



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director / Head of Department (Adjudication-I)

In the matter of

M/s. Pakistan International Container Terminal Limited

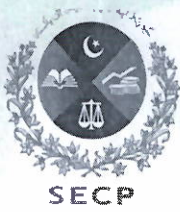
Number and date of Show Cause Notice (SCN)	2(437)/SMD/ADJ-1/2023-303 dated October 18, 2023
Date(s) of Hearing:	December 26, 2023
Hearing(s) attended by:	Mr. Rizwan Manai, Authorized Representative

ORDER

Under Section 96 read with Section 159 of the Securities Act, 2015

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. 2(437)/SMD/ADJ-1/2023-303 dated October 18, 2023 (the “SCN”) against M/s. Pakistan International Container Terminal Limited (hereinafter referred to as the “Company” or “Respondent”) for its alleged failure to make forthwith disclosure to the public through Pakistan Unified Corporate Action Reporting System (PUCARS) of M/s Pakistan Stock Exchange Limited (PSX) regarding dismissal of interim Order in March 2023 and culmination of legal suit/dismissal of appeal in June 2023, in contravention of the requirements of Section 96(1) read with Section 159(5)(a)(ii) of the Securities Act, 2015 (the “Act”).

2. Brief facts of the case are that the Company being a listed company as defined under section 2(xxix) of the Act is obliged to comply with, amongst other provisions of law, the requirements of Section 96 of the Act, which mandates immediate public disclosure of any price sensitive information *inter alia* relating to the company or its subsidiaries that has come to the company’s knowledge and would be material to an investor’s investment decision. The Company had a Built, Operate and Transfer Contract (BOT) “Concession Agreement” with Karachi Port Trust (KPT) for the exclusive construction, development, operations and management of a common user container terminal at Karachi Port. The Concession Agreement with KPT was for a period of twenty-one years expiring on June 17, 2023, and was the key operational asset of the Company.



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3. The series of events in the instant matter are summarized in the table below:

Sr. No.	Date	Event
1	December 14, 2021	The Company filed a legal suit (Suit No. 2933 of 2021) before the Honorable High Court of Sindh at Karachi (SHC), seeking an early extension in concession terms & expansion of infrastructure and to provide <i>status quo</i> to restrain KPT from terminating the Concession Agreement. Accordingly, on December 14, 2021, the SHC while issuing notices to the defendants, rendered an interim junction/stay Order stating that the <i>defendants</i> (including KPT) <i>may be restrained from terminating the subject implementation agreement and inviting bids for award of contract for terminal operation... Meanwhile parties shall maintain status quo.</i> It was also followed by an injunction application made by the Company before SHC vide CMA No. 713/2022 seeking aforesaid restraining order against KPT.
2	March 02, 2023	The SHC vide Order dated March 02, 2023 dismissed the said CMA 713/2022 in Suit No. 2933 of 2021 by observing that <i>plaintiff</i> (i.e. the Company) <i>is in no position to succeed on the strength of investment made by him as it was on Build Operate and Transfer (BOT) basis. Plaintiff build and operated it for 21 years and now it stands transferred at the conclusion of Agreement... plaintiff has no legal justification to continue occupying the terminal beyond 17th June, 2023. In case right of refusal is exercised by plaintiff, it would be re-occupation and re-commencement of such fresh terms as agreed.</i>
3	April 11, 2023	The Company filed High Court Appeal No. 162 of 2023 before SHC on April 11, 2023, challenging the afore-referred SHC Order passed in Suit No. 2933 of 2021 & CMA 713/2022.
4	May 09, 2023	Dissemination of annual audited financial statements of the Company for the year ended December 31, 2022. Note 2.3.4 thereof (under "Expiry of Concession Agreement and Going



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		Concern Assumption”) disclosed the afore-referred SHC Order of March 2023.
5	June 02, 2023	The said HCA 162/2023 was dismissed vide Order dated June 02, 2023, on the grounds that <i>...the finding of the learned Single Judge as recorded in the impugned order to this effect reflects correct interpretation of Implementation/Novation Agreement(s) by the learned Single Judge through impugned order, which does not require any interfere by this Court... Accordingly, we are of the opinion that the appellant has not been able to make out a prima facie case requiring this Court to interfere with the impugned order passed by the learned Single Judge on the injunction application of the appellant... Accordingly, vide our short order dated 02.06.2023, instant High Court Appeal was dismissed along with listed application, above are the reasons of short order.</i>
6	August 30, 2023	Dissemination of unaudited condensed interim financial statements of the Company for the half year ended June 30, 2023. Note 2.2 thereof (under “Expiry of Concession Agreement and its impact on financial statements”) disclosed the dismissal of appeal by the larger bench of SHC in June 2023.

4. The afore-mentioned information (i.e. dismissal of interim Order in March 2023 and culmination of legal suit/dismissal of appeal in June 2023) was required to be disclosed by the Company in terms of Section 96(1) of the Act. Upon review of the announcements made by the Company, it was observed that the afore-referred information has *prima facie* not been disclosed by the Company to the general public and/or stakeholders through PUCARS of PSX, as required to be disclosed forthwith in March and June 2023 respectively.

5. Considering that the requisite disclosure was *prima facie* not made in terms of Section 96(1) of the Act, a Show Cause Notice dated October 18, 2023 was served upon the Company through its Chief Executive Officer for alleged contravention of Section 96(1) read with the penal provisions of Section 159(5)(a)(ii) of the Act.



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6. The Company submitted its written response to the SCN vide letter November 01, 2023, denying the allegations raised through the SCN. An authority letter in the favor of Mr. Rizwan Manai (duly executed by Mr. Mohammed Ahmed Bharamchari, Acting Company Secretary, who was authorized by the Board of Directors of the Company vide resolution dated October 23, 2023) was also submitted along with the said letter. The relevant extracts of the said response are reproduced below:

“We understand that reliance is placed on disclosures in the annual audited financial statements for the year ended December 31, 2022 and reviewed financial statements for the half year ended June 30, 2023 and on basis observation is made through the show cause notice for timeliness of disclosures of material information under section 96 of the Securities Act, 2015. For the purpose of convenience, we reproduce here under the relevant extracts of the disclosures from the financial statements as follows...

June 17, 2023, as an expiry date of concession agreement is the only fact which is an essence of all the ancillary and incidental facts and circumstances. The above expiry date has repetitively being disclosed in all the financial statements since inception of the agreement. Availability of option for seeking the renewal was sub-judice on the basis of intent of KPT...

The legal suit, although a development with futuristic view and deserved appraisal by the shareholders but did not bring any change in repetitive disclosures of expiring date of the agreement on June 17, 2023. At the time of bringing the suit or even at the time of HCS order, KPT did not exercise any form of its intent about expiring term...

The order of March 2023 did not bring any development for the appraisal and situation of expiring term on June 17, 2023, as per disclosure in 2.3.1 supra remained the same...

1. Disclosures in the Financial Statements

Summarily the disclosures of May 9, 2023 for the purpose of Annual Audited Financial Statements viz a viz the disclosure of August 30, 2023 for the purpose of Half Yearly Financial Statements for the half year ended June 30, 2023 deals with the following facts and related developments: • Expiring term of June 17, 2023; • Active efforts for seeking the early renewal; • Bringing a legal suit and taking the relevant recourses for protection of rights of the company for the purpose of above. You may appreciate that, in the above, the expiring term of June 17, 2023 was the only fact which was surely in knowledge



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whereas the rest were hypothesis surrounded with contingencies and required interpretations.

2. Disclosure under Section 96 of the Securities Act, 2015

You may appreciate that the requirement of disclosure under section 96 of the Securities Act, 2015 is triggered in relation to an information on which following two tests are satisfied; • The information has been assessed by the company as price sensitive; and • The information must have come to the company's knowledge. About the renewal of concession agreement, you may appreciate that the expiry was well disclosed in every financial statements, since inception of the agreement in 2002 and although our active pursuance for the renewal was very well in place but the non-renewal was not confirmed till the expiry date i.e. June 17, 2023. Honoring the legal requirements with a futuristic view and on the basis of legal proceedings and financial plan as have also been disclosed in the financial statements for the year ended December 31, 2022 and interim financial statements for the period ended March 31, 2023 and June 30, 2023, the following disclosures have so far been made;

- June 13, 2023, disclosure of expiring date of June 17, 2023 and assessment of legal position including the fact of offering operation and management services to KPT;
- June 16, 2023, disclosure with reference to news item for re-affirming that any formal communication from the Government Authorities or KPT is awaited;
- July 07, 2023, disclosure of expiry of the concession agreement and on the basis confirming the smooth handover of the concession premises.
- July 20, 2023, disclosure of complexities of take over process by KPT for onward handing over the same to Abu Dhabi Ports. Disclosure is also made for continuing with the assessment of available options and a formal decision will be intimated to the members and market accordingly. • August 7, 2023, disclosure of no further development than what has earlier been disclosed...

Albeit, the court/legal proceedings may be subject to variety of interpretations and nothing can be concrete until there is the receipt of final order in black and white which used to take a considerable time to reach to the parties to the proceedings, but still all the efforts were in place to closely watch the situation and make disclosures forthwith on the basis of any active assessment. You may further appreciate that we have well informed the stakeholders for all the developments through necessary disclosures although the bitter reality is that the non-renewal was not confirmed till the expiry date.



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3. Dismissal of Interim Order and Appeal

We reiterate that availability of orders and on the basis assessment of legal position used to take some time and accordingly the position is disclosed in the subsequent financial statements. Albeit, the Court orders have not directly been spelled in the disclosures of Section 96 of the Securities Act, 2015 but through conjoining the review of all the disclosures in pursuance aforementioned section ended December 31, 2022 viz a viz the disclosure in the financial statements, we understand that stakeholders were well informed with all the active developments of the matter and nothing was left to conclude the situation of any uninformed market.

In this regard we further represent that, although the law has not provided any blinging line to distinguish available material information and unpublished price sensitive information but in pursuance of our active dissemination of all the developments, without any iota of doubt, market was not uninformed at any point of time. Subsequent events are evidencing the good faith in relation to timeliness of all the disclosures of the past which were essential for desired appraisal...”

7. In order to meet the ends of justice, the Respondent was provided an opportunity of personal representation and hearing in the matter was initially fixed for December 07, 2023 (vide hearing notice dated November 23, 2023), which was adjourned on request of Authorized Representative of the Respondent, made vide email dated December 06, 2023. Thus, the hearing was re-fixed for December 26, 2023, which was duly attended by Mr. Rizwan Manai, being the Authorized Representative of the Respondent. During the course of hearing, the Authorized Representative substantially reiterated the stance taken in the abovementioned written response.

8. I have gone through the relevant provisions of Section 96(1) of the Act and submissions made by the Company through its Authorized Representative in its written responses as well as during the subsequent hearing. I have also perused Section 159(5) of the Act, which stipulates penal provisions for contravention of any provision of the Act and have noted the following pertinent aspects vis-à-vis the submissions made by the Respondent:

- a. The disclosures in terms of Section 96 of the Act with regards to the status of the Concession Agreement were made by the Company to the PSX in the following manner:

Date of Disclosure	Particulars of Disclosure
June 13, 2023	<i>As disclosed in note 2.3 to the audited financial statements of the Company for the year ended December 31, 2022 and</i>



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	<p><i>interim financial statements for the quarter ended March 31, 2023, the Concession Agreement of the Company is expiring on 17th June, 2023. The Company is assessing its position and legal options and will keep you informed in the event there is any further development. Moreover, the Company has offered operations and management services when and if required by the Karachi Port Trust beyond June 17, 2023.</i></p>
July 20, 2023	<p><i>...The Company wishes to clarify that as already known, understood and duly disclosed, the Concession Agreement for Berths 6 to 9 held by the Company ("Concession Agreement") expired on June 17, 2023 and that the concession premises have been taken over by Karachi Port Trust ("KPT") on June 18, 2023. We further understand that KPT has already granted a new concession in respect of the same to Abu Dhabi Ports...While the terminal operated by the Company pursuant to the Concession Agreement was its key operational asset, the Company is committed to conducting a transparent assessment of its options, carefully considering all relevant factors to determine the most appropriate path forward....Given that process is already underway, as and when a formal decision is taken in this respect, the Company will make an appropriate disclosure in accordance with applicable laws.</i></p>

- b. In addition to the above, as referred by the Respondent in the written response, the Respondent made the following additional disclosures to/shared information with the PSX in relation to the Concession Agreement:

Date of Information shared	Particulars
June 16, 2023	<p><i>"Enquiry on news published in print/electronic media": We would like to inform you that the Concession Agreement of our Company was always due to expire on June 17, 2023 and this matter has been adequately disclosed from time to time</i></p>



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	<p><i>in the financial statements...Regarding the news item mentioned in your letter, we would like to clarify that we have not received any formal communication from the Government Authorities or the KPT pertaining to matters mentioned in the same.</i></p>
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- c. Another disclosure/information shared by the Respondent to the PSX on August 07, 2023, as appended with its written response to the SCN, relates to response to the PSX on an unusual movement in price in the shares of the Respondent, and is not considered abundantly relevant to the case at hand.
- d. At the outset, a bare perusal of the above-referred disclosures made by the Respondent with respect to the expiry of its Concession/Implementation Agreement clearly depicts that the Respondent itself publicly disclosed the information regarding the “Status of Concession Agreement” firstly on June 13, 2023, and thereafter on July 20, 2023, realizing it as a material and/or price sensitive information as per the criteria given under Section 96 of the Act. Disclosure of this information was, in fact, necessary to enable the public to appraise the position of the Respondent and was necessary to avoid the creation or continuation of a false market in the securities of the company (false market being an uninformed market or one which is based on incomplete information) at the first instance, in terms of Section 96(1)(a) and (b) of the Act respectively.
- e. It is also pertinent to delve down into the outset requirement of Section 96(1) of the Act, which emphasizes on the timely and **forthwith** disclosure of information that has come to a company’s knowledge and which would be material to an investor’s investment decision. The word ‘forthwith’ can be expounded further with the aid of court judgements passed in recent cases. For instance, in *Mahesh Kumar Shrivastava vs. Shri Satya Prakash & Anr.* Order dated April 24, 2012 passed by Madhya Pradesh High Court (of India) in petition No. 389/10 and 390/10, it was held that: “...*first of all meaning of word “forthwith”...is required to be seen. As per the Chambers 21st Century Dictionary Revised Edition 2007, meaning of words forthwith is as under: forthwith – adverb, immediately, at once. As per Oxford Dictionary, 8th Edition, meaning of forthwith is as under: forthwith -adv. Immediately, without delay. As per Black’s Law Dictionary, Ninth Edition meaning of word forthwith is as under: forthwith – adv. 1. Immediately without delay, 2. Directly; promptly; within a reasonable time under the circumstances. As per the Legal Glossary 1988 Government*



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of India, Law and Legislation Affairs Departments, meaning of word “forthwith” is as under: *forthwith: at once...*”. Therefore, the ‘forthwith’ disclosure of price sensitive and/or material information required under Section 96 of the Act connotes prompt and an immediate response, so as to avoid creation or continuation of a false market in the securities of a company in case the disclosure is made to the market with a delay or loss of time. However, in the instant case, the Respondent has disclosed the questioned material information regarding SHC Order of March 2023 only when its annual accounts of 2022 were disseminated on May 09, 2023, and regarding culmination of legal suit/dismissal of appeal vide SHC Order of June 2023 only when its half yearly accounts as of June 30, 2023 were disseminated to the public on August 30, 2023. Such information was evidently not disclosed ‘forthwith’ as required under Section 96(1) of the Act.

- f. Furthermore, the Supreme Court of India in Appeal (Civil) 8102 of 2003 titled *Sardar Harcharan Singh Brar vs. Sukh Darshan Singh & Ors. [CJI & C.K. Thakker]* vide Order dated October 27, 2004 held that *the word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action...The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.* Furthermore, the word “material” is defined under the Black’s Law Dictionary *Eighth Edition* as “...of such a nature that knowledge of the item would affect a person’s decision-making; significant; essential...” while “material information” is defined thereunder as “information that would be important to a reasonable investor in making an investment decision...” It is, therefore, evident that the questioned information regarding rescinding of stay order and subsequent dismissal of appeal of the Respondent is considered important and significant enough for the investors (both existing and potential) to have a complete and true picture of the Respondent’s affairs. The mere statement that the Company is “assessing its position” and “legal options” does not, in any way, depict and convey the material facts of the case in a complete manner, particularly when the Honorable Courts in both the afore-referred judgements vehemently nullified the plea put forward by the Respondent in its suit/appeal regarding the purported extension or renewal of the Concession/Implementation Agreement of the Respondent with KPT.



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- g. The Respondent's contention made in the instant proceedings that the "non-renewal" was not confirmed till the expiry date of June 17, 2023 is also unfounded and drastically contrary to what the Honorable Courts have vocally decided in March 2023 and June 02, 2023 (i.e. well before the expiry date). The Honorable Court pronounced in March 2023 that *...no justification exists for plaintiff to compel the defendants to offer the plaintiff to operate the terminal till new assignment is executed or decision is made...The plaintiff has no legal justification to continue to operate after Agreement expiry date...in case the defendants desire to operate the terminal on its own, the plaintiff cannot compel the defendant for the extension or renewal of the instant or any agreement for operating the terminal.* Therefore, it was abundantly clear for the Respondent at the time of pronouncement of this Court Order that the presumed extension or renewal of the Concession/Implementation Agreement was put off the table, and this material development pertaining to the said Agreement should have been immediately disclosed to the general public in terms of Section 96(1) of the Act.
- h. It is also imperative to note that the Respondent's identification of the questioned information as "hypothesis surrounded with contingencies and required interpretation" is not supported by any legal, or otherwise logical, basis, since the Honorable Court itself clearly pronounced in its Order of June 2023 that the Respondent *could not refer to any provision, either in law, or any clause in the Implementation/Novation Agreement(s), according to which, the period of Implementation Agreement, after its expiry on 17-06-2023 could be extended...* The Honorable Court also denoted the aforesaid Agreement and clauses therein to be "clear and unambiguous" vis-à-vis its clause regarding termination and subsequent fresh bidding process. Hence, the Respondent held no viable grounds to withhold the questioned information and disclose incomplete information/facts in its first ever disclosure made on June 13, 2023, though still made with a delay since March 2023, regarding "legal options" it has available. It is evident that the case at hand clearly related to the cessation of the **core** business operations of the Respondent, and the court cases invoking injunction/stay/restraining orders from the Honorable Courts that subsequently rendered the "extension" or "renewal" options inevitably unavailable to the Respondent, were crucially required to be disclosed promptly in terms of Section 96(1) of the Act.

Conclusion:

The above-mentioned detailed analysis of the facts and circumstances demonstrate that the Respondent failed to disclose the information w.r.t dismissal of interim Order in March 2023 and culmination of legal suit/dismissal of appeal in June 2023. The



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disclosure of such an information was necessary to enable the public to appraise the position of the Respondent and to avoid creation of a false market based on incomplete information. Hence, the contravention of Section 96(1) of the Act is established.

9. In view of the above-stated facts, circumstances and submissions made by the Company, it is established that the Company failed to make the requisite disclosure as required under Section 96 of the Act. Therefore, I, in exercise of the powers conferred under Section 159(5) of the Act, hereby impose a **penalty of Rs.500,000 (Rupees Five Hundred Thousand only) on the Respondent**. The Respondent is directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited, within a period of thirty (30) days from the date of this Order, and furnish receipted voucher issued in the name of the Commission for information and record.

10. The Company is also hereby advised to exercise caution and ensure meticulous compliance with all applicable laws in true letter and spirit in the future.

11. This Order is being issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)
Director / Head of Department
(Adjudication Department-I)

Announced:
January 11, 2024
Islamabad