



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

In the matter of

Karam Ceramics Limited

Show Cause Notice No. & Date CSD/ARN/324/2016-324 dated September 10, 2024

Date of Hearing: September 26, 2024

Present: Syed Mazhar Ali Nasir, Chief Executive Officer

ORDER

Under Regulation 27 & 36 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 and Section 166 (1) of the Companies Act, 2017 read with Section 169 thereof

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through Show Cause Notice No. CSD/ARN/324/2016-324 dated September 10, 2024 (the SCN) issued, under regulations 27 and 36 of the Listed Companies (Code of Corporate Governance) Regulations, 2019 (the Regulations) read with regulation 37 thereof and Section 512(2) and Section 166 (1) of the Companies Act, 2017 (the Act) read with Section 169 thereof, to the Board of Directors and Company Secretary of Karam Ceramics Limited (the Company), hereinafter collectively referred to as the Respondents.

2. Brief facts of the case are that:

- (i) Review of Annual Audited Financial Statements for the year ended June 30, 2023 (the Accounts 2023), of the Company, it was noted that the Company held its election of directors on November 26, 2022 in which independent directors were elected.
- (ii) In this regard, review of the independent directors' databank maintained by Pakistan Institute of Corporate Governance (the PICG), an institute notified by the Commission, on January 17, 2024, revealed that the independent director, namely Mr. Shuja Ahmed Alvi was not selected from the PICG's databank, as required in Section 166(1) of the Act.
- (iii) In view of the aforesaid, the Commission vide letter dated January 22, 2024 sought comments from the Company, responded vide letter dated February 22, 2024, which states as follows:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 1 -

"The Company conducted thorough due diligence for the selection of independent directors...Additionally, both directors have applied for registration in the PICG portal of independent directors, demonstrating compliance with regulatory requirements."

- (iv) On rechecking from PICG's databank on May 13, 2024, it was confirmed that Mr. Shuja Ahmed Alvi was registered with the PICG, however, his name was not existent in January 2024, *prima facie*, in contravention to the provisions to Section 166(1) of the Act, which requires that it is the responsibility of the Company to exercise due diligence, therefore, the aforementioned statement of the Company is not cogent.
- (v) In view of the aforesaid, the Respondents have, *prima facie*, contravened the provisions of Section 166(1) of the Act in terms of which the independent director was not selected from the PICG's databank at the time of appointment.
- (vi) In addition, Mr. Shuja Ahmed Alvi has served as the Chairman of the Audit Committee as per Accounts 2023. Hence, the Company, *prima facie*, has also failed to comply with the requirements of Regulation 27(1)(ii) of the Regulations, which requires the Chairman of the Audit Committee to be an independent director. Furthermore, the Company has also not disclosed its non-compliance in its Statement of Compliance with the Regulations for the year ended June 30, 2023 which is, *prima facie*, contrary to Regulation 36(1) of the Regulations.
3. In order to take cognizance of the aforesaid contravention, the SCN was served upon the Respondents seeking justification for not complying with the requirements of the Act, and the Regulations. In response to the SCN, Chief Executive Officer (CEO) on behalf of the Respondents vide letter dated September 20, 2024 made written response, *inter alia*, as under:

"The Board of Directors has thoroughly reviewed the matter and acknowledges that the company secretary, who has served the company diligently for more than 30 years, was not fully able to comply with the procedural requirements at the time of the election. In response to this oversight, the Board has issued a formal warning to the company secretary. This warning serves as a reminder of the importance of adhering strictly to all regulatory requirements, despite the long-standing service and past contributions of the company secretary."

We would also like to inform SECP that the current company secretary is scheduled to retire in December 2024. The company is already in the process of recruiting a new, highly qualified company secretary who will ensure that all compliance matters are handled with the utmost attention and diligence, in line with the latest corporate governance standards.

We assure SECP that we are committed to maintaining the highest standards of compliance moving forward and that the new company secretary will be fully qualified to manage the company's regulatory obligations effectively."



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 2 -

4. In order to provide opportunity of personal representation, hearing in the matter was fixed for September 20, 2024 wherein Syed Mazhar Ali Nasir, CEO, appeared as the Authorized Representative of the Respondents (**the Representative**). During the course of hearing, the Representative, reiterated the contents of the letter dated September 20, 2024.

5. Relevant provisions of the law provide that:

Section 166 of the Act:

"(1) An independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment."

Regulation 6(1) of the Regulations:

*"(1) It is **mandatory** that each listed company shall have at least two or one third members of the Board, whichever is higher, as independent directors."*

Regulation 27(1) of the Regulations:

"(1) It is mandatory that the audit committee shall be constituted by the Board keeping in view the following requirements, -

(ii) chairman of the committee shall be an independent director, who shall not be the chairman of the Board;"

Regulation 36(1) of the Regulations:

*"(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."*

Section 169 of the Act:

"Whoever contravenes or fails to comply with any of the provisions of sections 154 to 168 or is a party to the contravention of the said provisions shall be liable to a penalty of level 2 on the standard scale and may also be debarred by the authority which imposes the penalty from becoming or continuing a director of the company for a period not exceeding three years."

Regulation 37 of the Regulations:

"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."



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 3 -

Section 512(2) of the Act:

"512. Power to make regulations. — (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. 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. At this juncture, it is imperative to address the following:

(i) Whether the independent director, Mr. Shuja Ahmed Alvi, was selected from the PICG databank by the Respondents?

No, the independent director, Mr. Shuja Ahmed Alvi, appointed by the Respondents during the November 2022 elections, was not selected from the PICG databank. The fact that Mr. Alvi was subsequently registered in May 2024 does not rectify the violation that occurred at the time of his appointment. Compliance with the PICG databank requirement is a prerequisite for validly appointing an independent director, and any failure to meet this requirement at the time of election constitutes violation of the Act.

(ii) Significance of Selecting Independent Directors from PICG databank.

The significance of selecting independent directors from the PICG databank under Section 166 of the Act is paramount in upholding the standards of corporate governance and regulatory compliance. This requirement ensures that independent directors are not only qualified and experienced but also vetted for their eligibility and independence. By adhering to this mandate, companies demonstrate a commitment to transparency and accountability, which are critical for maintaining stakeholder trust and confidence. Compliance with this provision of the law reflects the company's dedication to best practices in governance, ultimately fostering a culture of integrity and responsibility at the board level.

However, the Respondents as well as the Representative admitted the oversight for not selecting the independent director from the PICG databank. By not meeting the prescribed requirements, the Respondents did not comply with the regulatory standards for independent director appointments as required under Section 166(1) of the Act.

(iii) Whether the Respondents violated Regulation 27(1)(ii) of the Regulations by appointing a non-independent director as Chairman of the Audit Committee?

Yes, the Respondents violated Regulation 27(1)(ii) of the Regulations. This regulation mandates that the Chairman of the Audit Committee must be an independent director. Since Mr. Alvi was not registered as an independent director with the PICG at the time of his election, his appointment as Chairman of the Audit Committee does not fulfill the regulatory requirement.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 4 -

(iv) Whether the Respondents violated Regulation 36(1) of the Regulations by failing to disclose non-compliance in its Statement of Compliance for the year ended June 30, 2023?

Yes, the Respondents violated regulation 36(1) of the Regulations, as it requires companies to disclose the status of their compliance with the regulations, including any non-compliance, in their Statement of Compliance. By failing to disclose the non-compliance related to the appointment of an independent director and the composition of the Audit Committee, the Respondents have contravened this provision.

(v) Importance of complying with the requirements of the Regulations.

Regulation 27(1)(ii) of the Regulations mandates that the Chairman of the Audit Committee must be an independent director, ensuring impartial oversight and enhancing investor confidence in corporate governance practices. Further, Regulation 36(1) of the Regulations requires companies to provide a Statement of Compliance regarding adherence to governance regulations, allowing stakeholders to assess the company's governance integrity.

(vi) Assessment of Company Secretary's role in compliance with the requirements of the Regulations and the Act.

The company secretary's role in compliance with the requirements of the Act and the relevant regulations is critical in understanding their impact on corporate governance. The company secretary serves as a key advisor to the board, ensuring that all actions taken, especially concerning the appointment of independent directors, align with legal requirements such as Section 166 of the Act. Their responsibilities include conducting due diligence in the selection process, maintaining accurate documentation, and ensuring that the company complies with mandatory disclosures in the Statement of Compliance under regulation 36(1) of the Regulations.

By monitoring adherence to governance standards and support to board members, the company secretary helps mitigate the risk of violations and enhances the company's overall governance framework. Any lapses in the company secretary's responsibilities can lead to significant legal consequences for the company.

7. In view of the aforesaid, it is stated that contravention with Section 166(1) of the Act and regulations 27 and 36 of the Regulations at relevant point in time have been established and the same have also been admitted by the Representative. Therefore, I, in exercise of the powers conferred upon me under Section 169 of the Act and regulation 37 of the Regulations read with Section 512(2) of the Act, hereby, conclude the proceedings initiated through SCN by imposing an aggregate penalty of **Rs. 50,000/- (Pak Rupees Fifty Thousand Only)** in the following manner and **Warn** the remaining Respondents and advise to ensure compliance with all the regulatory laws in letter and spirit:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department - I
Adjudication Division

Continuation Sheet - 5 -

Sr. #	Name of Respondents	Penalty (Rs.)
1.	Mr. Shuja Ahmed Alvi	25,000
2.	Mr. Manzoorali Natha	25,000
Total		50,000

8. 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 (30) days of the date of this Order and furnish receipted bank challan, to the Commission. In case of failure to deposit the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue

9. 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.

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

Announced:

Dated: September 25, 2024
Islamabad