



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director (Corporate Supervision Department)

In the matter of

Zeal Pak Cement Factory Limited

Number and date of notice: EMD/233/388/2002-66, dated July 10, 2014
Date of hearings: March 28, 2016
Present: Mr. Noman, Maqbool & Mr. M. Asghar Khan

ORDER

UNDER SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors and the company secretary (the “respondents”) of **Zeal Pak Cement Factory Limited** (the “Company”):

1. Mr. Mazhar Ali Jatoi, Director
2. Mr. Jehangir Akbar, Director
3. Mr. Ashraf Ali Jatoi, Director
4. Mr. Nawab Ali Jatoi, Director
5. Mr. Mushtaq Ahmd Jatoi, Director
6. Mr. Muhammad Moosa, Director
7. Mr. Mushtaq Ali Shah Bokhari, Director
8. Mr. Nawab Ahmed Khanzada, Director
9. Mr. M. Asghar Khan, Company Secretary

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated July 10, 2014 issued under section 492 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company’s annual financial statements (the “Accounts”) for the year ended June 30, 2011, filed with the Commission contained auditor’s report to members dated November 4, 2011 bearing stamp of Hameed Khan & Co., Chartered Accountants, and disclosing Mr. Abdul Waheed Khan as audit engagement partner. The same audit firm was mentioned as auditor of the Company under the corporate information disclosed in the Accounts. It was also observed from the record that Quality Control Assurance Board of Institute of Chartered Accountants of Pakistan (“ICAP”) had removed the name of Hameed Khan & Co. from the list of practicing firms having satisfactory Quality Control Rating (“QCR”) on September 27, 2010. Resultantly, the Commission initiated proceedings against all partners of Hameed Khan & Co., the firm disclosed as statutory auditor of the Company, on the ground that the said audit firm was not eligible to be appointed as statutory auditor of a listed company as it did not have a satisfactory QCR. In response, Hameed Khan & Co. through letter dated March 3,



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2014, informed that the firm was not the auditor of the Company for the year ended June 30, 2011, hence, no question arose to issue audit report. It was further stated that the firm had never deputed any person or staff for the audit of accounts of the Company. Hameed Khan & Co., vide letter dated June 5, 2014 further informed that Mr. Abdul Waheed Khan was no more a partner of the firm and the same had been intimated to ICAP in accordance with the rules. It further stated that Mr. Abdul Waheed Khan had used the stationery of the firm illegally and without consent and knowledge of the firm and he was misleading the public.

3. Aforementioned facts revealed that the Company, *prima facie*, disclosed false or incorrect information, due to the following:

- (i) Unaudited Accounts for the year ended June 30, 2011 were filed with this Commission and sent to members purporting those to be audited;
- (ii) Notice of annual general meeting ("AGM") dated November 4, 2011 contained agenda item of approval of audited Account for the year ended June 30, 2011, together with directors' and auditor's report, however, such Accounts were, *prima facie*, never audited by Hameed Khan & Co., Chartered Accountants;
- (iii) False or incorrect review report to the members on statement of compliance with best practices of the code of corporate governance, having stamp of Hameed Khan & Co., Chartered Accountants, and disclosed as issued by said audit firm, was sent to this Commission and was annexed with Accounts;
- (iv) Misstatement by the chief executive in the statement of compliance with the code of corporate governance, which was dated November 4, 2011, annexed along with the Accounts, by stating that statutory auditors, Hameed Khan & Co., had satisfactory QCR of the ICAP.

Consequently, the SCN was issued to the respondents calling upon them to show cause, in writing to explain as to why necessary penal action may not be taken against them in terms of section 492 of the Ordinance for the aforesaid, *prima facie*, misstatements by disclosing incorrect information in the Accounts and annexures.



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4. In response to the SCN, the Company through letter dated July 23, 2014 stated as under:

- The audit of the Company was carried out by Hameed Khan & Co. for the year ended June 30, 2011 and audit report was signed by Mr. Abdul Waheed Khan as engagement partner. Consent of the auditor was duly obtained. Therefore, the statement that unaudited Accounts were filed with the Commission and sent to the shareholder is not correct.
- The SCN states that QAB of the ICAP removed the name of Hameed Khan and Co. from the list of QCR rated firms on September 27, 2010. The said firm has been appointed as auditor of the Company since the year 2006 with due compliance of requirements and was again appointed as auditor for the year ended June 30, 2011.
- The Company has been filing the annual audited accounts audited by the same firm and no objection had been raised previously.

Information was sought from the ICAP regarding the composition of partnership of Hameed Khan & Co. since the year 2011. It was confirmed that the firm comprised three partners including Mr. Abdul Waheed Khan. It implies that Mr. Abdul Waheed Khan is a partner of Hameed Khan & Co., Chartered Accounts, notwithstanding the ongoing disputes of the partners within the firm. As per letter of the ICAP dated Sept 26, 2014, Mr. Hameed A. Khan, the other partner of the firm had not provided anything to the ICAP in this regard. As per the reply of the Company, Mr. Abdul Waheed Khan offered the firm's services for statutory audit for the period ended June 30, 2011, and having audited the Accounts provided the audit report, which bears official stamp of the firm Hameed Khan & Co., Chartered Accounts.

5. The Commission through letter dated January 27, 2015 required the following information from the Company:

- a. Copy of the consent of the Auditor
- b. Copy of the Audit Report signed and stamped by Auditor, for the aforesaid period
- c. Form 29 filed with the Commission, in regard to the appointment of aforesaid auditor.



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- d. Certified copy of the resolution for the removal of previous auditors i.e. S.M. Sohail, appointed but subsequently terminated, prior to the appointment of Hameed Khan & Co, Chartered Accountants.

The Company through letter dated February 2, 2015 provided consent letter dated August 9, 2011 from Hameed Khan & Co., along with signed and stamped auditor's report on the Accounts 2011. However, copy of Form-29 was not provided. Moreover, the Company provided the copy of special resolution dated August 12, 2011 signed by chief executive on behalf of the board of directors (the "BOD") whereof BOD approved appointment of Hameed Khan & Co. as auditor for the year ended June 30, 2011 and removal of S.M. Suhail & Co., Chartered Accountants, as the auditor. However, no approval of shareholders, which is a statutory requirement for removal of auditor and appointment of new auditor, was provided.

6. A hearing in the matter was held on March 28, 2016 before the undersigned and the respondents were represented by Mr. Noman, Maqbool, chief financial officer and Mr. M. Asghar Khan, the company secretary. They mainly reiterated the earlier written submissions and further stated that the Hameed Khan & Co. was appointed as auditor of the Company after obtaining their consent and internal disputes of the firm do not affect such appointment.

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

Section 492 of the Ordinance, states as under:

"Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees."



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

8. I have analyzed the facts of the case, relevant provisions of the Ordinance and the arguments put forth by the respondents and my observations are as under:

- The shareholders of the Company in the AGM held on February 28, 2011 appointed S.M. Sohail & Co., Chartered Accountants, as statutory auditor of the Company for the year ended June 30, 2011. However, services of S.M. Suhail and Co. were terminated on August 12, 2011 and the firm Hameed Khan and Co. Chartered Accountants, was appointed as auditor on August 17, 2011 by the BOD. However, the members' approval for appointment of the latter firm was obtained, on November 30, 2011 in 55th AGM, after twenty six days of the date of audit report which was November 4, 2011. However, separate proceedings have been initiated against the Company for removal of the old auditor and appointment of new auditor in its place, in violation of mandatory legal requirements of obtaining members' approval for the same.
- As per information received from the ICAP which is an independent source, Mr. Abdul Waheed Khan was a partner of the firm Hameed Khan and Co. as on the date of appointment of the firm as statutory auditor of the Company for the year ended June 30, 2011. The internal disputes between the partners of the firm do not affect the veracity of the audit of the Company conducted by the firm with Mr. Abdul Waheed Khan as the audit engagement partner. The Company obtained the consent of Mr. Abdul Waheed Khan for appointment as statutory auditor before the appointment and the same is available on record. Therefore, the veracity of the audit of Accounts for the year ended June 30, 2011 is intact.
- With regard to the QCR rating of the firm Hameed Khan & Co., it is understood the firm's name was removed from QCR rated list of auditors in the year 2010, and on the date of its appointment in August 2011, the firm was not eligible to audit the Accounts of the Company in terms of the listing regulations of the KSE. Therefore, the Accounts and the



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annexed statements were misstated to the extent that Hameed Khan and Co., were stated to have the satisfactory QCR. It has been stated by the respondents that the same firm has been auditing the Accounts of the Company since the year 2006 and the issue of QCR never arose before. However, it must be understood by the respondents that it is solely their own responsibility to appoint auditor after proper due diligence to make sure that a duly qualified auditor who meets all the legal and regulatory requirements is appointed for audit.

9. I deem it necessary to make some observations on the importance of audit and accurate disclosures in the financial statements and the statements annexed thereto. The financial statements along with annexures are the most important source of reliable information for the shareholders and other stakeholders. Therefore, adequate and correct disclosures in the financial statements and the statement annexed thereto are of utmost importance. The directors are responsible for stewardship of resources entrusted to them by the shareholders of a Company with the trust that they will manage such resources for the shareholders' benefits. There is no such arrangement in place whereby the shareholders can have an independent view as to how the directors have managed the affairs of the company. The law, therefore, recognizing this situation, has provided for the appointment of auditors who shall be responsible to audit the books of account, documents and financial statements required by the law and make out a report on them at the end of each year. Procedure for appointment of auditor has also been prescribed by the law, which must be followed by the Company, considering the fact that it is the only safeguard provided by law to the shareholders to ensure accountability of the management. It is the duty of the directors to see that the procedure for appointment of auditor is meticulously followed and correct disclosure are made in the financial statement and all the statements annexed thereto. In this context the respondents cannot absolve themselves of their statutory duties of exercising due care and prudence to ensure that all the legal and regulatory requirements are met while appointing the auditor and disclosures regarding appointment and qualification of auditors are correct.

10. For the foregoing reasons, I am of the view that the respondents are liable for action under the provisions of section 492 of the Ordinance for the misstatement in the annexures to the



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Accounts 2011, to the extent that the statutory auditor appointed for the year ended June 30, 2011 was not QCR rated but was disclosed as such. However, I take cognizance of the fact that the same auditor has been conducting audit of the Company since the year 2006 and was removed by the ICAP from the QCR rated auditors' list in 2010. Moreover, it is also evident that despite internal disputes of the firm Hameed Khan & Co., Mr. Abdul Waheed Khan, was a partner on the date of appointment of the firm as the Company's auditor. Therefore, in exercise of the powers conferred by section 492 of the Ordinance, instead of imposing fines on the respondents, I hereby conclude the proceedings against the respondents with a stern warning to them to be careful in future and ensure due compliance of the applicable law and all the regulatory requirements.

Abid Hussain

Executive Director (CSD)

Announced:

April 27, 2016

Islamabad