

Appellate Bench Orders
Order in case of Chakwal Cement Company Limited.

April 09, 2001

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. 1

1. Chakwal Cement Company Limited

7/1-E-3, Main Boulevard, Gulberg-III, Lahore

2. Khawajah Mohammad Javed,

Chief Executive,

Chakwal Cement Company Limited

7/1-E-3, Main Boulevard, Gulberg-III, Lahore Appellants

Vs.

Commissioner (Enforcement)

Securities and Exchange Commission of Pakistan..... Respondent

Present:

1. Mr. Nadeem Anwar, Manager Finance,

Chakwal Cement Company Limited, on behalf of appellants

2. Mr. Javed Ghafoor, Director SEC On behalf of respondent

**APPEAL UNDER SECTION 33 OF THE
SECURITIES AND EXCHANGE COMMISSION ACT 1997**

This is an appeal under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 filed by M/s Chakwal Cement Company Limited and its Chief

Executive against the Order dated February 2, 2001 passed by the then Commissioner (Enforcement & Monitoring) of the Commission, appointing Mr. Abdur Rehman Mir, FCA of M/s Rehman Sarfraz & Co, Chartered Accountants, Lahore as inspector to investigate into the affairs of the company.

2. The appeal was initially fixed for hearing on 28.3.2001 and Mr. Imtiaz Siddiqui, Advocate, appeared on behalf of the appellants. He requested for short adjournment which was allowed till 09.4.2001. Subsequently, the company withdrew nomination of their lawyer and authorized Mr. Nadeem Anwar, Manager Finance to appear before us on 09.4.2001, the next date of hearing. The authorized representative arguing on behalf of the appellants reiterated the points mentioned in the context of appeal. His main thrust was that though the management has failed to complete the project within the period indicated in the prospectus and to start the commercial production till October 1997, yet there was no complaint from the members or creditors seeking appointment of inspectors under section 263 and 264 of the companies ordinance. He was of the view that the commissioner was not empowered to exercise suo-moto powers under section 265 of the companies ordinance. The management of the appellant company has been conducting the entire business transactions under well accepted norms of compliance and disclosures.

3. To rebut the plea taken by Mr. Nadeem, the representative appearing on behalf of the respondent commissioner stated that major part of the imported machinery is still lying in customs warehouse at Karachi and the management has not been able to get it released. He was of the view that it appears that the chances of release of the machinery are still very remote. On this, the company representative was asked to produce written confirmation under signatures of the company's Chief Executive indicating outcome of the negotiations, which are in progress with the customs authorities.

4. In response, Mr. Nadeem Anwar, Manager Finance, produced a letter under signatures of Kh. Mohammad Jehangir, a director of the company stating that inspite of the Cost over runs and other difficulties, the management is making serious efforts to revive the project. The promoters of the company have also decided to contribute towards meeting the Cost over runs. However, the said authorized representative failed to produce any documentary proof about the promoters' contribution or commitment of the CBR for waiver of the customs duty.

5. In December, 1999, the management of the company had also moved a resolution seeking permission of the members for re-export and sale of the plant and machinery which is reportedly lying in the custody of custom authorities.

6. All this indicates that management be held responsible for conducting the business of the company with intent to defraud the members and creditors. The Directors have also failed to provide complete information with respect to affairs of the company to its members. As regards powers of the Commissioner and jurisdiction issue raised by the appellants, section 263 and 264 of the Companies Ordinance are not attracted in such cases but Commission is fully empowered under section 265 *ibid* to exercise suo-moto

powers of investigation of company's affairs if the circumstances exist as narrated thereunder.

7. In view of the position discussed in the preceding paras and, after hearing authorized representatives of the appellants and the respondent, we do not find any ground to interfere with the order of the Commissioner (Enforcement). The appeal is without any merit and is, accordingly, dismissed.

Announced : April 9, 2001

(N.K. SHAHANI)
Commissioner
(Securities Markets & Insurance)

(M. Zafar-ul-Haq Hijazi)
Commissioner