



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before
Shahzad Afzal Khan – Director/Head of Department
Adjudication Department-I

In the matter of
Kohinoor Power Company Limited

Show Cause Notice No. & Date No. CSD/ARN/97/2015-360 dated December 12, 2023

Dates of Hearings: February 14, 2024

Hearing attended by: Mr. Rashid Sadiq & Mr. Azeem Rashid
(Authorized Representative)

ORDER

Under Sections 227 of the Companies Act, 2017 and Section 479 thereof.

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/97/2015-360 dated December 12, 2023 (the SCN) issued under Sections 227 of the Companies Act, 2017 (the Act) and Section 479 thereof against the Board of Directors and Kohinoor Power Company Limited (the Company), hereinafter referred to as (the Respondents).

2. Brief facts of the case are that upon review of the annual audited financial statements of the Company for the year ended June 30, 2022 (the Accounts) transpired that the required details were not furnished in the director's report, annexed with the Accounts, and as specified in terms of Section 227 of the Companies Act, 2017 (the Act). The disclosures with regard to the following requirements have not been made in the aforesaid director's report:

S. No.	Requirements as per the Section 227	Compliance Status
1	Fair review of business	Non-compliant
2	Principal risk and uncertainties	Non-compliant
3	Comments on internal controls	Non-compliant
4	Material changes affecting financial position	Non-compliant
5	Disclosure with respect to remuneration package of each of director	Non-compliant
6	Main trends likely to affect the future development & performance	Non-compliant
7	Activities undertaken by the company with regard to CSR	Non-compliant
8	Directors' responsibility for adequacy of internal financial controls	Non-compliant



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3. The Securities and Exchange Commission of Pakistan (**the Commission**) through its letter dated January 11, 2023 sought an explanation for the aforesaid non-compliances of Section 227 of the Act. The Company through its reply dated May 18, 2023, *inter alia*, submitted that: "We prepare Director's report (2022) in accordance with Section 227 of the Act and put all information according the said section, and disclosure with respect to remuneration package of Directors and CEO, we clear you that no remuneration paid to any Director or CEO."

However, it was observed that the Company omitted relevant details required to be disclosed in the directors' report as per requirements of Section 227 of the Act. In view of the above deficient disclosures, as stated above, in the director's report annexed with the Accounts of 2022, *prima facie*, violation of Section 227 of the Act is attracted. Hence, the proceedings were initiated against the Respondents through the SCN and they were called upon to show cause in writing within the fourteen days from the date of the SCN as to why penalties may not be imposed on them for the said contraventions. In this regard, Mr. Rashid Sadiq, the Authorized Representative through letter dated December 18, 2023 sought four-week extension to submit a reply. The Commission through letter dated December 21, 2023 allowed so submit a reply within 10 days. However, no reply was received.

4. In order to provide the Respondents an opportunity of personal representation, the matter was fixed for hearing to be held on January 29, 2024. However, upon request of the Authorized Representative, the mater was rescheduled for hearing to be held on February 14, 2024. On the date of hearing, the Authorized Representative appeared and informed that the Chief Executive was not paid any remuneration, so disclosures were not made in the directors' report. He, however, submitted that business performance disclosures in terms of Section 227 of the Act were required to be made.

5. Subsequent to the hearing, the Authorized Representative through a reply dated March 15, 2024, *inter alia*, submitted that:

- The Company's business operations are limited to rental income and investments in equities which is known to all shareholders and duly reflected in the financial statements of the past years. Fair review of business has been duly given in the second para of the directors' report;
- There were no principal risk and uncertainties facing the Company in view of limited business operations;
- The internal financial controls were adequate and there were no comments with regard to internal controls which could be mentioned in the directors' report;
- The provisions of Section 227(2)(1) of the Act requires the disclosure of 'any material changes and comments to be made. If there are none, no disclosure is required;
- As the directors and chief executive were not paid any remuneration, therefore, no disclosure was required;
- In para three, it has been disclosed that there were no trends and factors which could affect the future development, performance and position of the company's business;
- There were no activities during the year with regard to CSR, hence no disclosure required;



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- With regard to directors' responsibility for adequacy of internal financial controls, the same were to be specified by the Commission. The internal financial controls, as mentioned above, were adequate.
- In terms of Section 227(3) of the Act, the information is to be disclosed to the extent necessary. Due to the limited operations as is reflected in the audited financial statements of the Company for the year ended June 30, 2022, the necessary disclosures were duly made. However, in case the SECP considers that there is any deficiency, the same may be intimated and the Company is quite willing to rectify the same.
- The Company has complied with the requirements of Section 227 of the Act and there is no violation on the part of the Respondents.
- It is further submitted that fine could only be imposed on substantial finding of guilt as was held by the Supreme Court in the case reported as 2011 PLD 778 in the matter of SECP vs First Capital Securities Corporation Limited. Reliance is also placed on SECP's binding precedents in Appeal No 40 of 2014 dated August 24, 2015 in the matter of Fauji Cement Company Limited and Next Capital Limited in Appeal No. 26 of 2015 dated July 24, 2015 for determination whether default was committed knowingly and willfully.
- It is prayed that the SCN be withdrawn without any adverse consequences for the Respondents who are devoted to demonstrating regulatory compliance and commit to ensuring compliance with the applicable law to the best of their abilities.

6. I have gone through the facts of the case and considered both the written and verbal submission of the Authorized Representative in light of the relevant provisions of law. In this regard, it is observed that:

(i) **Whether there are deficiencies in directors' report?**

Yes. The review of directors' report annexed with the Accounts of 2022 transpired deficient disclosures with regard to the following matters:

S. No.	Requirements as per the Section 227	Provision
1	Fair review of business	227(1)
2	Principal risk and uncertainties	227(2)(c)
3	Comments on internal controls	227(2)(k)
4	Material changes affecting financial position	227(2)(l)
5	Disclosure with respect to remuneration package of each of director	227(la)
6	Main trends likely to affect the future development & performance	227(3)(a)
7	Activities undertaken by the company with regard to CSR	227(3)(c)
8	Directors' responsibility for adequacy of internal financial controls	227(3)(d)

- As regard to fair review of business, the Respondents have submitted that the same have been disclosed in para 2 of the Directors' Report.
- The Respondents stated that there were no principal risk and uncertainties facing the Company. However, note 36 to the Accounts disclose that the Company is exposed to financial risk, credit risk, market risk and liquidity risks. The aforesaid



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transpires that disclosure in the Directors' Report of the principal risks and uncertainties is warranted. Such non-disclosures attract violation of Section 227(2)(c) of the Act.

- As regards to comments on adequacy of internal controls, the Respondents submitted that there were no comments as the controls were adequate. In this regard, I am of the view that the operations of the Company are based on rental of machinery to associated companies and investment in stock markets, therefore, the financial controls are of significance. Moreover, I am of the view that comment in internal controls must be made in the Directors' Report and in absence of such disclosures violation of Section 227(2)(k) is attracted.
- As regards to any material changes affecting the financial position of the Company occurred between the end of the financial year and the date of the report, the Respondents have submitted that no disclosure in case of the Company was required in terms of Section 227(2)(l) of the Act.
- As regard to disclosure with respect to remuneration package of each director, the Respondents have stated that no disclosure was required as neither any director nor chief executive was paid any remuneration. I am of the view that the Directors' Report must state the fact that chief executive and directors were working without any remuneration. In absence of such disclosure in the Directors' Report violation of Section 227(2)(la) is attracted.
- The Respondents have stated that the Directors' Report disclosed there were no trends and factors which could affect the future development, performance and position of the Company's business. In this regard, I am of the view that since the directors have given in principal approval for merger of the Company with the Saritow Spinning Mills Limited. Therefore, the affect of such development on the future performance and on Company's business is essential. I am, therefore, of the view that in absence of any such disclosure in the Directors' Report of the listed company, a violation of Section 227(3)(a) of the Act is attracted.
- The Respondents have stated that no activities during the year with regard to CSR were carried, hence, no disclosure was required.
- The Respondents have stated that for the directors' responsibility in respect of adequacy of internal financial controls the same were to be specified by the Commission. In this regard, I am of the view that in terms of the regulation 10 of the Listed Companies (Code of Corporate Governance) Regulations, 2019, the Commission has specified the directors' responsibilities for the internal controls. Moreover, as the Company was working without any employee in the year 2022 and no remuneration was paid to the directors, hence, the importance of internal financial controls is quite important in case of the Company. In absence of any such disclosures, the violation of Section 227(3)(d) of the Act is attracted.



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(ii) Whether the information in terms of Section 227 of the Act is mandatorily to be disclosed in the director's report?

Yes. The requirements of Section 227(2) & (3) of the Act, are explicit, unambiguous and the information is mandatorily required to be disclosed in the directors' report. I am of the view that the purpose of the disclosure of information in the directors' report, as envisaged in aforesaid provisions of the Act, is to provide updated information to the shareholders and stakeholders of the Company. The directors' report has an important function in provision to shareholders with information about the Company's business and performance which is not completely ascertainable from the financial information given in the accounts.

(iii) Whether non-compliances are evident.

Yes. The relevant information as per the provisions of Section 227 (2)&(3) of the Act, as stated above, was not disclosed in the directors' report annexed with the Accounts of 2022. Keeping in view that the Company, being a listed company and a power sector company, is engaged in the rental business and making returns through investments in stock markets. Therefore, the relevant disclosures as provided in terms of Section 227 of the Act are significant in nature.

I am of the view that in absence of non-disclosure of relevant information in the directors' report annexed with the Accounts of 2022, violation of the given provisions of Section 227 (2)&(3) of the Act, as stated above, is attracted.

7. Keeping in view, I, in terms of the powers conferred under Section 227(6)(a) of the Act, hereby, impose an aggregate penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Respondents as follows:

S. No.	Names of the Respondents	Amount of Penalty (Rs.)
1	Kohinoor Power Company Limited	50,000/-
2	Mr. Muhammad Zeid Yousuf Saigol, Chief Executive	50,000/-
Total		100,000/-

The other Respondents are hereby warned and they are advised to ensure compliance of the given provisions of the legal provisions in letter and spirit.

8. The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited/United Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue. The Respondents are advised to deposit penalties from their personal resources.



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9. 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 or violation of the Act.

Shahzad Afzal Khan
Head of Department
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Announced:

Dated: April 2, 2024

Islamabad