



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Dewan Cement Limited

Dates of Hearing

July 28, 2021

Order-Redacted Version

Order dated October 28, 2021 was passed by Director/Head of Department (Adjudication-I) in the matter of Dewan Cement Limited. Relevant details are given as hereunder:

| Nature | Details |
|------------------------|---|
| 1. Date of Action | Show cause notice dated May 25, 2021 |
| 2. Name of Company | Dewan Cement Limited |
| 3. Name of Individual* | The proceedings were initiated against the Company and seven directors of the Company. |
| 4. Nature of Offence | Proceedings were initiated in terms of Section 166 of the Companies Act, 2017 and Sections 155, 169, 512 and 479 thereof read with the Listed Companies Code of Corporate Governance Regulations, 2019 as <ol style="list-style-type: none">The Company had only one independent director namely Mr. *** on its board of directors;*** is not registered with the data bank maintained by the Pakistan Institute of Corporate Governance (PICG) for independent directors;*** is acting as the chairman of Board Audit Committee (BAC), despite the fact that he is not complying with the requirements of independent director as provided in Section 166 of the Act; and*** acting as director on the board of directors of more than seven listed companies |
| 5. Action Taken | Key findings were reported in the following manner: I have gone through the fact of the case and examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN and requirements of the Regulations and of the Act. At the outset, it is relevant to mention here that Auditors of the Company in their review report as annexed with the Accounts of 2020, on the SOC with the Regulations, <i>inter alia</i> , highlighted instances of non-compliances of the |



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| | <p>Regulations. Moreover, based on the available record, I have analyzed the matter in the following manner:</p> <p>(i) In terms of clause (1) of regulation (6) of the Regulations, the independent directors of each listed company shall not be less than two members or one third of the total members of the board, whichever is higher. As per available information, *** was acting as independent director who was not registered with the databank of PICG. Hence, the Company did not have at least two independent directors on its board qualifying the requirements given in terms of the requirements of regulation 6 of the Regulations and Section 166(1) of the Act. The Company in its representation has stated that one of the directors is to join PICG database. In terms of Section 166(1) of the Act read with S.R.O. 73(I)/2018 dated January 25, 2018, the name of independent director is required to be registered with the databank maintained by an institution notified by the Commission for the purpose. I am of the view that the Company did not have at least two independent directors who were registered with the databank of PICG, and evidence of subsequent compliance was also not furnished. Hence, contravention to the requirements Regulation 6(1) of the Regulations and Section 166(1) of the Act is evident. The default in this regard was duly admitted.</p> <p>(ii) In terms of regulation 27(1) of the Regulations, it is mandatory that chairman of the BAC shall be an independent director. Mr. ***** was acting as the chairman of the BAC, despite the fact that he was not complying with the requirements of the independent directors and was not registered with the database of PICG, as provided in terms of Section 166 of the Act. Hence, his chairmanship of BAC was not in compliance of the requirements of the Regulations. Moreover, auditors of the Company also highlighted the said non-compliance in their review report on SOC to members annexed with Accounts of 2020. The auditors stated that: <i>“(a) The composition of board includes Mr. *****, as independent director whereas in our view he does not meet the criteria of independent on account of his cross directorship in associated companies. (b) The chairman of the Audit Committee shall be an independent director, whereas, in our view Mr. ***** does not meet the criteria of independent directors due to the reason referred in paragraph (a) above.”</i></p> <p>The Respondents did not furnish any tenable reason for the said non-compliance which was duly highlighted by the auditors as well. Hence, violation in terms of regulation 27(1) of the Regulations is evident for the aforesaid non-compliance.</p> <p>(iii) As per available information, Mr. *****, a director of the Company was acting as director on the boards of more than seven listed companies. The Respondents are of the view that his directorship was in other group companies. I am of the view that</p> |
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| | <p>the Respondents did not furnish evidence that Mr. ***** did take steps to rectify the default in terms of Section 155(1) of the Act and regulation 3 of the Regulations. Moreover, the Respondents also did not furnish any tenable reason for the cited default. Hence, contravention of the requirements of Section 155(1) of the Act read with regulation 3 of the Regulations is evident.</p> <p>In view of the foregoing, it is concluded that the lapse was demonstrated by the Respondents with regard to compliance with the requirements of the Regulations and of the Act. Further, the Auditor of the Company also reported non-compliances in his review report on the SOC with the Regulations. The Respondents, therefore violated the aforesaid requirements of the Regulations and of the Act for which justifiable grounds do not exist nor steps were taken to rectify the defaults.</p> <p>Keeping in view the above, in terms of Regulation 37 of the Regulations and Section 169 and Section 512 of the Act, I, hereby impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Company and warn other Respondents for the aforesaid non-compliances.</p> <p>The Respondent is, hereby, directed to deposit the aforesaid amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.</p> <p>Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.</p> |
| 6. Penalty Imposed | A Penalty of Rs. 50,000/- (Rupees Fifty thousand only) was imposed on the Company. |
| 7. Current Status of Order | No Appeal has been filed by the respondents. |