



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/97/2015-359 dated December 12, 2023
Dates of Hearings:	February 14, 2024
Hearing attended by:	Mr. Rashid Sadiq & Mr. Azeem Rashid (Authorized Representative)

ORDER

Under Section 512(2) of the Companies Act, 2017 and Section 479 thereof read with the Listed Companies (Code of Corporate Governance) Regulation, 2019

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/97/2015-359 dated December 12, 2023 (the SCN) issued under Sections 512(2) of the Companies Act, 2017 (the Act) and Section 479 thereof read with the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations) 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 review of the annual audited financial statements (the Accounts) of the Company for the year ended June 30, 2022 (the Accounts) transpired that the Company has not annexed the Auditor's Review Report on the Statement of Compliance with the Accounts contrary to the requirements of regulation 36 of the Regulations. The Securities and Exchange Commission of Pakistan (the Commission) through letter dated January 11, 2023 sought an explanation from the Company for the aforesaid non-compliance of the Regulations. The Company through its reply dated May 18, 2023, *inter alia*, stated that "Due to oversight we did not annex the Auditors' review report of compliance with Accounts 2021 and 2022, but we confirm you that we attached the reports with Accounts on web site of the Company on same day."

3. However, the review of the Accounts available on website of the Company transpired that the Company did not ensure compliance with regulation 36 of the Regulations which requires a listed company to publish the Statement of Compliance and Auditor's Review Report along with



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department-I

Accounts/annual report. It is also pertinent to mention that the similar deficiencies were also noted in the Accounts of 2021.

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 matter was rescheduled for hearing to be held on February 14, 2024. On the date of hearing, the Authorized Representative appeared and informed that in terms of the Regulations, there is no requirement to attach the report. He submitted precedent case laws and stated that there was no loss to the shareholders. He requested to take a lenient view in the matter. He assured to submit a written reply in this regard.

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

The regulation 36(1) of the Code Regulations provides that a SOC (as given under Annexure A to the Code Regulations) is required to be published and circulated along with the annual report of a listed company. There is no dispute that the Company has attached the SOC with the annual report as per requirements of the Regulations and, therefore, fully met the obligation placed on it. The regulation 36(2) of the Regulations provides that the SOC as per regulation 36(1) of the Regulations shall be reviewed and certified by statutory auditors. The Company has got the SOC reviewed and certified by its statutory auditors. A copy of the same for relevant year is attached herewith. Therefore, the Company also fully complied with the requirements of regulation 36(2) of the Code Regulations.

There is no requirement under regulation 36 of the Code Regulations to publish the Auditors' Review Report on SOC with the Accounts as has been the case for Auditors Report on annual audited accounts for which specific provisions are made in the primary law.

In light of the above submissions, the Company has fully complied with the requirements of regulations 36(1) and 36(2) of the Regulations and there is, thus, no violation on the part of the Respondents.

Without prejudice to the above submissions, we place here below the following precedents which indicates that the Commission has taken lenient view with regard to defaults under the Regulations. Accordingly, we request for equal treatment on the basis of these precedents with regard to the matter at hand for just and fair dispensation.

- a) Sana Industries Limited, 31 January, 2023
- b) Macpac Films Limited, 28 September, 2022

There are a large number of other orders where no action was taken by the Commission and copies of the same can be presented if required by the Commission. Reliance is placed on the case laws reported as ANS Capital (Pvt) Limited v. Director (SMD) reported at , 2017 CLD 686, in Appeal No. 29 of 2016 (Mr. Salman Hussain Chawala, Nominee Director, NIT (Paramount Spinning



Securities and Exchange Commission of Pakistan
Adjudication Division
Adjudication Department-I

Mills Limited) v Director (CSD), SECP), by the Lahore High Court, Lahore in the case of Nishat Mills Limited v. SECP Appellate Bench and in cases, Mst. Gul Jan v. Naik Muhammad (PLD 2012 SC 421, Administrator District Council Larkana v Ghulab Khan (2001 SCMR 1320), Ghulam Murtaza v The State (PLD 2009 Lahore 362), Zahid Ullah v NWFP Public Service Commission through Chairman Peshawar (PLD 2010 Peshawar 2) and Nishat Mills Limited vs SECP case to support the argument of principles of equality under Article 25 of the Constitution as well as Section 20 (6) (c) of the SECP Act, 1997,

It is further submitted that SCN has wrongly been issued to officers of the Company. The recent judgement of the Supreme Court in the case of Mst. Samrana Nawaz v. MCB Bank Ltd. (PLD 2021 SC 581) provides instruction in the matter in the following terms:

"7. We are, however, bound by the judgment delivered by a Bench of co-equal strength, i.e., a three-member Bench, in the said case and therefore cannot hold otherwise. It is now a well-established principle of practice and procedure of this Court that the earlier judgment of a Bench of this Court is binding not only upon the Benches of smaller numeric strength but also upon the Benches of coequal strength; a Bench of co-equal strength cannot deviate from the view held by an earlier Bench, and if a contrary view has to be taken, then the proper course is to request the Hon'ble Chief Justice for constitution of a larger Bench to reconsider the earlier view. For, the law declared by this Court should be clear, certain and consistent, as it is binding on all other courts of the country, under Article 189 of the Constitution of Pakistan, 1973, The doctrine of binding precedent promotes certainty and consistency in judicial decisions, and ensures an organic and systematic development of the law.

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 24 August, 2015 in the matter of Fauji Cement Company Limited and Next Capital Limited in Appeal No. 26 of 2015 dated 24 July, 2015 for determination whether default was committed knowingly and willfully.

It is submitted, with due respect, that the SOC was duly prepared and reviewed by the statutory auditors. Accordingly, you will appreciate that there was no deliberate act of non-compliance on the part of the Respondents for not attaching auditors review report on SOC under the Regulations with annual report

In light of the above, 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; the written and verbal submissions made by the Authorized Representative and observe that:



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

• **Applicability of regulation 36 of the Regulations in the instant matter:**

The applicable regulatory framework is explicit and clear and it requires that the companies to publish and circulate a SoC with the Regulations, duly reviewed and certified by their statutory auditors, to set out the status of their compliance with the requirement of the Regulations. The term "specified" has been defined in Section 2 of the Act whereby it means, that: "(67) "specified" means specified through regulations made under this Act;"

As per the requirement under the regulations 36(1) and 36(2) of the Regulations wherein it is clear that the SoC, the auditors' review reports on SoC with the Regulations is required to be published along with the annual report. The Authorized Representative is of the view that the SoC was reviewed and certified by the auditors of the Company. The Authorized Representative is of the view that there is no requirement under regulation 36 to publish the auditors' review report on SoC with the Accounts as is the case of auditors' report on annual audited accounts for which specific provisions are made in primary law. The aforesaid stance of the Authorized Representative is not cogent as in terms of regulation 36(1) of the Regulations, it has been clearly provided to publish the SoC and the auditors' review report on SoC along with the annual report.

In case of the Company, the evidence suggests that the auditors' review report on SoC was not made part of the annual report of 2022, that was placed on the website of the Company, and circulated through the Pakistan Stock Exchange and was filed with the Commission. On an explanation sought by the Commission, the Company through reply dated May 18, 2023, *inter alia*, stated that:

Due to oversight we did not annex the Auditors' review report of compliance with Accounts 2021 and 2022, but we confirm you that we attached the reports with Accounts on web site of the Company on same day.

In view of the aforesaid, the auditors' review report on the SoC was not published and circulated along with annual report of 2022 in terms of regulation 36(1) of the Regulations, hence, violation of regulation 36(1) of the Regulations is attracted.

• **Whether the requirement of publishing auditors' review report on SoC exists in primary law i.e. the Act:**

It is noted that in terms of Section 236 of the Act, the requirement of publishing the auditors' review report on the SoC exists as the relevant provision states as hereunder:

236. Penalty for improper issue, circulation or publication of Financial Statements. — If any copy of financial statements is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) any component of financial statements, reports, or statements referred therein, (ii) the auditors' report, (iii) review reports on the statement of compliance, (iv) the directors' report and (v) the statements



Securities and Exchange Commission of Pakistan
Adjudication Division
Adjudication Department-I

of compliance, the company, and every officer of the company who is in default shall be liable to a penalty of level 1 on the standard scale.

Therefore, in view of the above, the requirements under Section 236 of the Act is for issuing, circulating or publishing, *inter alia*, the **review reports on the statement of compliance**. In line with the aforesaid, the requirement of publishing has been provided therein the regulation 36 of the Regulations.

• **Whether the Respondents to the SCN are in accordance with law:**

The Respondents have highlighted that the SCN was wrongly issued to officers of the Company and also highlighted the case of PLD 2021 SC 581. In this regard, regulation 37 of the Regulations uses the word "*whoever fails or refused to comply with...*"

37. Penalty.- Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.

In terms of the aforesaid provisions whoever fails or refused to comply with the requirements of the Regulations issued by the Commission may be impleaded guilty for the non-compliances. Keeping in view, the proceedings through the SCN were issued against the Company and its BOD for failure to comply with the requirements of regulation 36(1) of the Regulations. Hence, the officers/ directors were rightly impleaded being charge de affairs of the listed company for not ensuring compliances and liable for the default in terms of regulation 37 of the Regulations read with the Section 512(2) of the Act.

• **Whether reliance on cited case laws is relevant:**

- (i) The Respondents has also relied upon previous cases of Sana Industries Limited in case of order passed dated January 31, 2023 and Macpac Films Limited in case of order dated September 28, 2022 wherein penalties were not imposed on account of delayed or non-holding of annual general meetings. In this regard it is important to understand that every case has its own peculiar facts and circumstances, therefore, decisions of past cases may not be mechanically applied to this case. It is also important to note here that mere mentioning of different case laws or citations does not meet the requirements to establish, that facts of the case in hand are similar to the precedents.
- (ii) During the SCN proceedings, no discrimination has been made and the Respondents were provided adequate opportunity of hearing and has been treated in a fair, transparent manner and strictly in accordance with the applicable laws. Hence, no violation of Articles 25 of the Constitution of 1973 and Section



Securities and Exchange Commission of Pakistan

Adjudication Division
Adjudication Department-I

20(6)(c) of the SECP Act, 1997 may be attributed to the undersigned in reference to the proceedings of the SCN;

- (iii) The Respondents have referred a case laws cited as 2011 PLD 778 to build an argument that before proceeding in the instant matter, the Commission was required to establish substantial findings of guilt against the Respondents. It is relevant to highlight that in the instant matter the auditors' review report on the SoC of the Regulations was published / made part of the annual report after 7 months period. Moreover, it is also relevant to highlight that the referred case laws and its facts are different from the case in hand.

In the referred case law there was the requirement to establish a willful default under Section 223 and 224 of the Companies Ordinance, 1984, however, no such requirement is applicable in this case. Accordingly, facts of Next Capital Limited are also not relevant to this case, therefore, the same are not applicable. The Respondents have referred Appeal No. 40 of 2014 of Fauji Cement Company Limited, however, the reference is incorrect as the Appeal No. 40 of 2014 pertains to Pak Chromical Limited.

• **Subsequent compliance:**

It was informed through letter dated May 18, 2023 that the Company had annexed the auditors' review report on SoC along with the annual report of 2022. I am, however, of the view that the subsequent compliance, made after a lapse of over 7 months, does not exonerate the Respondents for the aforesaid non-compliance.

7. Keeping in view the above contraventions, I, in exercise of the powers conferred under regulation 37 of the Regulations read with Section 512(2) of the Act, hereby, impose an aggregate penalty of **Rs. 200,000/- (Rupees Two Hundred Thousand only)** on the Respondents in the following manner:

S. No.	Names of the Respondents	Amount of Penalty
1	Mr. M. Naseem Saigol	25,000/-
2	Mr. Muhammad Zeid Yousuf Saigol	25,000/-
3	Mr. Muhammad Murad Saigol	25,000/-
4	Mr. Muhammad Omer Farooq	25,000/-
5	Syed Zubair Ahmad Shah	25,000/-
6	Ms. Sadaf Kashif	25,000/-
7	Mr. Muhammad Asif	25,000/-
8	Kohinoor Power Company Limited	25,000/-
Total		200,000/-



Securities and Exchange Commission of Pakistan
Adjudication Division
Adjudication Department-I

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. The fines imposed must be deposited from the personal resources of the Respondents. 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.

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
Adjudication Department-I

Announced:

Dated: April 8, 2024

Islamabad

Security and Exchange Commission of Pakistan

Administrative Division
Investment Department



The Board has considered the application of the applicant for the issue of a license to carry on the business of a stockbroker in Pakistan. The Board has noted that the applicant has satisfied the conditions laid down in the Securities Act, 1997 and the Securities Exchange Commission (Regulation) Rules, 1997. The Board has also noted that the applicant has provided adequate security for the performance of his duties. The Board has, therefore, resolved to issue a license to the applicant for the period of five years from the date of the issue of the license.

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[Signature]

Chairman
Investment Department

Secretary
Investment Department