



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
NIC BUILDING, BLUE AREA, ISLAMABAD

Before the Commissioner (Securities Market Division)

In the matter of Show Cause notice No. SMD/TO/7/2004 dated May 28, 2004 issued to Dewan Mushtaq Group (the acquirers) for Non-compliance with certain provisions of the Listed Companies (Substantial Acquisition Of Voting Shares and Takeovers) Ordinance, 2002 while acquiring shares of Saadi Cement Ltd

Date of Hearing:

September 20, 2004

Present at Hearing:

Representing the acquirers:

- (i) Mr. Farrukh Junaidy, *CFO*
- (ii) Syed Moonis Abdullah Alvi, Company Secretary & G.M Finance

Assisting the Commissioner (SM):

- i. Miss. Jahanara Sajjad Ahmad JD (CI)
- ii. Mr. Amir Mohammad Khan DD (CI)
- iii. Mr. Sajid Imran, AD (CI)

ORDER

1. The matter arises from a show cause notice No.SMD/TO/7/2004 dated May 28, 2004 issued by the Securities and Exchange Commission of Pakistan (the Commission) to the acquirers.

2. The facts of the case are that the Commission on May 18, 2004 received a letter dated May 17, 2004 from Syed Moonis Abdullah Alvi, the then General Manager Finance, of the acquirers which revealed that the acquirers had acquired approximately 35,000,000 (about 42%) voting shares of M/s. Pakland Cement Ltd. ("Pakland") at a price of Rs.15.58 per share and approximately 36,176,000 (about

19%) voting shares of Saadi Cement Ltd. (“Saadi” or “the Company”) at a price of Rs. 15.55 per share through a share purchase agreement. It was further observed that Pakland is the major shareholder of Saadi holding in aggregate 80,000,000 (about 43%) voting shares of Saadi. In this way the acquirers would virtually control about 62% of the share capital of the Company.

3. The failure of the acquirers to comply with the following sections of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 (the Ordinance) necessitated action against the acquirers in terms of Section 25 & 26 of the Ordinance:

- (i) Under Section 5 of the Ordinance the acquirers were required to make a public announcement of offer to acquire voting shares or control of the Company and before making such announcement the acquirers were required to make a disclosure in the manner as specified under Section 4.
- (ii) Under sub section (1) of Section 7 of the Ordinance the acquirers were required to appoint a bank, financial institution or a member of a stock exchange as Manager to the Offer before making any public announcement;
- (iii) Under sub section (3) of Section 9 of the Ordinance the acquirers were required to submit to the Commission a copy of the public announcement through the Manger to the Offer at least two working days before its issuance;
- (iv) Under sub section (1) of Section 13 of the Ordinance the acquirers were required to send a copy of the proposed offer letter within two working days of the announcement to the Target Company at its registered office address, all the Stock Exchanges where the voting shares of the company are listed and the Commission;
- (v) Under sub section (8) of Section 13 of the Ordinance the acquirers were required to create a security as provided in the Ordinance on or before the date of issue of public announcement;

Consequently, a show cause notice dated May 28, 2004 was served on the acquirers calling upon to show cause in writing as to why action may not be taken against the acquirers under Section 25 and sub-sections (1) & (3) of Section 26 of the Ordinance for the aforesaid contraventions/violations.

4. The acquirers failed to respond to the notice dated May 28, 2004 within the stipulated time period despite providing extension. However, through letter dated July 27, 2004 Syed Moonis Abdullah Alvi, Company Secretary and General Manager Finance responded to our notice dated May 28, 2004, wherein, it was contended that Saadi Cement was in trouble as it was being mismanaged and the stepping in of the acquirers was welcomed by the existing shareholders as the share price of the Company has been increased after the acquisition of the said voting shares by the acquirers. It was further stated that the Ordinance is a self –contained code in respect of the acquisitions and Takeovers of listed companies and that the framework of the Ordinance has yet to be fleshed out by the detailed Rules that have to be framed under the Ordinance and since no such Rules have yet been framed therefore the Ordinance is not yet in effect. It was also stated that the Ordinance in the absence of Rules remains ineffective and there can be no violation thereof within the meanings, letter and spirit of the law.

5. Since the reply to the show cause notice was not found satisfactory, hence, in order to provide an opportunity of being heard to the acquirers, hearing in the matter was fixed on September 20, 2004, on which date Mr.Farrukh Junaidy, CFO and Syed Moonis Abdullah Alvi, Company Secretary & General Manager Finance (the representatives) appeared before me. During the proceedings, the representatives informed that the acquisition of Saadi by the acquirers is in the best interest of all the stakeholders mainly of minority shareholders and creditors. In support they cited that the market price of the shares of the Company increased significantly. Further, the banks and financial institutions have restructured the loans and advances of the Company on the credibility of the acquirers. They stated that as a result a sick Company would be converted in to a viable unit. Hence, all the stakeholders including minority shareholders and creditors of the target company would benefit from the takeover.

6. On query which was later on confirmed in writing, the representatives provided details of persons who acquired the shares of Saadi as under:

	Name of Company/individuals	Shares held in Saadi	% age
i.	Delta Innovations Ltd.	13,876,000	38.36%
ii.	Delta Climate Control Ltd.	4,000,000	11.06%
iii.	Dewan Motors (Pvt.) Ltd.	8,500,000	23.50%
iv.	Dewan Mushtaq Motors (Pvt.) Ltd.	8,500,000	23.50%
v.	Mr. Dewan M. Yousuf Farooqui	1,170,000	3.23%
vi.	Mrs. Heena Yousuf Farooqui	130,000	0.35%
	TOTAL	36,176,000	100.00%

7. Mr. Junaidy concluded his remarks by stating that it was never the intention of the acquirers to violate the Ordinance. He further stated that the acquirers have acquired the company in good faith and with a view to convert a sick unit into a commercially viable unit in the interest of all stakeholders particularly the minority shareholders and creditors. He prayed that violation, if any, on the part of the acquirers be condoned in the best interest of the Securities Market.

8. I have heard the representatives of the acquirers and have observed that the representatives of the acquirers were emphasizing more on the revival of the Company and the benefits to the minority shareholders in the form of increase in share price of the Company as a result of their acquisition. However, they have failed to defend themselves against the violations of the Ordinance committed by the acquirers as mentioned in the show cause notice.

9. It is a fact that the acquirers have failed to (i) make a public announcement of offer to acquire voting shares or control of the Company and before making such announcement the acquirers failed to make a disclosure in the manner as mentioned under Section 4; (ii) appoint a manager to the offer before making public announcement; (iii) submit a copy of the public announcement to the Commission and stock exchanges within the stipulated time; (iv) send a copy of the proposed offer letter within the stipulated time period to the Stock Exchanges and the Commission; and (v) deposit security.

It appears by not fulfilling the aforementioned requirements, the acquirers have violated the provisions of Section 5, subsection (1) of Section 7, sub section (3) of Section 9, sub sections (1) & (8) of Section 13 of the Ordinance.

10. The main purpose of the Ordinance is to provide for a fair and equitable treatment to all the investors as well as a transparent and efficient system for substantial acquisition of voting shares and takeovers of listed companies by the acquirer. In this particular case, the acquirers have failed to comply with several provisions of the Ordinance and when the Commission issued show cause notice to the acquirers, a delayed reply to the said show cause notice was received. The said reply was found to be untenable wherein, as mentioned in para 4 above the acquirers stated that the Ordinance was not applicable to them. They also stated that since no Rules have been framed under the Ordinance, the Ordinance is not effective. I would like to state that in sub section 3 of Section 1 of the Ordinance it has been stated that the Ordinance comes into force at once. Hence, with the promulgation of the Ordinance it came into effect in October 2002 and non-framing of the Rules does not make the Ordinance ineffective. Moreover, the acquirers appear to have knowledge that they were required to make a public announcement of the offer under the Ordinance as in the case of acquisition of voting shares of Pakland Cement Ltd. they published an announcement in the press whereby they offered to acquire 9% voting shares from the general public. Hence in my view the default on the part of the acquirers appears to be willful.

11. I am convinced that the acquirers have violated various provisions of the Ordinance and as such they could be directed under Section 25 (c) of the Ordinance to sell the voting shares acquired by them directly or indirectly (as they were acting in concert) in violation of the provisions of the Ordinance. However, I am not inclined to direct the acquirers for disinvestment as I see some substance in the argument put forward by the representatives of the acquirers that the Takeover of Saadi by the acquirers has helped the company in restructuring its debts and induction of fresh funds by acquirers would help the Company in its revival. Further, the share price, after the news of takeover by the acquirers of controlling shares of Saadi, also shows an upward trend, which goes to the benefit of the minority shareholders. Thus invoking of Section 25(c) of the Ordinance would neither be in the interest of the Securities Market nor would it be in the interest of minority shareholders of the Company. Therefore, taking a lenient view I Order as under:

- (i) The acquirers are directed not to dispose off any of the 116,176,000 voting shares of the Company acquired by them directly or indirectly for a period of three years from the date of acquisition without the prior approval of the Commission; and
- (ii) A collective penalty of Rs. 1 million is imposed on the acquirers in proportion to the voting shares held/acquired by them in violation of various provisions of the Ordinance as under:

	Name of Company/individual	Shares acquired (in million)	Penalty (in Rupees)
i.	Pakland Cement Ltd.	80.000	688,610
ii.	Delta Innovations Ltd.	13.876	119,439
iii.	Delta Climate Control Ltd.	4.000	34,431
iv.	Dewan Motors (Pvt.) Ltd.	8.500	73,165
v.	Dewan Mushtaq Motors (Pvt.) Ltd.	8.500	73,165
vi.	Mr. Dewan M. Yousuf Farooqui	1.170	10,071
vii.	Mrs. Heena Yousuf Farooqui	0.130	1,119
	TOTAL	116.176	1,000,000

The acquirers are further directed to make a public offer as required under Section 5 of the Ordinance and to comply with sections 8, 9, 10, 11 & 12 and any other section of the Ordinance that pertains to the public announcement of the offer.

12. The acquirers 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 Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challans to the Commission failing which proceedings for recovery of the fine as an arrears of land revenue will be initiated.

13. The Order is being issued without prejudice to any or all actions that may be required to be taken under the law against individual director(s)/officers(s) or any other person involved in violation of any other securities laws which may have been committed.

Shahid Ghaffar

Commissioner (Securities Market Division)

Announced:
September 30, 2004
ISLAMABAD