



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Capital Issues Department

Before the Director/HOD (Market Supervision and Capital Issues Department)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Mr. Muhammad Ayub, a Director of Javedan Cement Company Limited

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(91)10 dated 19/07/2011 ("**Notice**") issued to Mr. Muhammad Ayub ("**Respondent**"), a Director of Javedan Cement Company 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 Respondent has made some purchase and sale transactions during the period November 2010 to March 2011. 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.

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—*



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- (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 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. On account of scrutiny of record of this office, it was observed that the Respondent has sold 963,000 shares and purchased 320,000 shares of the Issuer Company in January 2011, but he failed to file the returns of beneficial ownership for the said changes in shareholding. He was, therefore, asked vide letter dated 04/04/2011 to file returns of beneficial ownership on Form 32 for said changes in shareholding alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance.



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6. The Respondent filed two Forms 32 as at 30/03/2011 and 30/04/2011 alongwith his letters dated 19/04/2011 and 12/05/2011 respectively 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	120,000	03/11/2010	18/11/2010	20/05/2011	183
2	644,000	04/01/2011	19/01/2011	22/04/2011	93
3	319,000	10/01/2011	25/01/2011	22/01/2011	87
4	320,000	11/01/2011	26/01/2011	22/04/2011	86
5	127,000	24/03/2011	08/04/2011	20/05/2011	42
6	543,000	25/03/2011	09/04/2011	20/05/2011	41

Thus the aforementioned changes in shareholding were reported to the Commission with delay ranges from 41 days to 183 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. The Respondent filed written reply to the Notice vide letter dated 27/07/2011, wherein he inter alia regretted for not filing the return within the stipulated time frame. He further stated that the Commission has already accepted his explanation for late filing of a return of beneficial ownership through its letter dated 31/05/2011. He requested to take



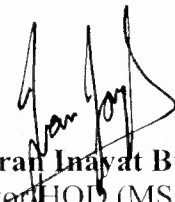
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lenient view of the matter and assured that due care will be taken in future for filing of the required documents as per the regulations.

8. Furthermore, in order to provide him an opportunity of being heard in person, hearing in the matter was fixed for 02/08/2011 and 11/08/2011 at Commission's Head Office, Islamabad. But the Respondent requested vide his aforementioned letter to waive off his personal hearing.

9. I have considered written submissions made by the Respondent. 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. I have also reviewed the available record which reveals that his justification for late filing of Form 32 as at 30/03/2011 has already been accepted. Considering the submissions made by the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the return of beneficial ownership on Form 32 as at 30/04/2011 may also 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.

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/HOD (MSCID)

Islamabad.
Announced on September 16, 2011