



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director

In the matter of

Exide Pakistan Limited

Number and date of notice: EMD/233/443/2002-716-722, dated January 13, 2015

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 Exide Pakistan Limited (the “Company”):

1. Mr. Arif Hashwani, Chairman
2. Mr. Arshad Shehzada, Chief Executive
3. Mr. Altaf Hashwani
4. Mr. Hussain Hashwani
5. Engr. Abdul Jabbar
6. Mr. S. Haider Mehdi
7. Mr. S.M. Faiq

The proceedings were initiated through show cause notice (“SCN”) dated January 13, 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 March 31, 2014 submitted with the Commission in pursuance of Section 233 of the Ordinance revealed that out of total investment of Rs.131.009 million (2013: Rs.109.311 million) of the employees’ provident fund (“EPF”) being operated by the Company, following investments were made by the Company in unlisted securities:

(Amounts in Rs. million)

Security	2013		2014	
	Debt Securities-Unlisted	28.709	26.26%	27.134
Mutual Funds-Unlisted	11.741	10.74%	24.069	18.37%

The Company in its Accounts stated that the investments of provident fund were made in accordance with the provisions of section 227 of the Ordinance and the rules formulated for this purpose other than investments in unlisted securities and that the management was taking steps to dispose of such investments. It appeared that the Company, prima facie, contravened the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

provisions of sub-section (2) of section 227 of the Ordinance, as it made investments in unlisted securities out of the EPF being operated by it. Consequently, the SCN was issued to the respondents requiring them to submit reply within fourteen days.

3. In response to the SCN, the company secretary through letters dated January 29, 2015 and February 4, 2015 submitted reply. A brief of reply with reference to the contents of the SCN is given below:

- Due to inadvertent error investment amounting to Rs.27 million in list term finance certificates of Engro Chemicals Limited was included in 'debt securities – unlisted'.
- Investment in NIT's mutual funds also falls under the category of listed mutual funds. The Company's investment of Rs.24.069 million in NIT's mutual fund was incorrectly classified as Mutual Funds-Unlisted.
- The actual total investment in unlisted securities at fair value was only Rs.3.260 million as on March 31, 2014 with cost of Rs.2.988 million. This investment was disposed of on August 31, 2014 on net realizable value of Rs3.108 million excluding mark-up earning of Rs.0.117 million, hence, yielding total gain of Rs.0.237 million.
- Fair value of investment of EPF in unlisted debt securities as on March 31, 2013 was Rs.9.250 million (cost Rs.8.967 million), however, it was inadvertently disclosed as Rs.27.134 million.
- Revised break up of investment of provident fund would be as under:

(Rs. in million)

Investment of EPF	as on March 31, 2014		As on March 31, 2013	
	Value	Percentage	Value	Percentage
Shares-Listed	2.210	1.69%	1.869	1.71%
Cash & Bank	13.580	10.37%	6.587	6.03%
Government Securities	55.786	42.58%	51.480	47.09%
Debt Securities-Listed	27.301	20.84%	25.783	23.59%
Debt Securities-Unlisted	3.260	2.49%	9.250	8.46%
Mutual Funds-Listed	4.803	3.67%	2,601	2.38%
Mutual Funds-Listed (NIT)	24.069	18.37%	11.471	10.74%
Mutual Funds-Unlisted (NIT)	-	-	-	-
TOTAL	131.009	100%	109.311	100%

- At present, the Company in compliance with provisions of section 227 of the Ordinance with regard to EPF investment.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

4. In response to the Commission's letter dated February 12, 2015 whereof explanation was required to explain the difference in comparative figures of year 2013 of the EPF investments as disclosed in the Accounts 2013, Accounts 2014 and those communicated through the Company's letter dated January 29, 2015, the Company through letter dated March 6, 2015 explained that the Automotive Battery Company Limited ("ABCL") was merged into the Company after sanction of court in terms of order dated March 11, 2009. However, EPFs of both the entities could not be merged. It was further explained that the Company operates three provident funds i.e. Staff Provident Fund, Senior Staff Provident Fund and ABCL Staff Provident Fund. Due to inadvertent error on account of workload of annual closing, the break up of balances of ABCL's provident fund could not be included under note 33 to the Accounts 2013, as per requirements of Fourth Schedule to the Ordinance. However, fair value of ABCL's provident fund was disclosed under note 33.2 to the Accounts 2013.

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



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

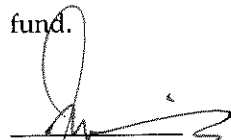
employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.

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 there have been investments made in unlisted securities out of the EPF during the year 2013 and 2014. However, the amount of investment was nominal vis-à-vis total balance of EPF. I also take cognizance of the facts that the Company has subsequently dispose of the investment of EPF in unlisted securities with a gain on disposal and no loss has been caused to the employees. It is, however, a matter of grave concern that there have been errors and omissions in the Company's Accounts with regard to mandatory disclosures of EPF, in terms of requirements of the Fourth Schedule to the Ordinance. These errors have also been rectified by the Company.

In view of the aforementioned facts, 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 warning to them to be careful in future and ensure meticulous compliance with provisions of the Ordinance and the disclosure requirements of the Fourth Schedule relating to the provident fund.


Amina Aziz
Director (CSD)

Announced:
May 30, 2016
Islamabad