



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Muhammad Tousif Paracha, Director of Gharibwal Cement Limited

Date of Hearing:

February 22, 2012

Present at Hearing:

Representing the Respondent:

Mr. Ashfaq Ahmed Khan,
Corporate Consultant,
Ashfaq A. Khan & Associates

Assisting the Director/HOD (MSCID):

Mr. Muhammad Farooq,
Joint Director (SMD)

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 Notice No. S.M(B.O)C.O.222/9(38)92 dated 11/01/2012 ("**Notice**") issued to Mr. Muhammad Tousif Paracha ("**Respondent**"), Director of Gharibwal Cement 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 change in his beneficial ownership on Form 32, within the period stipulated under Section 222 of the Ordinance. However, he failed to discharge the said obligation which attracts penal provisions 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. For convenience, the provisions of the said Section are reproduced hereunder:-

"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"

4. It is worth mentioning that in order to provide an opportunity to directors/beneficial owners of listed companies to file their over due returns of beneficial ownership without facing



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penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.

5. On account of scrutiny of record of this office, it was observed that the Respondent has failed to file returns of change in beneficial ownership on Form 32. The Respondent was, therefore, asked vide letter dated 26/05/2011 followed by a reminder dated 19/08/2011 to file returns of beneficial ownership on Form 32 alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance.

6. The Respondent filed Form 32 for the following changes in his beneficial ownership with delay mentioned against each:-

Sr. No.	No. of Shares	Date of Change	Nature of Change	Rate Per Share (Rs.)	Due Date for Filing the Return	Return Filed on	Delay in Days
1	106,017,218	31/12/2010	Buy (other than right)	10.00	15/01/2011	12/09/2011	240
2	5,333,333	28/02/2011	Sale	11.46	15/03/2011	12/09/2011	180
3	119,315	31/05/2011	Sale	8.17	15/06/2011	12/09/2011	88
4	4,600,000	07/06/2011	Sale	6.67	22/06/2011	12/09/2011	81

The aforesaid four changes in beneficial ownership were reported to the Commission with delay ranges from 240 days to 81 days, in contravention of Section 222(2)(c) of the Ordinance. The said contraventions attract penal provisions 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"

7. 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



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pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222(2)(c) of the Ordinance. The Company Secretary of the Issuer Company vide letter dated 20/01/2012 filed written reply to the Notice on behalf of the Respondent.

8. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed for 24/01/2012 at Commission's Head Office, Islamabad, which on request of Company Secretary of the Issuer Company was adjourned and re-fixed for 22/02/2012. On the given date, Mr. Ashfaq Ahmed Khan ("**Authorized Representative**") appeared before me on behalf of the Respondent. The submissions made on behalf of the Respondent by the Company Secretary in writing as well as verbally by the Authorized Representative during the course of hearing be summarized as under:-

- a) *The Respondent has not traded in the shares in open market and the change in his beneficial ownership was only because of issuance of other than right shares by the Issuer Company under Section 86 of the Ordinance.*
- b) *The sale of pledged shares was forced sale made by the financial institutions.*
- c) *The Reply could not be filed promptly because the Respondent was out of country.*
- d) *Due to liquidity position of the company, misunderstanding as well as oversight the return under reference could not be filed within the stipulated time limit.*
- e) *The delay in submission of the return of beneficial ownership was not willful.*
- f) *The Authorized Representative requested to condone the default and ensured that the Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*

9. I have considered the aforesaid submissions made on behalf of the Respondent and my findings in this regards are as under:-

- a) In reference to the contention raised on behalf of the Respondent that *inter alia* due to liquidity crunch of the Issuer Company the returns could not be filed in time it is clarified that filing of returns of beneficial ownership is responsibility of the beneficial owner instead of the company, therefore, this disputation does not have any substance.
- b) Regarding the plea that the aforementioned sales transactions were forced sales made by the financial institutions, it is pointed out that as per record of this office the aforesaid 5,333,333 shares of the Issuer Company were sold by the Respondent through its



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account maintained with JS Global Capital limited rather than by any financial institution.

c) Concerning the plea that the default in question was not willful, it is worth mentioning that in order to engender awareness and provide an opportunity to the specified officers and more than ten percent shareholders of listed companies, for filing of overdue returns, the Commission carried out exercise twice mentioned in detail in para 4 of the Order, but the Respondent failed to discharge its liability entailed under Section 222 of the Ordinance, until, the same was pointed out by this office through letter dated 26/05/2011.

d) With reference to the request that the aforementioned defaults committed by the Respondent may be condoned. I am of the view that Sections 220 to 224 of the Ordinance speak about a Scheme. Under the said Scheme such beneficial owners/persons are required to report their shareholding as well as changes in shareholding at the same time to the Company, Registrar of Companies and the Commission. The said officers and beneficial owners of more than ten percent equity securities of a listed company are required to fulfill their statutory requirements within the time period provided in the law. The inevitability of the filing of the return of beneficial ownership with the Commission may be adjudged from the fact, that it enables the Commission to monitor the trading activities of the returnee. In the instant case, four changes in beneficial ownership interest of the Respondent were taken place at different dates. Pursuant to the provisions of Section 222 of the Ordinance, each change in beneficial ownership was required to be reported within the 15 days of the change. But the said changes in beneficial ownership have been reported to the Commission with delay ranges from 240 days to 81 days.

10. In view of the foregoing discussion, it is evident that the Respondent has admittedly contravenes the provisions of Section 222 of the Ordinance. However, he has filed the return of beneficial ownership and assured for timely filing of the returns of beneficial ownership in future. In order to arrive at conclusion, I have also reviewed the available record which reveals that the Respondent till September 2009 filed returns of beneficial ownership regularly. Taking a lenient view of the defaults, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 20,000/- (twenty thousand rupees only) on the Respondent and no further fine for continuous default, which may extend to one thousand rupees per day for the period of aforesaid each default ranges from 240 days to 81 days is imposed.


11. 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, to the effect.



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12. 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.

Islamabad,
Announced on *March 19, 2012*


(Imran Inayat Butt)
Director/HOD (MSCID)

