

Before

Amir M. Khan Afridi, Director/Head of Department

In the matter of

Frontier Ceramics Limited

Dates of Hearings

August 31, 2021, September 13, 2021 and
October 20, 2021

Order-Redacted Version

Order dated April 18, 2022, was passed by Director/Head of Department (Adjudication-I) in the matter of Frontier Ceramics Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause Notice dated April 7, 2021
2. Name of Company	Frontier Ceramics Limited
3. Name of Individual*	The proceedings were initiated against the Company and its board of directors.
4. Nature of Offence	The Company did not disclose complete information to its shareholders, through the statement of material facts as per requirements prescribed in terms of Section 134(3) of the Companies Act, 2017 (the Act) read with regulation 5 of the Companies (Related Party Transactions and Maintenance of Related Records) Regulations, 2018 (the Regulations), read with para (C) of S.R.O 423(I)/ 2018 dated April 03, 2018. Hence, proceedings through the SCN were initiated against the Respondents and they were advised to furnish written submissions within 14 days.
5. Action Taken	<p>Key findings are given as hereunder:</p> <p>I have analyzed the facts of the case, relevant provisions of the Act and that of the Regulations, written responses submitted and arguments made by the Authorized Representative and state that:</p> <p>(i) Through the notice dated January 07, 2021 of EOGM, following special business for acquiring land was proposed for approval of members:</p> <p><i>“To consent and accord approval for acquisition of land from a related party which require approval of shareholders under section 208 of the Companies Act, 2017 by passing the following special resolution with or without</i></p>

*modification. Further Resolved that consent and approval be and is hereby accorded under Section 208 of the Companies Act, 2017 to acquire 1,031 kanal land from *** as recommended by the Board of Directors in the meeting held on January 7, 2021."*

In this regard, statement of material facts annexed with the notice of EOGM disclosed that:

*"The Board of Directors of the Company in their meeting held on January 7, 2021 reviewed the longterm business plans of the company and decided in principal to avail the opportunity of initially acquiring 1031 kanals of land Off-*** near *** from a related party *** which is at very attractive payment terms over the period of five years. The valuation of the said property has been done on behalf of the company by a registered valuer. Keeping in view the conducive business environment, Directors feel that if the environment remains stable then in the next ten years company shall be in a position to establish a large ceramic factory at the said proposed location. The Directors are interested in the resolutions only to the extent of their shareholding and/or common directorships in such related party."*

Pursuant to the Commission's letter dated January 21, 2021, the Company through its addendum to the notice of EOGM disclosed that:

*"The land to be acquired is located near ***. The valuation of the property done on behalf of the Company by a registered valuer is Rs. 1,150,000/- per kanal whereas the price negotiated with the related party in the Board of Directors' meeting held on January 7, 2021 for member's approval / ratification is Rs. 1,100,000/- per Kanal."*

Moreover, the Respondents also furnished copy of minutes of EOGM held on February 8, 2021, wherein it was transacted that:

*"The Chairperson informed the members that Board reviewed & approved the long-term business plans of the company in their meeting held on January 7, 2021. She further informs that valuation of the land to be acquired from *** has been carried out on behalf of the Company and market value calculated by the Valuer is Rs. 1.15 Million per Kanal. Board member discussed the Valuation report in detail with reference to ***, future prospects and nearby other well-known companies like ***"*

*On a question raised by the valued shareholder, the participants were told that Board has decided to buy the land in principal to avail the opportunity of initially acquiring 1,031 kanals of land near *** which is at very attractive payment terms over the period of five years. Keeping in view the*

conducive business environment, management feels that if the environment remains stable then in the next ten years company shall be in a position to establish a large ceramic factory at the proposed location.

*Resolved that consent and approval be and is hereby accorded under Section 208 of the Companies Act, 2017 to acquire 1,031 kanals land from related party *** at Rs. 1.1 Million per Kanal as recommended by the Board of Directors in the meeting held on January 7, 2021."*

The aforesaid statement of material facts and the minutes of EOGM transpire that complete information as per requirements of the Regulations read with Section 134(3) of the Act has not been furnished to the members of the Company. Review of aforesaid information transpires that nature and extent of interest of directors, key management personnel was not disclosed in acquisition of 1,031 kanals of land from ***. The aforesaid information was neither disclosed in notice of EOGM, addendum to notice of EOGM and nor such information was explained to the members during the course of the meeting. The Company, hence, contravened the requirements of clause (a) of sub-regulation (1) of regulation (5) of the Regulations, as the aforesaid information was required to be disclosed in the statement of material facts in terms of Section 134(3) of the Act.

As regards to salient terms and conditions of land purchase agreement for acquisition of 1,031 kanals of land from &&& the Company only disclosed to the shareholders that said land would be acquired at a price of Rs. 1.1 million per kanal and the amount to be paid within next five years period. The Company, however, did not disclose other terms and condition of the agreement including salient terms and conditions of the land purchase agreement, particularly the payment terms that may include down payment, instalment amount, consequences of default. I am of the view that the Company did not highlight relevant complete information to the shareholders which was required to be disseminated to the shareholders through notice of EOGM, hence, contravened the requirements of clause (d) of sub-regulation (1) of regulation (5) of the Regulations as the said information was required to be disclosed in the statement of material facts in terms of Section 134(3) of the Act.

- (ii) It is also highlighted that addendum to the statement of material facts issued by the Company did not include the complete information as explained in para 8(i) above, which were required under clause (a) & (d) of sub-regulation (1) of regulation (5) of the

	<p>Regulations and this addendum do not absolve the Respondents as they were required to comply with the requirements of the Regulations and of Section 134 of the Act, in letter and spirit, at the time of issuance of notice of EOGM. Hence, arguments of the Respondents are not tenable.</p> <p>It has been noted that statement of material fact in term of Section 134 of the Act read with the Regulations, annexed with the notice of EOGM was found deficient, as the relevant disclosures were not made about acquisition of ***. At this juncture, I would like to mention here that the Representative did not deny the mentioned non-compliance of Sections 134 and of the Regulations.</p> <p>In view of the foregoing and while taking cognizance of the matter, I am of the considered view that the Company did not disclose complete information to its shareholders, through statement of material facts in contravention with the requirements prescribed in terms of Section 134(3) of the Act read with regulation 5 of the Regulations. Therefore, in exercise of the powers conferred under Section 134(12) of the Act, I, hereby impose a penalty of Rs. 300,000/- (Rupees Three Hundred Thousand only) on the Respondents:</p> <p>The Respondents are, hereby, directed to deposit the aforesaid amount of penalties 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 furnish receipted bank challan to the Commission forthwith evidencing payment of the said penalty. In case of failure to deposit the penalty, proceedings under the Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue. It may also be noted that the said penalties are imposed on the Respondents in personal capacity; therefore, the Respondents are required to pay the said amount from their personal resources.</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	Rs. 300,000/-
7. Current Status of Order	The penalty was not deposited. An appeal was filed.