



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 0 -

***Before Abid Hussain,
Director (Enforcement)***

In the matter of

United Brands Limited

Number and date of show cause notice EMD/233/616/2002/2822- 2828 dated February 13,
2008

Date of hearing March 28, 2008

Present: Mr. Muhammad Suhail; and
Mr. Zubair Palwala.

ORDER

Under Section 227 read with Section 229 and Section 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against United Brands Limited (“the Company”) through show cause notice dated February 13, 2008 under the provisions of Section 227 read with Sections 229 & 476 of the Companies Ordinance, 1984 (“the Ordinance”).

2. The Company was incorporated in 1965 in Pakistan as a public company limited by shares under the Ordinance. The shares of the Company are quoted on the Karachi Stock Exchange (Guarantee) Limited. The authorized share capital of the Company is Rs.30,000,000/- divided into 3,000,000 ordinary shares of Rs.10/- each. The paid up share capital of the Company is Rs.12,000,000/- divided into 1,200,000 ordinary shares of Rs.10/- each. The principal activities of the Company was manufacturing / assembling and trading in electrical domestic appliances. Commencing from the month of January, 2006 the principal activities of the Company are trading and distribution of consumer goods, pharmaceutical and allied products.

3. The brief facts of the case are that while examining the annual accounts for the year ended June 30, 2007 (“the Accounts”) of the Company, it was observed that an amount of Rs.4,711,070 (2006: Rs 3,392,963) is payable on account of staff provident fund (“the fund”) whereas during the year under review, the Company had charged an amount of Rs.583,482 (2006: 365, 081) as mark-up on the fund. This was transpired that the Company had not made payment to the fund in compliance with the provisions of Section 227 of the Ordinance. Consequently, a show cause notice dated February 13, 2008



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 1 -

under Section 227 read with Sections 229 and 476 of the Ordinance was issued to all the directors of the Company, namely:

- i) Mr. Rashid Abdulla, Chief Executive;
- ii) Mr. Mushtaq Abdulla, Director;
- iii) Mr. Amal Ismail, Director;
- iv) Mr. Shahid Abdulla, Director;
- v) Mr. Monis Abdulla, Director;
- vi) Mr. Asad Abdulla, Director; and
- vii) Mr. Faisal Abdulla, Director.

4. The aforesaid notice was responded by the Mr. Muhammad Suhail, Company Secretary of the Company, on behalf of all Directors of Company vide letter dated February 22, 2008 and following submissions were made:

- Staff Provident Fund Trust Deed and Rules are not traceable as the Company was dormant since last 9 years;
- Operations at a limited scale were started in January 2006 by the present management after the take over from the previous owners;
- The present management has started the re-process of establishing and registration of staff provident fund of the Company;
- The Trust Deed and Rules of the Staff Provident Fund have been prepared by the consultants and are in process of registration and approval with the competent authorities;
- During October to December 2007 financial and business restructuring was carried out in which some of the employees have left the Company where settlement of Staff Provident Fund account along with accrued profit thereon has been paid. After the settlement of outgoing employees an outstanding balance payable to staff Provident fund trust Account is at Rs 3,874,666;
- The outstanding balance along with accrued profit thereon payable to Staff Provident Fund will be transferred to Trustees Account as soon as the approval of Staff Provident Fund Trust and Rules of the Provident fund is received from the commissioner of income Tax concerned, a mandatory requirement of the banks to open a bank account of staff provident fund trustees; and
- SECP may condone the delay which was not a deliberate non-compliance or negligence on the part of the management and withdraw the subject show cause notice against the Chairman, Chief Executive and other Directors of the Company.

5. A hearing in the matter was initially fixed for March 13, 2008 which was adjourned on the request of the Company. Finally hearing was held on March 28, 2008 and was attended by the authorized representatives, on behalf of all the director of the Company, namely Mr. Muhammad Suhail and Mr



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 2 -

Zubair Palwala (the “Authorized Representatives”). During the course of hearing, the authorized representatives admitted the default and reiterated the same arguments as were given through written submission in response to this Commission’s show cause notice. They further added as follows:

- a) The management and directors of company have changed during 2004-2005 and new management has taken over the business line and related assets and liabilities of a group company namely General commodities (Private) Limited (United Brands (Private) Limited) at realizable value on January 1, 2006;
- b) The present staff of the Company has transferred from the different group companies in order to enable the Company to start its new operations. Consequently their provident fund balances maintained with those group companies were also transferred to the Company and these group companies were complied all the requirements of section 227 of the Ordinance;
- c) However, since new management was more focused on the revamping of business of Company, they failed to complied with the requirements of Section 227 of the Ordinance;
- d) The Chief Executive of Company namely, Mr Rashid Abdulla took the notice of the aforesaid issue in the board meeting of the Company dated September 24, 2007 and it was resolved in that meeting that a provident fund trust deed and rules be prepared on priority basis and be registered with the Registrar of Trust and seek necessary approval from the Income Tax Department;
- e) They have also explained that the Company has not opened the separate bank account due to the reason that the formalities of preparation of trust deed have not completed yet, which is a pre-requisite of opening of a separate bank account with the scheduled bank;
- f) They assured that the constitution of formal provident fund trust will be completed within two months and in case of non-existence of provident fund or trust the money should have been deposited in a separate bank account in compliance with the requirements of Section 227 of the Ordinance.

6. During the hearing the authorized representative were advised to provide the following information/documents:

- Minutes of Board of Directors meeting dated September 24, 2007; and
- Evidence of commitment of authorized representative to deposit Rs 5 million in separate bank account in relation to payable to provident fund balance.

7. The authorized representatives on behalf of all the directors of the Company have submitted the following information/ documents through their letter dated April 3, 2008, in addition to their previous submissions with regard to proceedings in respect of subject show cause notice:

- Documentary evidence i.e. photocopy of cheque, deposit slip and bank statement of Company showing the deposit of Rs 5 million in separate bank account of the Company; and



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 3 -

- Minutes of BOD meeting dated September 24, 2007 showing his instruction for fulfilling the requirements with regard to provident fund trust.

8. Before proceeding further, it is necessary to advert to the following provisions of law, reproduced below:

- Provisions of Sub-section (1) of Section 227 of the Ordinance provides 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 Savings Schemes, and no portion thereof shall be utilized by the Company except for the breach of contract of service on the part of the employees as provided in the contract and after notice to the employee concerned;
- Provisions of Sub-section (2) of Section 227 of the Ordinance provides 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 Saving 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 schedule 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 & Power Development Authority and in listed securities subject to the conditions as may be prescribed by the Commission;
- Provisions of Sub-section (3) of Section 227 of the Ordinance provides 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 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.

9. The aforesaid provisions of law are clear and explicit. The objective of these provisions is to secure the amount of provident fund of the employees by the company and this fund is for the use and benefits of the employees only. The law requires that all moneys contributed by the employees as well as the company's own contribution including the profit / interest thereon must be deposited in a separate bank account or be invested in accordance with the provisions of Sub-sections (1) and (2) of Section 227 of the Ordinance. Where a trust has been constituted for this specific purpose, the company has an



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 4 -

obligation to pay the employees provident contributions including its own contributions to the trustees within fifteen days from the date of collection. The amount collected from the employees as contributions to the fund are in the nature of trust moneys in the hand of the company and must be paid to the trustees within stipulated time whereas the trustees are responsible to invest the moneys of the fund in accordance with the provisions of law.

10. I have given due consideration to the submissions of the authorized representatives as well as the arguments advanced by the representatives of the Company at the time of hearing 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 argument that the directors of Company were focused on the revamping of Company is not justified. It appears that payment towards the Fund is not prioritized by the Company and it does not take compliance of the law seriously. Moreover, the submissions made by the authorized representative in reply to the subject show cause notice that the Company is dormant since 9 years and trust deed of provident fund is not traceable, materially differ when on inquiry during the hearing it was explained by the authorized representative that this provident fund liability was transferred from the group companies due to transfer of employees to the Company for re-start of its operations. This amount of provident fund received from group companies, has not been invested or deposited in the separate bank account contrary to the requirements of the provisions of Section 227 of the Ordinance therefore directors failed to comply with the aforesaid provisions of the Ordinance. Accordingly, an action is necessary under Section 229 of the Ordinance which provides that whoever contravenes or authorizes the contraventions of any of the provisions of Section 227 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the employees on account of such contravention.

11. However, taking into consideration the Company's commitment for constituting the fund through a trust deed and assurance by the authorized representatives that all the moneys of the fund including mark-up accrued on the outstanding amounts of the fund shall be transferred to the fund in accordance with the provisions of the Ordinance, I, instead of imposing penalty on the directors of the Company hereby warn them to observe the compliance of law in letter and spirit and if any default of the provisions of the Ordinance is observed in future a stern action will be taken against them.

12. Further, in terms of the provisions of Section 473 of the Ordinance, I hereby direct the Chief Executive of the Company to:



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Continuation Sheet - 5 -

- (i) complete all the formalities to constitute a formal provident fund trust within thirty days of the date of this order and transfer all the outstanding moneys of the fund including mark-up accrued on it in accordance with the provisions of Section 227 of the Ordinance; and
- (ii) submit an auditors' certificate confirming that all outstanding moneys of the fund including the mark-up accrued on it, have been transferred to the trust in accordance with the provisions of Section 227 of the Ordinance.

Abid Hussain
Director (Enforcement)

Announced
April 18, 2008
Islamabad