



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division

NIC Building Jinnah Avenue, Jinnah Avenue, Islamabad

Before the Director (Securities Market Division)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Ghulam Sarwar Malik, Director of Bestway Cement Limited

Date of Hearing: 16/06/2011

Present at Hearing:

Representing the Respondent: (i) Mr. M. Javed Panni,
Chief Executive
M.J. Panni and Associates

Assisting the Director (SMD): (i) Mr. Muhammad Farooq,
Joint Director (SMD)

(ii) Mr. Nazim Ali,
Assistant 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(6)2001 dated 23/05/2011 (“**Notice**”) issued to Mr. Ghulam Sarwar Malik (“**Respondent**”), a Director of Bestway Cement Limited (“**Issuer Company**”).

2. The facts of the matter leading up to aforesaid Notice are that it was observed from the record of this office that the Issuer Company is a public listed company and the Respondent is on its Board of Directors. It was further observed that the shareholding of the Respondent shown by the Issuer Company in prescribed additional information regarding pattern of shareholding as on 30/10/2010 was not in conformity with the record of this office. Thus, pursuant to provisions of Section 222(2)(c) of the Ordinance, he was required to file his return of beneficial ownership on prescribed form, within the stipulated time period. But, he failed to discharge his said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.



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3. Section 222 of the Ordinance deals with the submission of statements by beneficial owners of listed securities. For convenience the provisions of the said Section are reproduced hereunder:-

- (1) *Every director, chief executive, managing agent, chief accountant, secretary or auditor of a listed company who is or has been the beneficial owner of any of its equity securities, and every person who is directly or indirectly the beneficial owner of more than ten per cent of such securities, shall submit to the registrar and the Commission a return in the prescribed form containing the prescribed particulars pertaining to the beneficial ownership of such securities and notify in the prescribed form the particulars of any change in the interest aforesaid.*
- (2) *The period within which the said return is to be submitted to the registrar and the Commission shall be—*
 - (a) *where the person occupies the position or office specified in sub-section (1), or is a person whose interest as beneficial owner of securities requiring submission of the return as stated in the said sub-section subsists on the commencement of this Ordinance, within thirty days from such commencement;*
 - (b) *in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be;*
 - (c) *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; or*
 - (d) *where the Commission by an order so requires, within such period as may be specified in such order.*

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 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



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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. Since the Respondent failed to file his return of beneficial ownership, therefore, he was asked vide letter dated 17/01/2011 to file said 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. In response to aforementioned letter, the Respondent filed Form 32 through Mr. M. Javed Panni, Chief Executive of MJ Panni and Associates (“**Representative**”) for the following changes in shareholding with the delay mentioned against each:-

Sr. No.	No. of Shares	Date of change in shareholding	Due date for filing the return	Return filed on	Delay in days
1	10,000	23.10.2004	07.11.2004	01.03.2011	2,305
2	500	20.04.2005	05.05.2005	01.03.2011	2,126
3	1,000	02.05.2005	17.05.2005	01.03.2011	2,114
4	2,000	13.05.2005	28.05.2005	01.03.2011	2,103
5	1,000	16.09.2005	01.10.2005	01.03.2011	1,977
6	5,000	06.10.2005	21.10.2005	01.03.2011	1,957
7	2,000	07.10.2005	22.10.2005	01.03.2011	1,956
8	5,000	12.10.2005	27.10.2005	01.03.2011	1,951
9	9,350	28.11.2005	12.12.2005	01.03.2011	1,904
10	10,285	28.11.2006	12.12.2006	01.03.2011	1,539
11	400	17.04.2007	02.05.2007	01.03.2011	1,399
12	600	18.04.2007	03.05.2007	01.03.2011	1,398
13	600	25.04.2007	10.05.2007	01.03.2011	1,391
14	15,400	10.05.2007	25.05.2007	01.03.2011	1,376
15	1,200	18.05.2007	02.06.2007	01.03.2011	1,368
16	2,300	21.05.2007	05.06.2007	01.03.2011	1,365
17	4,000	22.05.2007	06.06.2007	01.03.2011	1,364



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18	2,000	23.05.2007	07.06.2007	01.03.2011	1,363
19	51,500	21.06.2007	06.07.2007	01.03.2011	1,334
20	1,000	25.06.2007	10.07.2007	01.03.2011	1,330
21	5,000	28.06.2007	13.07.2007	01.03.2011	1,327
22	13,213	24.12.2007	08.01.2008	01.03.2011	1,148
23	9,802	26.12.2008	10.01.2009	01.03.2011	780

Thus the aforementioned changes in shareholding were reported to the Commission with delay ranges from 780 days to 2,305 days, in contravention of Section 222(2)(c) of the Ordinance. The said default attracts 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 accordingly 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 pursuant to Section 224(4) of the Ordinance, for aforesaid contraventions of Section 222(2)(c) of the Ordinance.

8. Furthermore, in order to provide him an opportunity of being heard in person, hearing in the matter was fixed for 06/06/2011 at Commission's Head Office, Islamabad, which on request of the Representative of the Respondent was adjourned and re-fixed for 16/06/2011. On the given date the above named Representative appeared before me on behalf of the Respondent and filed written reply vide letter dated 16/06/2011. He also pleaded the case verbally. The submissions made by the Representative in writing as well verbally on behalf of the Respondent may be summarized as under:-



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- (i) *The respondent received bonus and right shares totaling 1,200,023 shares from 23/10/2004 to 31/12/2008.*
- (ii) *The Respondent had made sale/purchase transactions in stock market and has tendered gain of Rs. 303,572.98 to the Issuer Company.*
- (iii) *On receipt of letter from the Commission, the Respondent promptly filed the returns of beneficial ownership.*
- (iv) *The delay in submission of return of beneficial ownership was not willful, thus the same may be condoned.*
- (v) *The Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*

9. I have considered written submissions made on behalf of the Respondent as well as the verbal arguments advanced by the Authorized Representative during the course of personal hearing. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed willfully and knowingly. The Respondent has assured for timely filing of the returns of beneficial ownership in future and requested to condone the default in question. In order to arrive at conclusion, I have also reviewed the available record which reveals that the Respondent has earlier filed Form 31 within the stipulated time period. The record further signifies that the Respondent has filed the return promptly on receipt of letter from the Commission. Considering the arguments advanced on behalf of the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the under reference return of beneficial ownership may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future. However, it is pointed out that tendering of gain to the Issuer Company is a separate subject and is dealt under Section 224(2) of the Ordinance. Thus the legitimacy of the tendering the under reference gain is being examined separately in the light of provisions of Section 224(2) of the Ordinance read with Rule 16 of the Companies (General Provisions and Forms) Rules, 1985.



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10. 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.


(Imran Inayat Butt)
Director (SMD)

Islamabad.
Announced on June 30, 2011