



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

#### ORDER

In the matter of

#### Kohinoor Power Company Limited and its Directors

Number and date of Show Cause Notice (SCN) CSD/ARN/97/2015-168  
Dated March 22, 2024

Date(s) of Hearing(s): (i) May 06, 2024;  
(ii) May 14, 2024;  
(iii) June 05, 2024;  
(iv) August 20, 2024; and  
(v) November 18, 2024

Present at the Hearing: Mr. Rashid Sadiq

#### UNDER SECTION 512(2) OF THE COMPANIES ACT, 2017 READ WITH LISTED COMPANIES (CODE OF CORPORATE GOVERNANCE) REGULATIONS, 2019

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through the Show Cause Notice No. CSD/ARN/97/2015-168 dated March 22, 2024 (the "SCN") issued under sub-section (2) of Section 512 of the Companies Act, 2017 (the "Act") read with the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the "Regulations") against Kohinoor Power Company Limited (the "Company") and its Board of Directors ("BoD"), hereinafter collectively referred to as the "Respondents".

2. The brief facts of the case are that the Company's Board Audit Committee ("BAC") constituted under the Regulations was required to hold its meeting at least once every quarter. However review of the annual audited financial statements of the Company for the year ended June 30, 2023 (the "Accounts") revealed that the Board Audit Committee ("BAC") meeting was not held in first quarter of Financial Year 2022-23 ("FY 2023"), contrary to the requirements of clause (i) of sub-regulation (2) of regulation 27 of the Regulations and the auditor of the Company in the review report on the Statement of Compliance of the Regulations dated September 28, 2023 highlighted the said non-compliance by stating: "The audit committee is required to meet at least once every quarter of the financial year. No meeting of the audit committee was held during the quarter ended September 30, 2022."

3. The Commission, in order to probe the matter, vide letter dated January 26, 2024 sought justification from the Company for not holding meeting during the quarter ended September 30, 2022. The Company in its response vide letter dated February 28, 2024 responded that the meeting of the BAC was subsequently held on October 27, 2022.

4. From the above, it appears that the Respondent members of BAC, i.e. (i) Mrs. Sadaf Kashif; (ii) Mr. Omer Farooq and (iii) Mr. Muhammad Athar Rafiq; *prima facie*, contravened the requirements of clause (i) of regulation 27(2)(i) of the Regulations by not holding BAC meeting during the quarter ended on September 30, 2022. Moreover the Company also, *prima facie*, failed to highlight the aforesaid non-compliance of the mandatory provisions of the regulation 27 of the Regulations in the Statement of Compliance annexed with the Accounts, contrary to the requirements of regulation 36(1) of the Regulations.

5. The aforesaid contraventions indicated that the Respondents members of BAC and the Company, *prima facie*, failed to comply with the requirements of clause (i) of sub-regulation (2) of regulation 27 of the

*Handwritten signature and date:*  
31-12-2024

Regulations and sub-regulation (1) of regulation 36 of the Regulations, respectively, which attracts penal action under regulation 37 of the Regulations read with sub-section (2) of Section 512 of the Act. The relevant provisions are reproduced as under:

**The Regulations:**

**27. Audit Committee.-** It is **mandatory** that meetings of the audit committee shall be held as per the following requirements,-

(i) the audit committee of a company shall meet at least once every quarter of the financial year. These meetings shall be held prior to the approval of interim results of the company by its Board and after completion of external audit;

**36. Compliance Statement and Auditor Review.-** (1) It is **mandatory** that the company shall publish and circulate a statement, as given under Annexure A to these Regulations, along with their annual reports to set out the status of their compliance with the requirements of these Regulations and the said statement shall be specific and supported by necessary explanations.

**37. Penalty.-** Whoever fails or refused to comply with, or contravenes regulation 3, 6, 7, 8, 27, 32, 33 and 36 of these Regulations, shall be punishable with penalty as provided under sub-section (2) of section 512 of the Act.

**The Act:**

512 (2) Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."

6. Accordingly the SCN was served upon the Respondents, requiring them to show the cause as to why penal action as provided under regulation 37 of the Regulations read with sub-section (2) of Section 512 of the Act may not be taken against them.

7. As no response was received from the Respondents and in order to provide opportunity of personal representation, hearings in the matter were fixed for May 06, 2024, May 14, 2024 and June 05, 2024 through the hearing notices served at the registered office address of the Company. However, the Respondents failed to appear at any of the said hearing opportunities. Subsequently, another opportunity was provided by fixing hearing on August 20, 2024 which was adjourned on request made by Mr. Rashid Sadiq, Authorized Representative ("AR"), vide email dated August 15, 2024. Subsequently, the matter was again fixed for hearing on November 18, 2024 when the AR, immediately before convening of the hearing, submitted response to the SCN through letter dated November 18, 2024 which, *inter-alia*, stated that:

- (i) The SCN alleged that the BAC did not hold a meeting for the first quarter of the year 2022- 2023 but was issued to the Company and all its directors, therefore, the same is defective in the eyes of law and is without the jurisdiction and not lawful.
- (ii) The BAC is required to hold its meetings at least once in each quarter. However, such meetings are to be held 'prior to the approval of the interim results of the Company by its Board and after the completion of its external audit.' BAC meetings were held as required in terms of clause (i) of sub-regulation (2) of regulation 27 of the Regulations, therefore, alleged violation is denied. Accordingly BAC meetings held prior to approval of interim financial statements by the Board and after the completion of external auditors cannot be made redundant.
- (iii) The BAC meetings can be delayed/ postponed due to any reason including the justification that they are to be held for consideration of interim and annual financial statement. If the interpretation offered by the SCN is to be accepted, the wording; 'These meetings shall be held prior to the approval of interim results of the company by its Board and after completion of external audit' become redundant and would need to be deleted from the clause (i) of sub-regulation (2) of regulation 27 of the Regulations before issuing SCN under the said Regulations. There is no provision which prohibits BAC from holding delayed meeting or postponing of any BAC

*[Handwritten signature and date]*  
31-12-2024

meeting.

- (iv) BAC meeting, in the instant matter, was delayed only by six days due to non-availability of relevant accounts hence the allegation that no meeting for first quarter was held is contrary to the factual position.
- (v) Non-compliance of sub-regulation (1) of regulation 36 of the Regulations is denied, as the information regarding BAC meetings was provided strictly as per requirement of law. There is no requirement to highlight non-compliance in the statement of compliance and the Company has fully complied with regulation 36 of the Regulations and non-compliance is to be highlighted by the auditors in terms of sub-regulation (3) of regulation 36 of the Regulations.
- (vi) Article 25 of the Constitution of Pakistan guarantees every person equality before law and equal protection of the law which is also embodied in Section 20(6)(c) of the SECP Act highlighting the importance of a consistent application of the law. Without prejudice to the above submissions, it is submitted that there are a large number of orders where no action was taken by the Commission. A different treatment in relation to the Company would, therefore, be unfair, unjust and discriminatory treatment and would contravene the letter and spirit of the scheme envisaged under Section 20(6) of the SECP Act, 1997 and Article 25 of the Constitution which has been held by different court of law in various matters.
- (vii) The fine could only be imposed on substantial finding of guilt as was held by the Supreme Court in the case reported as 2011 PLD 778 in the matter of SECP vs. First Capital Securities Corporation Limited. Even in the absence of the requirements to establish guilt it is incumbent upon the Commission to not merely penalize purely technical violations which action is not justified in the absence of a substantial finding of guilt as specially instructed by the Supreme Court of Pakistan in the case of Securities and Exchange Commission of Pakistan vs. First Capital Securities Corporation Limited (2011 PLD 778). Further reliance is also placed on Commission's judgement in Appeal No. 40 of 2014 dated August 24, 2015 and Appeal No. 26 of 2015 dated July 24, 2015 in the matter of Fauji Cement Company Limited and Next Capital Limited, respectively, for determination whether default was committed knowingly and willfully.
- (viii) The Regulations have not been published by the Commission according to the requirements of Section 512(2) of the Act read with Section 40(2) of the SECP Act, 1997.
- (ix) The Regulations have been issued under Section 156 and not under Section 512 of the Act read with sub-section (2) of Section 40 of the SECP Act, 1997. Accordingly, the contravention of any provisions of the Regulations entails penalty under Section 169 of the Act which is of level 2 while penalty for violation of Regulations is provided under regulation 37 of the Regulations which may extend to Rs. 5 million. As the Regulations provided higher penalty as against the penalty provided under Section 169 of the Act, the same needs to be reconciled before issuance of SCNs for violation of the Regulations.

8. In order the matter to be heard in person, hearing was held on November 18, 2024 when the AR appeared and reiterated the stance taken in reply to SCN dated November 18, 2024.

9. I have considered the facts of the case, written and verbal submissions made by the AR, relevant provisions of the Act and Regulations and the available record. At this juncture, it is imperative to address the following factual and legal elements:

- (i) The arguments of the AR that "holding of BAC meeting prior to approval of interim financial statements by the Board and after the completion of external auditors cannot be made redundant", is not plausible. Provisions of regulation 27 of the Regulations are explicit and clear, which require the BAC to meet at least once in each quarter of the financial year of the company. The want of law is required to be met in entirety and any element of legal framework cannot be demeaned in criticality where each element is supplementary and complimentary to the overall framework. BAC, being part of the whole fabric of the corporate compliance, is a linchpin entrusted to deal with external auditors, Board and internal management hence its non-functioning is not desirable and its cardinality and cruciality cannot be undermined.

*Handwritten signature and date:*  
31-12-2024

- (ii) It is pertinent to observe that the framework requires the BAC of a listed company to meet, at least, once in each quarter to effectively undertake its role in ensuring effective and vigilant oversight on the Company's financial reporting, internal control, compliance and internal audit processes. Clear guiding reference can be drawn from clause (4) of sub-regulation (2) of regulation 27 of the Regulations which provides numerous businesses, in addition to review of financial statements, that require deliberation and recommendation of BAC. Hence by meeting regularly, BAC would be able to identify any critical matter in a timely manner and could promptly address the same. Moreover the usage of word "shall meet" in clause (i) of sub-regulation (2) of regulation 27 of the Regulations read with its mandatory status clearly reflects that the intent of law is to necessitate and make it binding on BAC to meet at least once in each quarter.
- (iii) The applicable regulatory framework is explicit and sub-regulation (1) of regulation 36 of the Regulations clearly declares it mandatory for the companies to publish and circulate a statement to set out the status of their compliance with the requirement of the Regulations, duly reviewed and certified by their statutory auditors. The AR's assertion that there was no non-compliance of clause (i) of sub-regulation (2) of regulation 27 of the Regulations and regulation 36(1) thereof, is not plausible. The Company was clearly non-compliant with the provisions of regulation 27 of the Regulations by not holding the BAC meeting during the first quarter i.e. July – September of FY 2022-23 and held the said meeting with a delay of twenty seven days. Moreover the Respondents failed to disclose this fact in its SoC for FY 2022-23 annexed with the accounts of 2023; which is in contravention of the requirements of sub-regulation (1) of regulation 36 of the Regulations.
- (iv) The stance of the AR that SCN was wrongly issued to all directors of the Company is not tenable as the provisions of regulation 37 of the Regulations clearly provides that whosoever fails or refuse to comply with the mandatory requirements of the Regulations shall be punishable for non-compliances. In the instant matter, members of the BAC were responsible to hold BAC meeting in accordance with the provisions of clause (i) of sub-regulation (2) of regulation 27 of the Regulations while, in terms of regulation 36 of the Regulations, the Company and its Board of Directors were responsible for highlighting any non-compliance of the Company with the Regulations. Hence responsibility clearly falls on the shoulders of the Board of Directors, being responsible for running the affairs of the listed Company.
- (v) The Company vide letter dated February 28, 2024 informed that the meeting of BAC was held on October 27, 2022 i.e. with a delay of twenty seven days. Hence the stance of the AR that the meeting of BAC was held with a delay of six days only is not based on facts.
- (vi) The provisions of Articles 25 of the Constitution of 1973 and Section 20(6)(c) of the SECP Act, 1997 were not violated during the adjudication proceedings as Respondents, without any discrimination, were treated in a fair, transparent manner and strictly in accordance with the applicable provisions of law. Provision of five opportunities of hearing and due consideration of the written and verbal arguments of the AR in the adjudication proceedings clearly and sufficiently address this argument.
- (vii) The case law cited as 2011 PLD 778 referred by the AR argues that the Commission was required to establish substantial findings of guilt against and willful default by the Respondents is a valid principle which has been fully adhered to in the instant matter where the auditors' review report on the Statement of Compliance as annexed with the Accounts of 2023 clearly identified non-compliance of clause (i) of sub-regulation (2) of regulation 27 by the Respondents. Moreover, the Respondents in the duly published Statement of Compliance with the Regulations clearly failed to highlight the non-compliance of clause (i) of sub-regulation (2) of regulation 27.
- (viii) In reference to the request by the AR for equal treatment on the basis of binding precedents for just and fair dispensation of justice, it is observed that the recent judgement of the Honorable Islamabad High Court in the case of PKP Exploration Limited vs Federal Board of Revenue (PTD 2021, 1644),

*Handwritten signature and date:*  
31-12-24

held that decisions of quasi-judicial forums in one case are not binding for other similar cases before such tribunal. Relevant abstract of the judgement is reproduced below:

*"13..... Given that it is an adjudicatory forum of a quasi-judicial nature established by statute, it is vested with no inherent power. .... The consequences of the decision of the Tribunal are limited to the case it decides and do not travel beyond the four corners of the subject-matter before it in appeal. In other words, neither the Constitution nor any statute envisages a law-declaring function for the Tribunal. Its decision do not become binding precedents. The reasoning of the Tribunal in one case could be treated by tax authorities as a persuasive precedent in a subsequent case where the subject-matter is the same or similar. But the persuasive quality or cogent reasoning of a decision of the Tribunal does not transform it into a legally binding precedent for officials exercising executive or adjudicatory authority under tax, statutes, just as the most compelling and potent decisions of District Courts do not make such decisions binding precedents."*

It is evident from the aforesaid that the precedents may be considered as reference but are not binding and accordingly each case is to be decided on its own merits and circumstances.

- (ix) The argument of the AR dealing with publication of the Regulations is not tenable as the preamble of the Regulations specified through S.R.O 1163(1)/2019 dated September 25, 2019 reads as below:

*"SRO 1163 (I)/2019.- In exercise of the powers conferred under Section 156 read with section 512 of the Companies Act, 2017 (XIX of 2017), the same having been previously published in the official Gazette vide Notification S.R.O. 485(I)/2019 dated 23<sup>rd</sup> April, 2019, as required under proviso to sub-section (1) of said section 512, the Securities and Exchange Commission is pleased to notify ....."*

- (x) The argument of the AR that the anomaly between the penalty provided in terms of regulation 37 of the Regulations read with sub-section (2) of Section 512 of the Act which may extend to Rs. five million and penalty under Section 169 of the Act i.e. level 2 (up to Rs. 500,000 only) for contravention of Section 156 of the Act under which the Regulations are issued needs to be resolved before issuance of SCNs for violation of the Regulations, is not plausible. In this context, it is imperative to understand the intent of the legislature by prescribing clause (67) of sub-section (1) of Section 2, Sections 156 and 512 of the Act. The said provisions provides as under:

**2(1)(67):** *"Specified means specified through regulations made under this Act."*

**156: "Compliance with the Code of Corporate Governance.—***The Commission may provide for framework to ensure good corporate governance practices, compliance and matters incidental and axillary for companies or class of companies in a manner as may be specified."*

**512 "Power to make regulations.—***(1) The Commission may, by notification in the official Gazette, make such regulations as may be necessary to carry out the purposes of this Act .*

*(2) Any regulation made under sub-section (1) may provide that a contravention thereof shall be punishable with a penalty which may extend to five million rupees and, where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."*

The aforesaid legal provisions entail that in terms of Section 156 of the Act framework for good corporate governance is specified through the Regulations and shall prevail, being a specific framework.

8. In view of the forgoing, non-compliance of clause (i) of sub-regulation (2) of regulation 27 and sub-regulation (1) of regulation 36 of the Regulations is established beyond doubt and the said contravention attracts application of the penal provision contained in regulation 37 of the Regulations read with sub-section (2) of

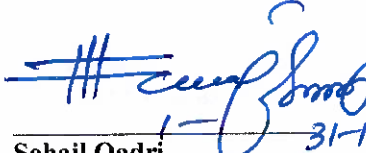
*Handwritten signature and date: 31-12-2024*

Section 512 of the Act. In view thereof, I, in exercise of the powers conferred upon me under regulation 37 of the Regulations read with sub-section (2) of Section 512 of the Act vide S.R.O. 1545(I)/2019 dated December 6, 2019, hereby:

- (i) Impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand Only)** on the Company and warn the remaining Respondents for failure to highlight the non-compliance of the mandatory provisions of the regulation 27 of the Regulations in the Statement of Compliance annexed with the Accounts for FY 2023;
- (ii) Warn the Respondent members of the BAC for not holding meeting of the BAC during first quarter of FY 2023; and
- (iii) Advise all the Respondents to ensure compliance of applicable legal and regulatory framework in future in letter and spirit.

9. The Respondents are hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record.

10. 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.

  
31-12-2024  
**Sohail Qadri**  
Director/ HOD  
Adjudication Department-I

**Announced:**  
December 31, 2024  
Islamabad.