



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

Before

Shahzad Afzal Khan - Director/Head of Department

*In the matter of*

Bestway Cement Limited

Show Cause Notice No. & Date: CSD/ARN/220/2015-231  
dated April 24, 2024

Date(s) of hearing(s): June 05, 2024; and September 19, 2024

Present: Mr. Amir Khan Afridi, Director Corporate  
Affairs-II, MJ Panni & Associates Advocates-  
Corporate & Capital Market Consultant; as the  
Authorized Representative

### ORDER

**Under Section 512 of the Companies Act, 2017 read with Regulation 11 of the Companies (Postal Ballot) Regulations, 2018 and Regulation 11b thereof**

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through Show Cause Notice bearing No. CSD/ARN/220/2015-231 dated April 24, 2024 (the SCN) issued under section 512 of the Companies Act, 2017 (the Act) read with regulation 11 of the Companies (Postal Ballot) Regulations, 2018 (the Regulations) and regulation 11B thereof against Bestway Cement Limited (the Company) and its Board of Directors, hereinafter referred to as (the Respondents).

2. Brief facts of the case are that:

- i. Review of the notice of Annual General Meeting held on September 01, 2023 (AGM) of the Company transpired that the notice, inter-alia included the special business relating to "Investment in associated company, United Bank Limited under section 199 of the Act".
- ii. The Commission through letter dated January 17, 2024 advised the Company to provide copy of the report of the scrutinizer for special business transacted in the AGM as mandated by the Regulations. In response, the Company, *inter-alia*,



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submitted that under the Regulations, scrutinizer is required to be appointed with respect to business mentioned in section 183(3)(a) and section 199 of the Act. However special resolutions were unanimously adopted, further, no request from any shareholders was received for casting vote through ballot, therefore, the need for appointment of scrutinizer did not arise.

iii. It is evident from the aforesaid admission by the Company that it did not appoint scrutinizer for the purpose of voting for special business of investment in associated company transacted in the AGM as against the mandatory requirement, in terms of regulation 11 of the Regulations.

iv. In view of the aforesaid, the Company and its Board of Directors, *prima facie*, have failed to comply with the requirements of regulation 11 of the Regulations, punishable under regulation 11(B) of the Regulations read with section 512 of the Act.

3. In order to take cognizance of the aforesaid non-compliance, SCN was served on the Respondents, requiring them to explain the reasons as to why action should not be taken against them for the aforesaid contraventions.

4. In response to the SCN, Mr. Amir Khan Afridi, Director Corporate Affairs-II, MJ Panni & Associates Advocates-Corporate & Capital Market Consultant, as the Authorized Representative (**the Representative**), on behalf of the Respondents vide letter dated September 19, 2024, *inter-alia*, submitted that:

- Under the requirements of section 199 of the Act, Special Resolution with regard to purchase of 50 million shares of United Bank Limited at the quoted price of such shares on the Stock Exchange on the date of purchase was adopted unanimously.
- Directors, their spouses, associated companies and related parties hold 77.50% shares, whereas general public holds 21.20% shares.
- As the sponsors and associated companies held 77.50% shares and keeping in view the past participation of the general public, it was understood that there is no likelihood for any voting on the Special Resolution.
- In this regard, the resolution having been unanimously adopted proved this assumption to be correct. Had there been any likelihood of casting of votes, the Company would have definitely appointed a Scrutinizer.

5. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 05, 2024 which was adjourned on the request of the Representative vide email



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dated June 03, 2024. Another hearing in the matter was fixed for September 19, 2024 wherein the Representative appeared and, *inter alia*, submitted that:

- Written response submitted in reply to SCN dated September 19, 2024, is reiterated;
  - Requirement to appoint a Scrutinizer for investments in associated companies under section 199 of the Act was added through an amendment in December 2022;
  - A period of three months was provided to the companies, to fulfill the aforementioned requirement;
  - This was the first AGM since the new amendment in the Regulations, with only a few months' gap in the AGM notice; and
  - Admitted the default and requested that a lenient view be taken.
6. Relevant legal provisions under the Regulations and the Act are reproduced as under:

***"The Regulations:***

**11. Appointment of Scrutinizer.** (1) *The Board of a listed company shall appoint a scrutinizer for the purpose of voting in the meeting where following businesses are to be transacted, -*

- (a) *businesses mentioned in section 183 (3) (a) and (b) of the Act;*
- (b) *investment in associated companies as mentioned in section 199 of the Act except where investment is made in wholly owned subsidiary; and*
- (c) *election of directors*

**11B. Penalty for contravention of these regulations.** – (1) *Whoever fails or refuses to comply with, or contravenes any provision of these regulations, or authorizes or permits such failure, refusal or contravention shall be punishable with penalty as provided in sub-section (2) of section 512 of the Act.*

(2) *The penalty to be imposed under this regulation shall be in addition to any other actions that may be taken by the Commission.*

***The Act:***

**512. Power to make regulations.** –

(1).....

(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."*



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7. I have reviewed the facts of the case, considered the written and verbal submissions made by the Respondents and their Representative in the light of the applicable legal provisions and available record before me. At this juncture, it is imperative to address the following:

(i) **Whether the appointment of a scrutinizer was mandatory under the Regulations, for the special business of investment in an associated company?**

Yes, regulation 11 of the Regulations explicitly mandates the appointment of a scrutinizer for any special business related to investments in associated companies under section 199 of the Act. This requirement applies to all listed companies, ensuring transparency and integrity in the voting process. Failure to comply constitutes a breach of the aforementioned provision.

(ii) **Whether the argument that unanimous adoption of the special resolution negated the need for a scrutinizer, holds legal merit?**

No, the unanimous adoption of the special resolution does not absolve the Company from its statutory obligation to appoint a scrutinizer. The requirement to appoint a scrutinizer serves as a procedural safeguard to ensure that the voting process is conducted transparently and fairly, irrespective of the outcome. This safeguard is designed to maintain the integrity of the process, ensuring that all votes, whether unanimous or not, are properly counted and verified. Therefore, compliance with the requirement to appoint a scrutinizer is mandatory under the law, and the Company must fulfill this obligation regardless of whether dissenting votes are expected.

(iii) **Whether the requirement for the appointment of a scrutinizer, introduced through the amendment on December 05, 2022, applies to the Company's AGM held in September 2023?**

Yes, the amendment to regulation 11 of the Regulations, introduced on December 5, 2022, provided companies with a three-month period to achieve compliance. Following this period, the Company was required to adhere to aforementioned requirement. Given that the AGM was held in September 2023, the Company had sufficient time to comply with the mandatory appointment of a scrutinizer for the special business related to the investment in an associated company under section 199 of the Act. Therefore, the Company's failure to appoint a scrutinizer constitutes a violation of the Regulations, especially considering that the Company had sufficient time prior to the AGM to ensure the compliance with the regulatory requirement.

8. Keeping in view of the aforesaid, contravention of regulation 11 of the Regulations at relevant point in time is established, hence the Respondents are liable under regulation 11B of the Regulations read with section 512(2) of the Act. In exercise of the powers conferred under the said provision, I, hereby impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Company i.e. **Bestway Cement Limited** and warn the remaining Respondents to be careful and to ensure the compliance of applicable regulatory framework in letter and spirit.



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9. The aforesaid penalty must be deposited in the designated bank account maintained with MCB Bank Limited or United Bank Limited in the name of the *Securities and Exchange Commission of Pakistan* within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

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 or violation of the Act.

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

**Announced:** October 10, 2024  
Islamabad

