



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Azgard Nine Limited

Number and date of notice: CSD/ARN/64/2015- 2809-15, dated January 22, 2016
Date of Hearing: March 16, 2016
Present: M. Ijaz Haider, M. Zahid Rafiq, authorized representatives

ORDER

**UNDER SECTION 227 READ WITH SECTIONs 229 AND 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors (the "respondents") of **Azgard Nine Limited** (the "Company):

1. Mr. Aehsun M.H. Shaikh, Chairman
2. Mr. Ahmed H. Shaikh, Chief Executive
3. Mr. Nasir Ali Khan Bhatti
4. Mr. Usman Rasheed
5. Mr. Farrukh Hussain
6. Mr. Saghir Ahmed
7. Mr. Munir Alam

These proceedings were initiated through show cause notice ("SCN") dated January 22, 2016 under the provisions of section 227 read with sections 229 and 476 of the Companies Ordinance 1984 (the "Ordinance").

2. The brief facts of the case are that examination of annual audited financial statements ("Accounts") of the Company for the year ended June 30, 2015 filed with the Commission under section 233 of the Ordinance revealed that following amounts were disclosed under note 13 to the Accounts in relation to the 'employees provident fund ("EPF")' Trust:

	2015	2014	2013
Payable to EPF Trust	46,236,228	54,950,366	83,897,625
Contribution to EPF Trust	115,372,211	99,471,266	110,692,736
Interest Payable on EPF Trust	5,783,793	8,588,691	18,689,139

The accrual of interest on the amounts payable by the Company to EPF Trust and the amounts of liability appearing as payable to EPF Trust in Company's books at the close of respective years vis-à-vis the amounts of contributions made by the Company towards EPF during each year, reflected that the Company was not paying the amounts of EPF contributions to the EPF Trust within



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fifteen days. It appeared that the Company, prima facie, contravened the provisions of section 227 of the Ordinance as it failed to deposit the amounts of EPF to the Trust within the prescribed time of fifteen days. Consequently, the SCN was issued to the respondents requiring them to submit reply within fourteen days.

3. In response to the SCN, Mr. Muhammad Ijaz Haider, the Company Secretary through letter dated February 12, 2016 requested for extension in time for submission of reply to the SCN and the respondents were given time till February 28, 2016 for submission of response. The written reply to the SCN was submitted by the respondents through letter dated February 29, 2016. A brief of written submissions of the respondents with reference to the contents of the SCN is given below:

- The year wise movement of Payable to EPF Trust is as under:

	31-Dec-15	30-Jun-15	30-Jun-14	30-Jun-2013
Opening Balance	46,236,228	54,950,366	83,897,625	96,248,979
Contribution during period	-	115,372,211	99,471,266	110,692,736
Interest on PF	1,267,075	5,783,793	8,588,691	18,689,139
Payments	(47,503,303)	(129,870,142)	(137,007,216)	(141,733,229)
Closing Balance	-	46,236,228	54,950,366	83,897,625

- The period starting from year 2013 till date has been tough for the Company. During year 2013, the Company was to receive Rs.926.82 million from financial restructuring of debt accomplished in year 2012. However, it only received 226.82 million during year 2013 and Rs.700 remained stuck, hampering the cash flows. As of today still receipt of balance working capital is still awaited.
- The entire liability towards EPF Trust has been paid before 31 December 2015. Despite tight cash flows, we have been honoring our liability towards EPF Trust. In addition, the interest rate that has been applied on outstanding balance to EPF Trust remained higher than the SBP rate and no loss has been caused to employees.



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- As mentioned in note 13.2.2 of the Accounts, with effect from 1 July 2015, the Company has discontinued provident fund and in its place started gratuity scheme. All the liability toward provident trust has been paid before 31 December 2015.

Based on the above submissions, the respondent requested to condone the default.

4. Subsequently, a hearing in the matter was fixed on March 16, 2016 and Mr. Ijaz Haider and Mr. M. Zahid Rafiq appeared before the undersigned on behalf of the respondents. They mainly reiterated the earlier written submissions and requested to take a lenient view in the matter.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Sub-section (2) of section 227 of the Ordinance provides as under:

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 Commission.*

Sub-section (3) of section 227 of the Ordinance provides as under:

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.

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Section 229 of the Ordinance provides that *whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 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 depositor of security or the employee on account of such contravention.*

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 229 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

6. Having gone through the facts of the case, submission of the respondents and applicable legal provisions, I have concluded that the provisions of section 227 of the Ordinance have been violated by the respondents as the Company failed to discharge its obligation for paying the contributions of employees' provident fund to the trustees of the EPF Trust, within fifteen days. However, I take cognizance of the facts that the Company has paid off the entire liability of EPF Trust, as is reflected in the half yearly accounts for December 31, 2015 and has discontinued the EPF to replace it with gratuity. Moreover, the Company has also paid mark up on the amounts payable to the EPF Trust. Therefore, in exercise of the powers conferred by section 229 of the Ordinance, instead of imposing fines, I hereby conclude the proceedings against the respondents with a stern warning to them to be careful in future and ensure meticulous compliance with applicable legal provisions.

Amina Aziz
Director (CSD)

Announced:
May 9, 2016
Islamabad