and unambiguous. The objective of these provisions is to secure the amounts collected from the employees of the company as contributions to a Provident Fund for the benefits of the employees of the Company through the mechanism of trustees. The law requires that all moneys contributed by the employees as well as the company's contributions, if any, including the profit thereon must be deposited within fifteen days of the contributions shall be invested in securities referred to in Clause (a) to (c) of Sub-section (2) of Section 227 of the Ordinance. When a Trust has been created by a company with respect to any Provident Fund, the company has an obligation to pay the contributions including its own contributions to the trustee within fifteen days from the date of collection. In the latter case, the trustees are responsible to invest the moneys of the Provident Fund in accordance with the provisions of Law. The amounts collected from the employees as contributions to a Provident Fund are in the nature of trust moneys in the hand of the company and the same must be paid to the trustees within stipulated time. The Company on the pretext of higher returns cannot, therefore, withhold such moneys.

8. I have considered the reply of the Company and found it unsatisfactory. The Company has failed to comply with the mandatory provisions of the Ordinance by utilizing the funds of the Provident Fund Trust. The Ledger accounts of the Company reflect that it has not been making any payments to Provident Fund Trust in blatant violation of Section 227 of the Ordinance. Moreover, the argument that the Board of Trustees of the Provident Fund Trust had invested the money in the Company as per written contract is also not valid



because the Company has not kept the moneys received in a Special account with a scheduled bank in violation of Section 226. It is also pertinent to mention here that investment made by the trustees through this contract is not in accordance with the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996. In addition to that, Company has not been making any payments to the Fund and therefore no money is available with the Fund for investment in accordance with the contract mentioned by the Company. It has been held by the superior courts that the defaults committed cannot be validated by subsequent ratification and doctrine of substantial compliance cannot be resorted to where there has been clear violation of mandatory provisions of Section 266 and 227 of the Ordinance.

9. I have given due consideration to the submissions of the directors but none of them justified the default. The law does not permit any Company to utilize the funds of Provident fund for its commercial purposes and the above mentioned arguments of the Company are not justified.

10. For the forgoing, I am of the view that the Company and its directors have breached the mandatory requirements of Section 226 and 227 of the Ordinance. The outstanding contributions disclosed at the end of every year make it clear that the mandatory provisions of the law were breached since long. Breach of mandatory provisions of the Ordinance meant to secure the funds of the employees cannot be allowed. An action, therefore, is necessary under Section 229 of the Ordinance. I therefore, proceed to impose a fine of Rs. 5,000 (Five thousand Rupees) only on the Chief Executive of the Company namely Mr. Ausaf Hussain Agha under Section 229 of the Ordinance for violation of Section 227 of the Ordinance. The other directors are reprimanded to be careful in future. Moreover, the Company and its directors are also directed to pay the entire amount outstanding towards the Provident Fund Trust by July 31, 2008.

11. The Chief Executive is hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines totaling to Rs.5,000 (Rupees Five thousands Only) in the Commission's designated bank account No. 75010-6 maintained at Habib Bank Limited, Central Branch, 102/ 103, Upper Mall, Lahore or pay by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the Directors in their personal capacity; therefore, they are required to pay the said amounts from their personal resources.

Tariq Bakhtawar
Director Enforcement

Announced on:
July 21, 2008