1162

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

SECP

[Islamabad]

Before Tahir Mahmood, Executive Director (Enforcement)

In the matter of

Dadabhoy Cement Industries Limited

Number and date of notice:	No. EMD/233/371/2002-1061-67 December 29, 2009
Date of Hearing:	March 08, 2010
Present:	Syed Haroon Aziz Authorized Representative

Order

Under Section 492 read with Section 476 of the Companies Ordinance, 1984

This order shall dispose of the show cause proceedings initiated against directors of Dadabhoy Cement Industries Limited (DCIL) through show cause notice dated December 29, 2009 under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the "Ordinance") due to following issues:

i. DCIL did not disclose contingent liabilities relating to its bank liabilities from National Bank of Pakistan (NBP) in its annual audited accounts for the year ended June 30, 2009.

ii. Directors of DCIL made misstatement in projected financial statements, submitted to the Commission in connection with right issue announced in 2007, regarding injection of funds of Rs.400 million by way of director's loan. However, the director's loan as disclosed in projected financial statements was never injected.

2. The facts leading to this case, briefly stated, are that the annual audited accounts of DCIL for the year ended June 30, 2009 (accounts) disclosed an amount of Rs.600 million (2008: Rs.600 million) as long term loan payable to NBP. Relevant notes to the accounts disclosed that DCIL was negotiating with NBP for full and final settlement of said liability. It was also noted from DCIL's accounts for the year ended June 30, 2008 (2008 accounts) that said loan was also restructured/rescheduled in previous years and DCIL has made consequent adjustment/reversal of Rs.454.732 million to the original liability payable to NBP in its annual audited accounts for the year ended 2007 and 2008 and did not accrue interest of approximately Rs.320 million for the said periods. It was further disclosed in the 2008 accounts that the NBP had principally agreed for full and final settlement of its liability at Rs.600 million to be paid by December 31, 2008 and in case compromise terms were not fulfilled the said adjustments made to original liability and interest would reverse and be

recognized as liability. DCIL could not pay its overdue liabilities to NBP till December 31, 2008 and continued further negotiations. However, DCIL did not disclose, in the accounts for the year ended June 30, 2009, the liabilities that would become payable incase negotiations with NBP became unsuccessful.

3. The second issue giving rise to proceedings under Section 492 of the Ordinance is misstatements in projected financial statements submitted to the Commission, under Rule 5 of The Companies (Issue of Capital) Rules, 1996, in connection with 124% right issue announced by directors of DCIL in their meeting held on April 16, 2007 for repayment of long term loans of DCIL. The directors projected net profits and dividends through 2007-2012. The aforesaid projections of profits and dividend were based on injection of funds of Rs. 543.809 million through issuance of right shares and Rs. 400 million through director's loan in the year 2007. The accounts of DCIL for 2007-2009 revealed that the said right issue was completed in 2007-2008 and equity of Rs.543.908 million was injected, however, the director's loan as disclosed in projected financial statements was never injected. Moreover DCIL could not pay its long term liabilities and also failed to achieve results as presented in projected financial statements. DCIL had to stop production in August 2008 due to unavailability of working capital. In view of the aforesaid, it was apprehended that the projected financial statements of DCIL submitted to the Commission in 2007 were misstated.

4. In view of the above, a show cause notice dated December 29, 2009 was issued to the directors of DCIL highlighting the violations of Section 492 of the Ordinance calling upon them to explain as to why penal action may not be taken against them for contravention of the said provisions of the Ordinance. The Company Secretary of DCIL submitted reply to the said show cause notice, vide letter dated January 15, 2010, which was not found satisfactory. Hearing in the matter was held on March 08, 2010. Syed Haroon Aziz of M/s. Aziz Associates, Income Tax & Company Law Consultants, appeared before me to represent the directors of DCIL. He also submitted written representation during the course of hearing.

5. Arguments presented by the directors and their Authorized Representative in their written representations and during the course of hearing have been summarized below;

1). Non-disclosure of contingent liabilities:

a) DCIL is still under negotiation with the banker for final settlement of outstanding loans and grant of further loans to meet the working capital requirements.

b) The financial statements for June 30, 2009 were prepared based on the assumption that an outcome of the negotiations will be reached by the end of December 2009.

however, since the negotiations are still in progress DCIL could not recognize the liability mentioned in the financial statements.

c) We assure you to disclose this fact in future under contingencies and commitments.

2). **Misstatement in projected financial statements:**

a) The Commission should not ignore the fact that projected financial statements are not firm commitments. They are based on certain assumptions and expectations in light of available information at the time of their preparation and are always susceptible to risks and uncertainties arising in future.

b) The projected results were based on negotiations with the financial institutions and the management is continuously making its utmost effort to get working capital for heavy repairs and maintenance requirements for the commencement of un-interrupted operations in future and still negotiating with the national and international investors to achieve the projected results.

c) Right issue was mainly supported by the directors' and their associates whereas general public only participated to an extent of Rs.100 million. This implies that the directors have made further investment of approximately Rs.444 million.

It is evident from the above clarification and documents submitted that there is no intentional default committed which attracts penalties under the Ordinance. Considering the adverse financial condition of DCIL we would request to ignore the minor disclosures requirements under the law.

6. I have duly considered written and verbal submissions of DCIL's directors and their Authorized Representative. Justification given for nondisclosure of contingent liabilities in the accounts of DCIL for June 30, 2009 is not acceptable at all. However, since directors have admitted non-disclosure and have assured to make required disclosures in future this issue does not require further deliberation.

7. Submissions made by directors and their Authorized Representative regarding the issue of misstated projected financial statements are also not very convincing. Though I agree that projections are always based on certain assumptions and may change due to changing circumstances a company is undergoing however it is also a considered view that the projections should be based on realistic assumptions while carefully analyzing the particular circumstances of a company. I have gone through the projected financial statements submitted by DCIL and have noticed that the same were based on injection of funds through equity and director's loan. No other sources of financing were envisaged for operations of DCIL during

the projected period i.e. from 2007 to 2012. Moreover, projected financial statements not only anticipated repayment of long-term liability of NBP and planned director's loan but also projected handsome profits and dividends for 2007-2012. The said projections were submitted in April 2007 and in August 2008 DCIL had to stop its production due to unavailability of working capital (as stated in auditor's report for the year ended June 30, 2009). The directors failed to provide the planned funds to DCIL. The DCIL could not pay its long term liabilities and also failed to achieve projected results. The aforesaid circumstances show that the projected financial statements of DCIL submitted to the Commission in 2007 were misstated to present an optimistic picture of DCIL's affairs. As regards the plea that directors have made further investment of approximately Rs.444 million it is stated that the said figure of Rs.444 million comprise of right issue entitlement of DCIL's directors/associates to the extent of Rs.365.9 million and subscription of unsubscribed portion of right issue amounting to Rs.74.1 million by DCIL's associate as underwriter. The *director's loan* of Rs.400 million as shown in projected financial statements was in addition to injection of funds by way of right issue.

8. Although the default under Section 492 of the Ordinance is established, however, considering the fact the DCIL has disclosed contingent liabilities in half yearly accounts for period ended December 31, 2009 I am inclined to take a lenient view and instead of imposing maximum penalty of Rs.500,000/- on each director impose a token penalty of Rs.200,000/- of the Chief Executive of DCIL only.

9. The Chief Executive of DCIL is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or pay through a demand draft in the name of the Securities and Exchange Commission of Pakistan within thirty days from the receipt of this order and furnish receipted bank voucher to the Commission, failing which proceedings for recovery of fines as an arrear of land revenue will be initiated. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

Tahir Mahmood
Executive Director (Enforcement)

Announced
May 20, 2010