

Before Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Unity Foods Limited

Dates of Hearing	January 14, 2020, February 4, 2020 and April 26, 2021
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Order-Redacted Version

Order dated April 30, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Unity Foods Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated December 13, 2019
2. Name of Company	Unity Foods Limited
3. Name of Individual*	The proceedings were initiated against the directors of the Company i.e. Unity Foods Limited
4. Nature of Offence	Violations of Section 218, Section 219 and Section 479 of the Companies Act, 2017
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I, have gone through the facts of the case, submission made by the Authorized Representative and relevant provision of the Act. The matter is summarized in the following manner:</p> <p>(a) I am of the view that scheme of law stipulated in Section 218 of the Act requires that all moneys received from the employees, the Company and / or both, such money must be deposited, in a special account maintained for this purpose with a scheduled bank, by the company within fifteen days from the date of receipt. In the instant matter, the Company had been collecting the provident fund contributions of the employee and employer from October 2018 to June 2019 as stipulated in the SCN; however, these contributions were not being deposited in the required special bank account. At this juncture, I would like to point out that this fact is not contested by the Authorized Representative, which is the basic factor of SCN.</p> <p>(b) The Company vide its letter dated November 11, 2019 submitted that it was in process of establishing and registering the provident fund trust and the same was registered on September 18th, 2019 i.e. subsequent to financial year ended on June 30, 2019. In this regard, it is hereby pointed out that it was obligations of the</p>

Respondents, to get the contributed moneys deposited in special bank account required to be opened for the said purposes. In terms of Section 218 (1) and (2) of the Act, both sub-section use words “all moneys or securities deposited with a company” and “all moneys contributed to such fund”, hence, it is concluded that moneys includes the contributions that are required to be deposited in special bank account within given time frame of fifteen days as was provided in terms of Section 218(1) of the Act. Perusal of relevant information transpires that the Company also informed that employees provident fund account was opened with Habib Metropolitan Bank Limited in June 2019. The contributions of employees and employer, which were withheld for the months of October 2018 till June 30, 2019, were deposited on July 2, 2019 in special bank account maintained with Habib Metropolitan Bank Limited. It is highlighted that the deposit of moneys available with the Company relating to contributions of employees and employer in a special bank account was not dependent on the registration of trust and as per information the amounts were even required to be deposited in a special bank account before the registration of trust, which was registered in September 2019.

- (c) In view of the aforesaid, I hereby reiterate that deposit of the moneys within given time in special account to be opened by the Company as provided in the Act was applicable in the instant case. As far as obligation of such deposit in special bank account is concerned since trust was not registered till September 18, 2019, hence, the moneys received by the Company in the form of contributions was required to be deposited by the Company itself instead of the trust.
- (d) As per the available information disclosed in Accounts 2019, the Company was operating an employee’s provident fund and an amount of Rs.13.149 million (2018: Rs. 1.065 million) was payable to employees’ provident fund. The above highlights that the moneys received by the Company in the form of employees’ provident fund contributions were not deposited in a special bank account and rather were withheld by the Company till the opening of the bank account of employees’ provident trust.
- (e) The moneys in the form of contributions pertained for the months of October 2018 to June 30, 2019 and an amount of Rs.12 million was deposited on July 2, 2019. Note 5.18.1 to the Accounts 2019 discloses that:

“The Company operates a provident fund scheme for its permanent employees. Equal monthly contributions are made by the Company and its employees. Obligation for contributions to the fund are recognized as an expense in the unconsolidated profit or loss account when they are due.”

	<p>The disclosure states that provident fund scheme is for its permanent employees, and services of permanent employees are determined through contract of service, and I, am of the view that for determination of provident fund related contributions and their deposit in special bank accounts special contracts of service are not required as approved scheme was in place. The Company taken steps for the purpose of compliance of Section 218 of the Act with delay.</p> <p>(f) As regards to the matter raised that there was no time limit for making investments by the employee's provident fund trust, in terms of sub-section (2) of Section 218 of the Act, I, will not deliberate on this argument of the Authorized Representative as the same is not the charge levelled against the Respondents in the said SCN.</p> <p>Keeping in view a penalty of Rs.25,000/- (Rupees Twenty-Five Thousand Only) was imposed on the Chief Executive.</p> <p>Penalty order dated April 30, 2021 was passed by Director (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs.25,000/- (Rupees Twenty-Five Thousand Only) was imposed on the Chief Executive of the Company.
7. Current Status of Order	No Appeal has been filed by the respondents till date.