



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Enforcement Department

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**Before Mr. Tahir Mahmood, Executive Director (Enforcement)**

**In the matter of**

**Zeal Pak Cement Factory Limited**

**Under Section 495 read with Section 476 of the Companies Ordinance, 1984**

No. and date of Notice	EMD/Co.233/388/2002 dated March 01, 2007
Date of hearing	November 13, 2007
Present	Mr. Shafiq Ahmad, Legal Counsel

***Order***

This order shall dispose off the proceedings initiated against Zeal Pak Cement Factory Limited (hereinafter referred to as the "Company") vide show cause notice dated March 01, 2007 under the provisions of Section 495 read with Section 476 of the Companies Ordinance, 1984 (hereinafter referred to as the "Ordinance").

2. The Company was established as a public limited company on May 9, 1957 and is currently listed on Karachi Stock Exchange. Its authorized and paid-up capital, as per annual audited accounts for the year ended June 30, 2006 (hereinafter referred to as the "annual accounts"), was Rs.1,800 million and Rs.1,700 million respectively. The principal activity of the Company is manufacturing and sale of cement and clinker. The Company has 5,008 shareholders comprising individuals, financial institutions, joint stock companies etc., as per pattern of shareholding annexed to the Directors' Report on the annual accounts.

3. Brief facts leading to this case are that Securities & Exchange Commission of Pakistan ("the Commission") has passed an order against Zeal Pak Cement Factory Limited ("Company") on February 16, 2006 for non-compliance of mandatory provisions of Section 226 of the Companies Ordinance, 1984 ("the Ordinance"), as revealed during the examination of annual accounts for the year ended June 30, 2005, and the Company has been given following directions under Section 473 of the Ordinance:-

- (a) Amend the agreements with the cement stockists for utilization of the security deposits or otherwise keep the same in a separate account with a scheduled bank;



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- (b) Submit statutory auditors' certificate confirming either amendments have been made in agreements or otherwise security deposits have been kept in a separate bank account with a scheduled bank as the case may be;
- (c) Submit the auditors' certificated within 2 months from the date of this order i.e. on or before April 16, 2006.

4. The record of the Company maintained in the Commission revealed that the aforesaid directions were not followed by the Company. Further, examination of annual accounts for the year ended June 30, 2006 of the Company also revealed that an amount of Rs.5.316 million (note 7.1) has again been shown as long term deposits from cement stockists. This indicated that the Company has neither amended the agreements with cement stockists nor it has deposited the said amount in a separate bank account in a scheduled bank. Proceedings through a show cause notice (hereinafter referred to as the "SCN") dated March 1, 2007 under the provisions of Section 495 read with Section 476 of the Ordinance were therefore initiated against Mr. M. A. Jameel, Chief Executive of the Company.

5. In response to the SCN, the Company vide its letter dated July 18, 2007 stated that the Company was established in the year 1957 thereafter it remained in the administrative control of the Ministry of Industries & Production and was one of the state owned unit of State Cement Company of Pakistan until October 1992. Majority shares, assets and liabilities including management was transferred through privatization process and was taken over by our holding company namely Sardar M. Ashraf D. Baluch (Pvt.) Limited and is till in their control. At the time of handing over of the books, assets and liabilities in October, 1992 we have inherited a huge amount as securities and other deposits of cement stockists without any details of such deposits / payee. The Company has not been provided any information with regard to the compliance of mandatory provisions of Section 226 of the Ordinance up to date of handing over of this company through a vendors' agreement dated 14.09.1992. However we are in process of compliance of Section 226 and would revert to you as soon as we finalize the same.

6. In order to provide an opportunity of personal hearing, the case was fixed on August 9, 2007. Mr. Shafiq Ahmad, advocate of Nuruddin Sarki & Company appeared as legal counsel on behalf of the Chief Executive of the Company (hereinafter called as the "Counsel") to argue the case. During the course of hearing, the Counsel in addition to the arguments given in the written reply informed that a fire erupted in the office of the Company in November 2005 and most of the record was lost including the agreements of



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the cement stockists. He also provided a newspaper clipping and copy of FIR as an evidence of incident. He further stated that the Company is ready to accept all the claims of the cement stockists against the Company having legal evidence and the Company has refunded over Rs.7.00 million to cement stockists over the years. He undertook to provide evidence of these payments within two weeks.

7. Subsequent to the hearing, the Legal Counsel submitted the aforesaid information vide letter dated August 20, 2007 which was examined in the light of his undertaking for providing evidence of refund of Rs.7.00 million of security deposits. From the details it was observed that an amount of Rs.120,000 only was refunded to the following cement stockists:

<b>Date</b>	<b>Name of Stockists</b>	<b>Amount</b>
31.10.2003	Punjab Iron	Rs.60,000
11.04.2005	Abdul Hannan Traders	Rs.60,000
31.03.2007	Various stockists – Lahore	Rs.900,000

Further perusal of ledgers and information provided by the Company revealed that Rs.900,000 was not actually refunded to the cement stockists but it was merely an adjustment by the Company against the debit balance of stockists. Moreover, this adjustment of Rs.900,000 does not pertain to period under review in the instant SCN i.e. financial year ended on June 30, 2006 whereas this adjustment was made in the financial year ended on June 30, 2007, therefore, has no relevance to these proceedings.

8. As the Company failed to provide evidence of refund of security deposit of Rs.7.00 million as undertaken by the Legal Counsel in the hearing therefore it was decided to give a final opportunity of hearing to the Company for deciding the SCN and consequently a final hearing was scheduled on November 13, 2007.

9. Mr. Shafiq Ahmad, Legal Counsel appeared before me on behalf of the Company. During the course of hearing, he submitted that the security deposits of Rs.5.316 million are time barred as these deposits were inherited to the Company in year 1992 when the Company was taken over through a privatization process from state owned unit – State Cement Corporation of Pakistan. He further submitted that as these deposits are very old so law of limitation applies and the Company is no longer required to refund these deposits to the cement stockists.



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10. Before going ahead, I feel it necessary to quote the mandatory provisions of Section 495 of the Ordinance which states that:

*“Where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues.”*

11. I have analyzed the written submissions made by the Company, verbal submissions of legal counsel and relevant provisions of the law. My observations to the submissions of the Company and legal counsel are hereunder:

- a. The Company is under the control of current management since 1992 which is long enough span of time for a company to streamline its financial reporting framework and to update and maintain its books of accounts in accordance with the prevailing laws. There appears to be no serious effort from the management of the Company to find the details regarding these deposits and cement stockists as the same are lying as it is since 1992. If, no details could be found, then the Company had the option to deposit the amount in a separate account with a scheduled bank in order to comply with the mandatory provision of Section 226 of the Ordinance and directions given by the Commission vide its Order dated February 16, 2006. It is pertinent to mention here that while passing the order under Section 226 of the Ordinance, a period of two months was given to the Company to ensure compliance of law however the Company did not paid heed to the Commission’s directions. The authorized legal representative of the Company time and again promised to ratify the default however despite elapse of 11 months, the default has not been corrected as directed by the Commission vide aforementioned order.
- b. The Company failed to provide evidence of refund of security deposit of Rs.7.00 million as undertaken by the Legal Counsel in the hearing. Further, the submission of the Company with regard to loss of data pertaining to cement stockists does not appear to be correct as the working sheets provided by the



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Company vide letter dated August 20, 2007 contain full name and city of each cement stockists which makes it easier for the Company to contact them and amend the agreements or otherwise make the refund. It is, therefore, viewed that the Company is using delaying tactics. The above facts leads to a certain conclusion that the Company has not made any noticeable effort to contact the cement stockists for amending the agreement or for making the refunds neither has it deposited the security deposits of Rs.5.316 million in a separate bank account in a scheduled bank in terms of Section 226 of the Companies Ordinance, 1984 and as per the directions of the Commission given vide Order dated February 16, 2006.

- c. The security deposits cannot be time barred neither law of limitations applies to such statutory deposits which the Company is required to maintain in terms of provisions of Section 226 of the Ordinance. The aforesaid provisions of law clearly states that no company and no officer or agent of a company, shall receive or utilize any money received as security or deposit, except in accordance with a contract in writing; and all money so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank.

12. From the above discussion, submissions of the Company and argument put forward by the Counsel, I am of the considered view that the Company has not complied with the directions of the Commission and therefore liable to be punished under the provisions of Section 495 of the Ordinance. Section 495 of the Ordinance provides that where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues. As the legal counsel, during the course of hearing has assured to comply with the direction of the Commission by keeping the security deposits of the cement stockiest in a separate bank account in a scheduled bank, therefore taking a lenient view, I, instead of imposing a maximum penalty of rupees fifty thousand only impose a token penalty of rupees ten thousand



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only (Rs.10,000 only) on Mr. M. A. Jameel, the Chief Executive of the Company. Mr. M. A. Jameel is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of the Commission with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as an arrear of land revenue. It may also be noted that the said penalty is imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from his personal resources.

13. Before departing with the order, I hereby invoke provisions of Section 473 of the Ordinance and direct Mr. M. A. Jameel, the Chief Executive to get the outstanding balance of security deposits verified by the statutory auditors of the Company and deposit the same in a separate bank account in a scheduled bank and to submit the auditors' certificate along with evidence of deposit of said security deposits, within 15 days from the date of this order, failing which the Commission shall be constrained to initiate proceedings under Sub-section (2) of Section 495 of the Ordinance which states that if non-compliance or failure continues after conviction under Sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding tow thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

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**Tahir Mahmood**  
Executive Director (Enf.)

**Announced**  
November 20, 2007  
Islamabad.