



Corporate Supervision Department
Company Law Division

Before Abid Hussain –Executive Director

In the matter of

Bestway Cement Limited

Number and date of notice: CSD/ARN/220/2015-1073 dated October 20, 2015
Date of hearing: March 16, 2016
Present: M. Javed Panni – Authorized Representative

ORDER

UNDER SECTION 208 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the Directors including the Chief Executive (the “respondents”) of Bestway Cement Limited (the “Company”) through show cause notice (“SCN”) dated October 20, 2015 issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (the “Ordinance”).

2. Brief facts of the case are that notice of annual general meeting dated September 23, 2015 of the Company revealed that during the financial year 2015 the Company purchased 3.9 million shares of subsidiary Company Pakcem Limited without approval of shareholders under Sub-section 1 of Section 208 of the Ordinance. Consequently a SCN was served upon the respondents on October 20, 2015 to show cause as to why penalty may not be imposed under Section 208 of the Ordinance for making investment in subsidiary without authority of special resolution.

3. The respondent vide letter dated November 21, 2015 made following submissions in response to SCN.

- The Commission first conveyed its observation in its letter dated October 8, 2015. It was only then the Company became aware of its oversight in seeking prior approval of its shareholders for the purchase of 3.9 million shares of Pakcem Limited. The Company had no intention to disregard the provisions of Section 208 nor deliberately deny its shareholders the right to review the proposed acquisition of shares.
- In such circumstances, it is always prudent to view the reputation and historical practice of the Company as whole. We would like to refer to the recent acquisition of majority shareholding of Pakcem Limited whereby the Company duly sought approval of its shareholders and made all necessary disclosures in accordance with then Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002,



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commencing from its participation in the bidding process till its final public announcement of offer. The Company reviewed the subsequent acquisition of an additional 3.9 million shares as an insignificant value in comparison to the acquisition of majority shareholding, thereby assuming incorrectly that the transaction was not substantially material to warrant a prior approval of its shareholders. The Company had neither any incentive nor mala fide intention to deliberately disregard compliance of Section 208 of the Ordinance.

4. The respondents were granted an opportunity of personal hearing on March 16, 2016 before the undersigned which was attended by Mr. M. Javed Panni- Authorized Representative and reiterated the submissions made in the earlier written reply and requested for a lenient view keeping in view of the fact that it is not mala-fide on the part of the management but a bona-fide oversight of the requirements of the law.

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

- Provisions of Sub-section (1) of Section 208 of the Ordinance provides that a company shall not make any investment in any of its associated companies or undertakings except under the authority of special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto provided that the return on investment in the form of loan shall not be less than the borrowing cost of the investing company;

Explanation: The expression "investment" shall include loans, advances, equity, by whatever name called, or any amount which is not in the nature of normal trade credit.

- Provisions of the than applicable Sub-section (3) of Section 208 of the Ordinance provides that if default is made in complying with the requirements of this Section, every director of a company who is knowingly and willfully in default shall be liable to fine which may extend to ten million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this Section;



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- In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under Section 492 of the Ordinance have been delegated to Executive Director (Corporate Supervision).

6. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, arguments put forth by the representative in writing and during the hearing and observed that:

- Pakcem Limited is an associated company of the Company in term of Section 2 of the Ordinance which state that;

"associated companies" and "associated undertakings" mean any two or more companies or undertakings, or a company and an undertaking, interconnected with each other in the following manner, namely: —

(ii) If the companies or undertakings are under common management or control or one is the subsidiary of another.

- Provisions of Section 208 of the Ordinance are clear and explicit and bound companies to take approval from shareholders before making an investment in associated companies and taking approval from shareholders after making investment in associated company cannot serve the purpose.

7. For the foregoing reasons, I am of the opinion that the provision of Section 208 of the Ordinance has been violated by the respondents as they failed to take approval of shareholders before making investment in subsidiary. However, I have also noted that the respondents have admitted oversight on their part and obtained shareholders' approval by providing complete information as required by the law. The self-realization and corrective measures taken for avoidance of future errors are also reassuring. The enforcement and regulatory function of the Commission is aimed at building a compliant corporate culture, directors have a key role in ensuring that seed of this culture grows and is well nurtured. I have also considered the fact that the Company recently took over Pakcem Ltd. by acquiring up to 87.9% shares; the said transaction was approved by the shareholders. The transaction in question appears to be a consolidation of the aforesaid acquisition which enhances the company's ownership in Pakcem Ltd to 88.2%.



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Therefore, I take a lenient view and hereby warn the respondents to ensure meticulous compliance of law in future.

Abid Hussain
Executive Director

Announced:
April 15, 2016
Islamabad