



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, 2022, 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 196, 160 & 164 of the Companies Ordinance, 1984 read with Section 476 thereof and SRO 1227(1)/2005.
5. Action Taken	<p>Key findings were reported in following manner:</p> <p>I have analyzed the facts of the case, in light of the relevant legal provisions, and submissions of the Respondents and state that:</p> <p>i) Sizeable part of assets:</p> <p>The principle activity of the Company is to generate and sell electric power and the Company reported nil sales during the years 2014 and 2015. The Company has made disclosure of PPE, stocks and spares in its accounts 2015. Note 10.4 to the 2015 Accounts 2015 provide detail of disposal of 2 sets of nigatta diesel generators to SGCPL. It may be noted that although Section 196 of the Ordinance does not specify the specific percentage of being sizeable part of asset or undertaking, however, while determining the sizable part, it is important to consider the circumstances of each case including the value of the assets being disposed of with respect to its percentage to total assets, PPE as well as the relevant class of assets. In the instant matter, the disposal of 2 sets of generators having written down value (WDV) of Rs. 81.459 million constitutes 30% of total assets and 39%</p>



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of WDV of total PPE, at the beginning of the year June 30, 2015. The aforesaid is sufficient to deduce that the assets disposed of constitute sizeable part in term of Section 196 (3) of the Ordinance. In addition to the aforesaid assets, the Company also sold out its stores & spares and stock in trade comprising furnace oil.

ii) Approval for sale of assets:

The Company vide letter dated July 13, 2018 had provided the sales tax invoice dated March 18, 2015 regarding sale of generator set to SGCP therefore, it evident that sale of generator was made during the year ending June 30, 2015. The Company has also provided the extract of minutes of AGM dated October 31, 2015 approving sale of generators. The said generators were sold in March 2015 and approval of shareholders is obtained in AGM held in October 2015 i.e. after the sale of the said generators.

iii) Prior approval for sale of assets:

Section 196 of the Ordinance clearly provides that directors of a public company shall not sell, lease or otherwise dispose-off the undertaking or sizeable part, thereof except with the consent of the general meeting whether specifically or by way of an authorization. The aforesaid implies that sale/ lease of assets is prohibited without prior approval of the members in general meeting. Further, notifying shareholders after sale/ lease of asset is neither explicitly allowed nor intended through Section 196 of the Ordinance. Hence the Respondents failed to seek approval of members, prior to the sale of 2 sets of generators (in March 2015) rather post facto approval was sought in the AGM held on October 31, 2015.

iv) Deficient notice of AGM:

Notice of AGM dated October 10, 2015 did not include agenda of disposal of sizeable part of undertaking (i.e. sale of generators) as special business. Further, the Company did not annex statement of material facts and disclosure regarding aforementioned disposal assets in terms of clause (b) of subsection (1) of Section 160 of the Ordinance and SRO 1227/2005. Moreover, draft resolution relating to the aforementioned disposal of assets was not sent to the shareholders along with the notice of the aforesaid AGM for consideration of shareholders.

v) Validity of Delegation of penal powers w.r.t Section 476 of the Ordinance and legibility of proceedings initiated under the Ordinance:

The Commission and the registrar have concurrent jurisdiction in regard to the power under Section 476 of the Ordinance to punish and adjudicate and impose a fine or penalty. Furthermore, Section 10 of the SECP Act 1997



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which provides for delegation of the Commission's functions and powers explicitly states that the Commission may delegate any of its powers or functions under the SECP Act or any administered legislation to one or more Commissioners or any officer of the Commission and Section 10 (2) further provides that such delegation shall not prevent the concurrent performance or exercise by the Commission of the powers and functions which have been delegated. Thus, the exercise of the power under Section 476 rooted in law and the contentions of the respondent are unsubstantiated. With regard to the proceedings initiated under the Companies Ordinance instead of the Companies Act 2017, the disposal of assets which have been held to have constituted a breach of Section 196(3) of the Ordinance were effectuated in 2015, which was prior to the promulgation of the Companies Act 2017. The shareholder approval was also accordingly not sought prior to the disposal which should have been sought in 2015 prior to the disposal of the assets. Thus, the breach under Section 196 and insufficient disclosure under Section 160 of the Ordinance were also effectuated prior to the promulgation of the Companies Act 2017 and were therefore actionable under the Companies Ordinance 1984 as it was the prevailing law. Principally, Section 509 (1) of the Companies Act 2017 which provides for the repeal and savings of the Companies Ordinance 1984 has explicitly stated in its proviso that " The repeal of the repealed Ordinance shall not (c) affect the proviso operation of the repealed Ordinance or anything duly done or suffered thereunder; (d) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinance; or (e) affect any penalty imposed, forfeiture made or punishment awarded in respect of any offence committed under the repealed Ordinance; or (f) affect any inspection, investigation, prosecution, legal proceeding or remedy in respect of any obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such inspection, investigation, punishment legal proceedings or remedy may be made, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act has not been passed." Therefore, any action taken by the Commission or any officer of the Commission under the Ordinance will not be affected by the enactment of the Companies Act 2017 and will thus be actionable under the Ordinance which was the prevailing law at the time the Respondents defaulted their statutory obligations.

Keeping in view the above and after consideration of the facts of this case, the submissions made by the Respondents both in writing and verbal, I am of the considered view that by not obtaining approval of the members of the Company prior to sale of the two (2) sets of Generators, the Respondents have contravened the provisions of Sections 196, 160 and 164 of the Ordinance which attracts applicability of the penal provisions contained in subsection (4) of Section 196; clause (a) to subsection (8) of



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	<p>Section 160; and subsection (4) of Section 164 of the Ordinance. Therefore, taking cognizance of the submissions by the Respondents and in exercise of the powers conferred under the aforesaid penal provisions of the Ordinance:</p> <p>i. In matter of contravention of requirements of Section 196 of the Ordinance, the Respondents are warned to ensure compliance of law in full letter and spirit in future.</p> <p>ii. In matter of contravention of requirements of Section 160 and Section 164 of the Ordinance, I hereby impose a cumulative penalty of Rs. 72,000 (Rupees seventy-two 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. 72,000/- (Rupees seventy-two thousand only) was imposed on the Company.
7. Current Status of Order	No appeal has been filed by the Respondents.