



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

*Before*

**Shahzad Afzal Khan, Director / Head of Department (Adjudication-I)**

*In the matter of*

**M/s. Bela Automotives Limited**

Number and date of Show Cause Notice	2(448)SMD/Adj-1/2024-46 dated February 01, 2024
Date(s) of Hearing:	February 22, 2024 ( <i>adjourned on the request of Respondent</i> ) March 21, 2024 ( <i>adjourned due to unavoidable circumstances</i> ) March 28, 2024
Hearing(s) attended by:	Mr. Omer Mateen, Director Mr. Muhammad Niaz Khan, Manager (Authorized Representatives)

### **ORDER**

**Under Regulation 5(1)(a) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 read with Section 126(3)(c) of the Securities Act, 2015**

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. 2(448)SMD/Adj-1/2024-46 dated February 01, 2024 (the "SCN") against M/s. Bela Automotives Limited (hereinafter referred to as the "Respondent" or the "Target Company") for its alleged failure to file the requisite disclosure through Pakistan Unified Corporate Action Reporting System (PUCARS) of M/s Pakistan Stock Exchange Limited (PSX) and with the Securities and Exchange Commission of Pakistan (the "Commission") immediately when the Respondent was notified of a firm intention to acquire control or voting shares, in contravention of the requirements of Regulation 5(1)(a) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (the "Regulations") read with Section 126(3)(c) of the Securities Act, 2015 (the "Act").

2. Brief facts of the case are summarized as below:

- a. The Target Company made an announcement dated December 26, 2023 through PUCARS of PSX on December 28, 2023 at 02:34pm, in terms of Regulation 5 of the Regulations, regarding receipt of a firm intention from Mr. Amir Noman (hereinafter referred to as the "Acquirer") to acquire 50% voting shares and control of the Target Company.
- b. Perusal of the aforesaid disclosure revealed that this firm intention was notified to



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

Continuation sheet – I –

the Board of Directors of the Target Company on December 20, 2023. Upon being notified of the firm intention of the Acquirer to acquire control or voting shares beyond the limits prescribed under Section 111 of the Act, the Target Company was **immediately** required to inform the PSX and the Commission, in terms of Regulation 5(1)(a) of the Regulations.

- c. It was, however, transpired that the Respondent reportedly failed to file the aforesaid requisite disclosure on an immediate basis, and filed the said disclosure with a delay of eight (08) days (since December 20, 2023 when the firm intention was notified) on December 28, 2023. The relevant department of the Commission vide letter dated January 01, 2024 requested clarification from the Respondent regarding its afore-referred non-compliance vis-à-vis the requirements of Regulation 5(1)(a) of the Regulations. In response, the Respondent vide letter dated January 09, 2024 substantially submitted that:
- i. The letter dated December 20, 2023 was received through TCS on December 23, 2023 in the second half; while December 24th, 25th and 27th were public holidays.
  - ii. A letter dated December 26, 2023 was written by the Target Company to the PSX, which was received by PSX on December 28, 2023.
  - iii. The same information was uploaded on PUCARS subsequently.
- d. The Regulation 5(1)(a) of the Regulations explicitly require the Target Company/the Respondent to make mandatory disclosures on an **immediate basis**, in case where it is notified of a firm intention to acquire control or voting shares.

3. Considering that the requisite disclosure was *prima facie* not made on an immediate basis in terms of Regulation 5(1)(a) of the Regulations, a Show Cause Notice dated February 01, 2024 was served upon the Respondent through its Chief Executive Officer for alleged contravention of Regulation 5(1)(a) of the Regulations read with the penal provisions of Section 126(3)(c) of the Act.

4. The Respondent submitted its response to the SCN vide letter dated February 13, 2024 (received with the Commission on February 15, 2024), the relevant extracts of which are reproduced below:

*"Letter dated December 20, 2023 was received by us on the December 23, 2023 and these*





# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

Continuation sheet – 2 –

*were many public holidays 24th being a Sunday 25th a national holiday as already informed in our previous letter. The reasons were due to public holidays as already informed in our letter...dated January 9, 2024. Reasons for the delay were due to public holidays as already informed. The copy of the acquirers letters was also sent to the commission along-with the our letter...dated January 9, 2024. Given the evidences above it is requested that no penal action may be taken. Please also understand, this is a closed unit that is in the process of revival and the shareholders dead investment is being converted to a value..."*

5. In order to meet the ends of justice and provide an opportunity of being heard to the Respondent, a hearing was scheduled vide hearing notice dated February 22, 2024 for February 29, 2024; however, the Respondent requested for an adjournment of the said hearing. Accordingly, another hearing was fixed for March 21, 2024, which was thereafter adjourned due to unavoidable circumstances. Subsequent, another hearing was scheduled for March 28, 2024, which was attended by Mr. Omer Mateen, Director and Mr. Muhammad Niaz Khan, Manager being the Authorized Representatives of the Respondent (*authorized through a letter of authority duly executed by Abdul Mateen, Chief Executive Officer in favor of the Representatives*). During the course of hearing, the Representatives substantially reiterated the written submissions. Moreover, the Representatives were inquired as to why the disclosure dated December 26, 2023 made to the PSX (on December 28, 2023) explicitly mentioned that the firm intention was notified by the Acquirer to the Board of Directors of the Target Company on December 20, 2023. In response, the Representatives admitted that the wording of the said disclosure was confusing, and it should have clearly mentioned the receipt of the said letter from the Acquirer by the Respondent on December 23, 2023. The Representatives were also advised to provide the copies of TCS receipt and a certified copy evidencing registry and receipt of the letter in the records of the Target Company on December 23, 2023.

6. Subsequent to the hearing, the Respondent vide letter dated April 01, 2024 (received with the Commission on April 03, 2024) provided a copy of TCS shipment booking statement dated December 22, 2023.

7. I have gone through the relevant provisions of Regulation 5(1)(a) of the Regulations and submissions made by the Respondent in its written response as well as during the course of hearing through its Authorized Representatives. I have also perused Section 126(3)(c) of the Act, which stipulates penal provisions for contravention of the afore-referred provision of law. I have noted the following pertinent aspects vis-à-vis the submissions made by the Respondent:

- a. At the outset, it is considered abundantly necessary to shed light upon the rationale



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

Continuation sheet – 3 –

behind the promulgation of takeover laws (and regulations thereunder). The Appellate Bench of the Commission in the case titled as *Mahboob Elahi, Chief Executive vs. Commissioner CLD SECP* (2013 CLD 1122 SECP) held that “...*Chief executive, in circumstances, crossed the threshold level of 25% holding of voting shares in the company set out in...the Listed Companies (Substantial Acquisition of Voting Shares and takeovers) Ordinance, 2002, which required the disclosure to the company and to the stock exchange on which the voting shares of the company were listed...increase in shareholding required compliance of...the Ordinance...Rationale as stated in the Preamble read with other provisions of the Ordinance was to provide for a fair and equal treatment to all the investors, as well as a transparent and efficient system for substantial acquisition of voting shares and takeovers of listed companies...Chief Executive of the company was required to comply with the requirements of...the Ordinance, but he failed to comply with the said requirement...*” [2011 CLD 537 titled *Elahi Cotton Mills Limited vs SECP* also considered relevant]. The said judgement correctly emphasizes on the cruciality of making transparent as well as timely disclosures in takeover transactions in the prescribed manner, even when such disclosures could, rather wrongly, be taken as merely procedural.

- b. The Respondent has also admitted during the course of hearing held on March 28, 2024 that the language of the disclosure published on December 28, 2023 (lest with a delay of 08 days) was itself ambiguous as to the exact date when the firm intention was received by or notified to the Respondent by the Acquirer. The disclosure clearly states that the firm intention was notified to Board of Directors of the Respondent on December 20, 2023; on the contrary, the Respondent maintained during the course of instant proceedings that the letter was received from the Acquirer on December 23, 2023. Furthermore, the TCS shipment slip as subsequently furnished by the Respondent was dated December 22, 2023. However, as committed during the hearing, the Respondent has not submitted a certified copy of its own records evidencing registry and receipt of the letter in its records on December 23, 2023.
- c. The argument that the disclosure letter was written by the Respondent on December 26, 2023 and addressed to the PSX through courier is not tenable, since the requisite disclosure was required to be uploaded on the PUCARS portal of PSX by the Respondent itself using its own login credentials (or User ID and password). Thus, the mere addressal of letter dated December 26, 2023 to the PSX through courier does not, in any way, absolve the Respondent of its own obligatory & regulatory duty to comply with the Regulations in a timely manner.
- d. In addition, the revival process of the Respondent as referred by the Respondent –





# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

Continuation sheet – 4 –

although not considered abundantly relevant to the case at hand – cannot be taken as a sound ground for absolving it from complying with all the applicable requirements of law in true letter and spirit. Any such exercise should remain, at all times, in due compliance of the mandatory requirements of law.

- e. With respect to the determination of willfulness of the Respondent in conceding the questioned default of Regulation 5(1)(a) of the Regulations in terms of Section 126(3)(c) of the Act, the judgement cited as 2010 CLD 262 is considered relevant, wherein it was discussed at length by the Appellate Bench that *"...in order to reach a conclusion whether an act was willful or not one needs to look at the intention in the light of surrounding facts. The appellants have not come forward to show and infact have neither pleaded any fact which would reveal that the violation of sections 4 and 5 of the Takeovers Ordinance was not willful. The fact that the appellant No.1 was a Director of the target company and which in turn had informed the KSE cannot be termed partial compliance of the Takeovers Ordinance by the appellants as we have already held in paragraph 9 above. In Jalaluddin F.C.A. v. Commissioner SEC, 2005 CLD 333, where the meaning of willful...has been discussed, it was held that:-- "whereas intent is a necessary ingredient of willfulness, impropriety is not (1960) 30 Com cases 523. It is therefore not necessary to prove that the default committed by the appellant was mala fide." We would also rely on case titled City Equitable Fire Insurance Co. Ltd., Re. 1925 Ch. 407, referred to in 2005 CLD 333... "that a default...will be considered willful even if it arises out of being recklessly careless, even though there may not be knowledge or intent." The appellants by not complying with the requirements of sections 4 and 5 of the Takeover Ordinance are in violation of the law and their inaction can be termed as being recklessly careless in light of the case-law cited above." (emphasis added)*

### **Conclusion:**

The above detailed analysis of the facts and circumstances vis-à-vis the pronounced rulings as quoted in preceding paras demonstrate that the default has been made by the Respondent on account of being recklessly careless, since it has failed to file the requisite Schedule-V with the PSX and the Commission **immediately** when the Respondent was notified of a firm intention to acquire control or voting shares. In light of the jurisprudence quoted in para (f) above, it is also evident that the Respondent has not come forward to show and plead any fact which would reveal that the questioned violation of the Regulations was not willful – the sole ground of occurrence of public holidays does not seem plausible enough, as the Respondent is ought to access PUCARS portal at all times for the purpose of timely reporting. The subsequent



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I Adjudication Division

Continuation sheet – 5 –

disclosure made with a considerable delay of eight (08) days cannot be regarded as to demonstrate meticulous compliance of the Respondent with the questioned requirements of Regulations. Hence, the contravention of Regulation 5(1)(a) of the Regulations is established.

8. In view of the above-stated facts, circumstances and submissions made by the Respondent, it is established that the Respondent failed to make the timely disclosure as required under Regulation 5(1)(a) of the Regulations. Therefore, I, in exercise of the powers conferred under Section 126(3)(c) of the Act, hereby impose a **penalty of Rs.50,000 (Rupees Fifty Thousand only) on the Respondent**. The Respondent is directed to deposit the aforesaid penalty in the designated bank account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited, within a period of thirty (30) days from the date of this Order, and furnish receipted voucher issued in the name of the Commission for information and record. The Respondent is also hereby advised to exercise caution and ensure meticulous compliance with all applicable laws in true letter and spirit in the future.

9. This Order is being issued without prejudice to any other action that the Commission may initiate against the Respondent and / or its management (including CEO of the Respondent) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)

Director / Head of Department  
(Adjudication Department-I)

**Announced:**

April 15, 2024

Islamabad