



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Registration Department (MSRD)

Before the Director/HOD (MSRD)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Nadeem Atta Sheikh, Director of Kohat Cement Company Limited

Date of Hearing:

September 01, 2014

Present at Hearing:

Representing the Respondent:

Mr. Rashid Sadiq,
Chief Executive Officer,
RS Corporate Advisory (Pvt.) Limited

Assisting the Director/HOD (MSRD):

Mr. Muhammad Farooq,
Joint Director, SECP

Order

This Order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan ("**Commission**") through Show Cause No. SMD/BOW/222/9(342)123 dated 25/06/2014 ("**Notice**") issued to Mr. Nadeem Atta Sheikh ("**Respondent**"), Director of Kohat Cement Company Limited ("**Issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being its Director was required to file returns of beneficial ownership on Form 32, for the changes took place in his beneficial ownership from September 2013 to December 2013, within the period stipulated under Section 222 of the Ordinance. However, he failed to discharge the said obligation which attracts penal provision contained in Section 224(4) of the Ordinance.

3. Section 222(2)(c) of the Ordinance stipulates the period within which the Form 32 is required to be submitted as under:-

"where there is any change in the position or interest as aforesaid including a change in the beneficial ownership of any equity, security, within fifteen days of such change"





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4. The Respondent in response to this office letter dated 06/01/2014 has reported the following changes in beneficial ownership to the Commission on 04/03/2014, with the delay as mentioned against each:-

Date	No. of Shares	Nature of Change	Extent of Delay (Days)
22/08/2013	34,277	Specie dividend received from Tariq Motors Limited	179
24/09/2013	100,000	Purchase	146
25/09/2013	20,000	Purchase	145
27/09/2013	154,000	Sold/transferred to	143
03/10/2013	28,947,000	ANS Capital (Pvt.) Limited	137
04/12/2013	163	Bonus	75

5. The aforesaid changes in beneficial ownership were reported to the Commission with delay ranging from 75 days to 179 days, in contravention of Section 222(2)(c) of the Ordinance. The said contraventions attract penal provision of Section 224(4) of the Ordinance, which provides as under:-

“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.

6. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon him to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against him pursuant to Section 224(4) of the Ordinance, for aforesaid contraventions of Section 222 of the Ordinance. Mr. Rashid Sadiq, Chief Executive Officer, RS Corporate Advisory (Pvt.) Limited (**“Authorized Representative”**) responded the Notice vide letter dated 17/07/2014 on behalf of the Respondent.

7. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed on 28/08/2014 at the Commission’s Head Office, Islamabad. The hearing was rescheduled for 01/09/2014 and the Authorized Representative was allowed to appear through video link, as was requested by him. On the said date, the Authorized Representative appeared through video link from Company Registration Office, Lahore. The submissions made by the Respondent in writing as well as verbally during the course of hearing be summarized as under:-





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- a) *The changes in beneficial ownership of the Respondent were due to receipt of bonus shares and transfer of 29,101,000 shares to holding company of the Issuer Company in terms of SECP's approval dated 18/09/2013 and not due to any trade in the shares of the Issuer Company.*
- b) *The delay in filing of Form 32 was purely due to oversight and also due to problems encountered by the Respondent in filing of Form 32 through eservice of the Commission. The Respondent tried a number of times for filing of these forms within stipulated time, however, every time he faced a problem in eservice facility of the Commission. The same was brought to the notice of the Company Registration Offices Peshawar and Lahore. A letter dated 20/01/2014 was also written to SECP which remained un-responded. However, after consultation with CROs, the Form 32 was filed physically.*
- c) *Furthermore, the delay in filing of Form 32 was a technical nature and there has been full and complete disclosure of the Respondent's shareholding in Form A as well as in Annual Report under Form 34, therefore, the delay in filing of Form 32 was unintentional.*
- d) *The Respondent will continue to observe strict compliance with the mandatory provisions of Section 222 of the ordinance.*
- e) *The default is unintentional and the same may kindly be condoned.*

8. I have considered the aforesaid submissions made by the Authorized Representative in writing as well as during the course of hearing. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The changes in beneficial ownership were due to receipt of bonus shares and transfer of shares to the holding company of the Issuer Company.

In order to arrive at decision, I have also reviewed the record of this office, which reveals that:-

- a. The Respondent is a beneficial owner/Director of the Company since 1994.
- b. Earlier, the Respondent was asked vide letter dated 25/08/2010 followed by reminder dated 22/09/2010 for filing of form 32, for changes took place in her beneficial ownership during December 2005 to October 2008, along with the reason for non-filing of the same within the stipulated time limit..
- c. In response to said letter/reminder, the Respondent filed Form 32 on 18/10/2010 for 106 transactions/changes in beneficial ownership. The said changes in





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beneficial ownership were reported with delay ranging from 534 days to 1,788 days.

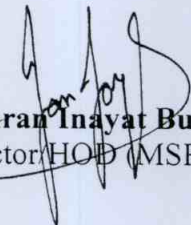
- d. Concerning the said defaults, the Respondent stated that *"I am repentant for the delay in filing and request to condone the delay this time"*.
- e. The request made by the Respondent was accepted and was strictly warned vide letter dated 26/10/2010, to ensure timely compliance of Section 222 of the Ordinance, in future.

9. As per available record, the Respondent is a beneficial owner/on the Board of Directors of the Company since 1994. Hence, in my opinion, the Respondent is supposed to be well aware of his legal obligations. Concerning the plea that the Issuer Company tried to submit online the aforesaid Form 32, it is pointed out that pursuant to the provisions of Section 222 of the Ordinance, filing of returns of beneficial ownership is responsibility of the beneficial owners/directors/officers of the a listed company rather than the company, therefore, hard copy of Form 31/32 duly signed by the beneficial owner is required to be filed with the Commission. It is worth noted that in the instant case, the Respondent has already been strictly warned vide letter dated 26/10/2010 to ensure timely compliance of Section 222 of the Ordinance in future. Thus, the Respondent has contravened the provisions of Section 222 of the Ordinance. In the light of aforesaid discussion, I am of the view that the Respondent has committed the violation. However, taking a lenient view of the default, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 10,000/- (ten thousand rupees only) on the Respondent.

10. The Respondent is directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

11. This Order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.




(Imran Inayat Butt)
Director/HOD (MSRD)

Islamabad.
Announced on October 31, 2014