



Securities and Exchange Commission of Pakistan

Adjudication Division Adjudication Department

Before

Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Kohinoor Power Company Limited

Date of Hearing	July 17, 2019, September 16, 2019, September 25, 2019, January 07, 2020, January 22, 2020, January 29, 2020, May 18, 2020, May 25, 2020, September 23, 2020, November 24, 2020, April 22, 2021
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Order-Redacted Version

Order dated March 31, 2022 was passed by Director/Head of Department (Adjudication-I) in the matter of Kohinoor Power Company Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated April 15, 2019
2. Name of Company	Kohinoor Power Company Limited
3. Name of Individual*	The proceedings were initiated against directors of the Company.
4. Nature of Offence	Under Section 176, 205 and 207 of the Companies Act 2017 read with Section 479 thereof.
5. Action Taken	<p>Key findings were reported in following manner:</p> <p>I have gone through the facts of the case, relevant provisions of the law, the written as well as the verbal submissions of the Respondents and the record placed before me and state that:</p> <p>(i) <u>Transactions with SSML:</u></p> <p>The Company, under note 25 of its 2017 Accounts, has disclosed related party transaction with SSML. The Company vide letter dated July 13, 2018 and August 17, 2018 has acknowledged the transactions with SSML during its financial year 2017. Hence, presence of transactions with SSML as stated under para 1 of the SCN is an undisputed fact.</p> <p>(ii) <u>Basis of associate relationship with SSML:</u></p> <p>The Company vide its letter dated August 17, 2018 has stated that four directors namely Mr. ****, Mr. ****, Mr.****, and Mr. **** are common on the board of directors of the Company and SSML. Thus, by virtue of four common directors, SSML and the Company are associated companies.</p>



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(iii) Disclosure of interest of directors under Section 205 of the Act:

The Board of Directors of the Company in its meetings held on October 08, 2016 and October 09, 2017 approved the aforementioned transactions with SSML, an associated undertaking of the Company.

a) Meeting of the Board of the Company held on October 09, 2017 Section 205 of the Act provides for disclosure of nature of direct as well as indirect interest in any contract or arrangement entered or to be entered at the meeting of the board. The stated interest of respective directors is derived by the directorship in SSML as already explained in preceding sub-para (ii) above. Therefore, any common director present in the meeting of board of directors approving transactions with related parties was required to disclose his interest by virtue of requirements of Section 205 of the Act. It was noted that one common director namely Mr. **** was present in the meeting of the board of directors held on October 09, 2017, approving the transactions with SSML. The minutes of the board of directors of the aforesaid meeting, provided by the Company, do not state any disclosure of interest by Mr. ****. It is also important to state that while sub-section (2) of Section 205 of the Act provides manner of disclosure in meeting of board when he becomes interested, subsection (3) of Section 205 of the Act clearly provides what is regarded as concerned or interested in any contract as below:

(3) For the purposes of sub-sections (1) and (2), a general notice given to the board to the effect that a director is a director or a member of a specified body corporate or a partner of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.”

The Respondents have not provided any such disclosure in the manner provided under the aforesaid requirements of Section 205 of the Act and the same is the subject matter of the proceedings initiated under the SCN. It is also noted that, considering sub-section (3) of Section 205 is explicit and self-explanatory, the assertion that there is need to define interest separately for purpose of disclosure or deduce that interest of Respondents was not personal and material thereof is neither intended nor relevant to the SCN.

b) Meeting of the Board of directors held on October 08, 2016:

Considering the Act was promulgated with effect from May 2017, therefore provisions of Section 207 of the Act was not applicable w.r.t the Board of directors meeting held on October 08, 2016 as the requirements of Act cannot be applied retrospectively. However, the aforesaid is without prejudice to relevant provisions of law (Companies Ordinance, 1984) as applicable at the relevant time.

(iv) Interest under Section 205 of the Act:



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It has been argued that the directors were already aware of the common directorship of the respective Respondents in SSML and, therefore, disclosure was not required or that such implied knowledge was suffice. Considering the requirements of sub-sections (4) and (5) of Section 205 of the Act, the law explicitly provides that disclosure of interest is not indefinite rather renewable every year and shall take into effect only if it is active disclosure and not an implied disclosure/ knowledge i.e. either given at the meeting of board or brought up and read by concerned director. The relevant provisions of Act are given below:

“(4) Any such general notice shall expire at the end the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

“(5) No such general notice, and renewal thereof shall be of effect unless either it is given at a meeting of the board, or the director concerned takes reasonable steps to ensure that it brought up and read at the first meeting of the board after it is given.”

Moreover, the minutes of meeting held on October 09, 2017 clearly state that the transactions with related parties were approved for period of one year i.e. July 01, 2016 to June 30, 2017. Therefore, the assertion of implied or previous knowledge of interest of Mr. **** does not meet the purpose 207 of the Act.

(v) Interested director not to participate or vote in terms of Section 207 of the Act:

The Respondents have not disputed the fact that Mr. **** was present in the meeting held on October 09, 2017. Moreover, minutes of the Board's meeting dated October 09, 2017 disclose that the interested director namely Mr. **** did not abstain from participation, discussion and voting when the matter of transactions with SSML were being considered and approved. In view of requirements of sub-section (1) of Section 207 of the Act, directors of a company are prohibited to participate in discussion and vote on any contract/ arrangement entered or to be entered where such director is directly or indirectly concerned. For listed companies, the requirements are more stringent, as a director having personal interest in a matter subject to consideration by the board is prohibited to be present in such meeting of board.

Mr.****, the director, by failing to abstain from participating and voting in the meeting of the Board held on October 09, 2017 while approving the transactions with SSML has contravened the provisions of Section 207 of the Act.

(vi) Insufficient Quorum and matter to be placed before general meeting:

Minutes of the Board's meeting held on October 09, 2017 disclosed that the matter of transactions with SSML was placed before the Respondents namely (a) Mr. ****, (b) Mr. ****, (c) Mr. ****, and (d) Mr. **** to consider and approve. Considering one of the aforesaid Respondents namely Mr. ****, had interest in the transactions



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	<p>with SSML, hence, Mr. **** was required to refrain from participation and voting in the meeting of the Board considering the said transactions. Nonetheless, in terms of Section 207 of the Act, presence of Mr. **** for purpose of quorum and his voting was void. Therefore, the quorum of meeting comprising of three directors was deficient in terms of Section 176 of the Act. In stated circumstances, the next recourse for the Respondents was to place the stated transactions with SSML, before the shareholders in general meeting for decision, as required under sub-Section (2) of Section 207 of the Act.</p> <p>12. In view of the above, I am of the considered view that:</p> <p>(i) one the Respondents i.e. Mr. ****, also holding directorship in Saritow, (a) by not disclosing to the Board in its meeting held on October 09, 2017 his interest in the matter of transactions of the Company with Saritow; and (b) by not abstaining from the proceedings of the Board's aforesaid meeting while considering the matter of transactions with Saritow, has failed to comply with the requirements of subsection (1) of Section 205 of the Act and hence liable for penalty under subsection (6) of Section 205 of the Act;</p> <p>(ii) Mr.****, one of the Respondents, having interest in the Company's transaction with Saritow in the capacity of having directorship therein, by participating in the proceeding of the meeting held on October 09, 2017 has failed to comply with the requirements of sub section (1) of section 207 of the Act and, hence liable for penalty under subsection (4) of Section 207 of the Act; and</p> <p>(iii) in terms of Section 207 of the Act, the presence and participation of Mr. ****, in the Board's meeting held on October 09, 2017, was void. Consequently, the Respondents namely Mr. ****, Mr. **** and Mr.**** have contravened the provisions of Section 176 of the Act by holding the said meeting of the Board with deficient quorum; and failing to place the matter of SSML before shareholders in the general meeting in terms of subsection (2) of Section 207 of the Act and, therefore, are liable under subsection (4) of Section 176 of the Act.</p> <p>(iv) With regard to the Respondents namely Mr.**** and Mr. ****, it is stated that since these Respondents had not participated in the aforesaid meeting of the Board held on October 09, 2017, therefore proceedings against these two Respondents are concluded with no further action.</p> <p>13. Taking cognizance of the submissions of the Respondents and in exercise of the powers conferred under aforesaid provisions of the Act, I hereby impose a cumulative penalty amounting to Rs. 95 000 (Rupees ninety-five thousand only) on the Respondents.</p> <p>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, violation of the Act.</p>
6. Penalty Imposed	A Penalty of Rs. 95,000/- (Rupees ninety-five thousand only) was imposed on four Respondent of the Company.



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7. Current Status of Order	No appeal has been filed by the Respondents.