



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

NO. SM (BO) 222/19(9)/2004

Before Executive Director (Securities Market Division)

Order

Under Section 224(2) of the Companies Ordinance, 1984
In the matter of
Bestway (Holdings) Limited Beneficial Owner of Bestway Cement Limited

Date of Hearing: 27.12.2005

Present at the Hearing:

Representing the Bestway (Holdings) Limited

- i) Mr. M. Irfan A. Sheik
- ii) Mr. M. Musaddaq Ali Khan

Director Finance, Bestway Cement Ltd.
Financial Controller, Bestway Cement Ltd.

Assisting the Executive Director (SM)

- i) Mr. Imran Inayat Butt
- ii) Mr. Muhammad Farooq
- iii) Mr. Nazim Ali

Director (SM)
Deputy Director
Assistant Director

This order will dispose off the proceedings initiated under section 224(2) of the Companies Ordinance, 1984 (the "Ordinance") by the Securities and Exchange Commission of Pakistan (the "Commission") through notice dated November 15, 2005 against Bestway (Holdings) Limited (the "beneficial owner"), a more than ten percent shareholder of Bestway Cement Limited (the "issuer").

2. Brief facts of the case are that in response to this office letter of even number dated March 22, 2005, the beneficial owner filed returns of beneficial ownership as a more than ten percent shareholder of the issuer, as required under section 222 of the Ordinance. It was noticed from the examination of the said returns that among others the beneficial owner inter alia has made following transactions within the period of six months:-



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| Nature of Transaction | Date of Transaction | No. of Shares | Rate per Share (Rs.) |
|-----------------------|---------------------|---------------|----------------------|
| Sale | 24.05.2002 | 1,000 | 25.40 |
| Sale | 27.05.2002 | 67,000 | 24.80 |
| Purchase | 17.09.2002 | 27,104 | 12.00 |

The aforesaid purchase and sale transactions resulted in gain of Rs. 347,531.00 (rupees Three hundred forty seven thousand Five hundred thirty one only) to the beneficial owner, computed in the manner prescribed in Rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (the "Rules").

3. Section 224 of the Ordinance provides that where inter alia a more than ten percent shareholder of a listed equity security makes any gain by purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such shareholder is required to make a report and tender the amount of such gain to the company and simultaneously send an intimation to that effect to the Registrar of Companies and the Commission. The said section further provides that where such shareholder fails or neglects to tender or the company fails to recover, any such gain within a period of six months after its accrual, or within sixty days of a demand thereof, whichever is later, such gain shall vest in the Commission and unless such gain is deposited in the prescribed account, the Commission may direct recovery of the same as an arrear of land revenue.

4. Since neither the beneficial owner tendered the gain to the issuer nor the issuer recovered it as provided in section 224(2) of the Ordinance, therefore, the beneficial owner was intimated on April 08, 2005 that the amount of the gain according to law now has vested in favour of the Commission. On behalf of the beneficial owner, Khalid Majid Rehman, Chartered Accountants (the "KMR") responded that neither the transactions were made on the basis of inside information nor were made with the motives of profit making, therefore, the gain in question does not qualify to be deposited to the Commission. The KMR also requested to drop the proceedings. Since, the view points of the KMR for non-accrual of the gain were not considered to be tenable, therefore, Show Cause Notice under section 224(2) of the Ordinance was served upon the beneficial owner company on November 15, 2005 to give them an opportunity of personal hearing.



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5. The case was fixed for hearing on December 22, 2005, which on the request of the beneficial owner was adjourned and re-fixed on December 27, 2005. On the appointed date M. Irfan A. Sheikh, Director Finance of the issuer and Mr. M. Musaddaq Ali Khan, Financial Controller of the issuer (the “Representative”) appeared before me. The main points raised by the KMR in its written reply and by the Representative of the beneficial owner in the course of hearing are as under:-

- a) *The purchase transaction of 27,104 shares was a private deal with a UK-based family friend of the parent company. The representative requested that the Commission should look into the substance of the purchase transaction which was executed in good faith by the beneficial owner and there was no motive at all to make any gain from the transaction.*
- b) *The said transactions were not made on the basis of inside information.*
- c) *If allowed the gain may now be tendered to the issuer in response to its demand raised on 15.05.2002, which was earlier contested by the beneficial owner on the basis that no gain has arisen.*

6. On the aforesaid grounds the Representative of the beneficial owner requested to drop the proceedings initiated against the beneficial owner for recovery of the tenderable gain.

7. I have considered and examined the arguments, presented by KMR and by the Representative of the beneficial owner, in the light of prevailing Laws and Rules on the subject, as under;-

- a) In terms of Section 224(1) of the Ordinance, if a person who is directly or indirectly the beneficial owner of more than 10 percent of a company’s listed equity securities, makes a gain by the purchase and sale of such equities within six months or less, he is required to tender the amount of the gain to the issuer or the Commission (as the case may be). No transaction is exempt from the application of Section 224 unless it is a security acquired in good faith in satisfaction of a debt previously contracted. The return of beneficial ownership filed by the beneficial owner on Form-32 as at March 31, 2005 clearly indicates that the tenderable gain was accrued to the beneficial owner on account of sale and purchase



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transactions made during May - September 2002. Thus the plea that the transactions was made in good faith, and earning of the profit was not motive of the beneficial owner does not result in the non-application of Section 224, as no such exceptions exist in the stated law.

- b) The proceedings for recovery of gain have been initiated under section 224(2) of the Ordinance instead of invoking section 15-A of Securities & Exchange Ordinance, 1969, which deals with the transactions made on the basis of inside information. Thus, the plea of the Counsel is not tenable.
- c) Under Section 224(2), the beneficial owner can tender the gain made in such transactions to the issuer within six months after its accrual, or sixty days after a demand thereof, whichever is later. If the beneficial owner does not do so, such gain vests in the Commission. In the instant case the said period has lapsed, therefore, the amount of the gain is now required to be tendered to the Commission, resultantly, request of the Counsel regarding now tendering of the gain to the issuer can not be accepted.

8. Having heard and after examination of the relevant provisions of the prevailing Laws and Rules on the subject matter, I am of the considered opinion that the arguments presented by the Representative of the beneficial owner do not have any merit and substance. Hence, the request to drop the proceedings is rejected and Bestway (Holdings) Limited a beneficial owner of Bestway Cement Limited is, hereby, directed to tender Rs. 347,531.00 (rupees Three hundred forty seven thousand Five hundred thirty one only) to the Securities and Exchange Commission of Pakistan as provided in section 224(2) of the Companies Ordinance, 1984, through a demand draft in favour of the Commission, within thirty days of the issue of this order.

(M. Arif Mian)
Executive Director (SM)

Islamabad.
Announced on -----