



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 37 of 2008**

Zeal Pak Cement Factory Limited

7<sup>th</sup> Floor, PIC Tower, 32-A, Lalazar Drive, Moulvi Tamiz-ud-din Khan Road,  
Karachi

Appellant

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

Respondent

**ORDER**

Date of Hearing

02-12-09

**Present:**

**For the Appellant:**

Mr. Shafiq Ahmad

Advocate

**Departmental representatives:**

Ms. Amina Aziz, Joint Director (Enforcement)

Ms. Zohra Sarwar, Deputy Director (Enforcement)



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1. This order shall dispose of appeal No. 37 of 2008 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 08-09-08 (the "Impugned Order") passed by the Respondent.
2. Zeal Pak Industries (Private) Limited ("ZPIL"), Pakistan Slag Cement Industries Limited ("PSCIL") and Rohri Cement (Private) Limited ("RCPL") were merged with and into the Appellant by the order of Sindh High Court order dated 13-5-2008 passed in J.M. No. 39/07.
3. The Respondent passed the Impugned Order of inspection under section 231 of the Companies Ordinance, 1984 (the "Ordinance") on the following grounds:
  - a) On examination of the annual accounts of the Appellant for the year ended 30-06-07, it transpired that:
    - i) Trade debts amounting to Rs. 109.685 million were due from associated companies and receivables amounting to Rs. 87.856 million were due from related parties.
    - ii) Long term financing reflected interest free unsecured financing from M/s Sardar Muhammad Ashraf D. Baluch (Private) Limited amounting to Rs. 92.391 million while the trade credit extended to the related parties reflect an amount of Rs. 110.193 million.



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- iii) For the purposes of merger, the net assets of RCPL and PSCIL had been calculated while including the payables of Rs.197.680 million and Rs.198.130 million to RCPL respectively.
- b) The Commission subsequent to the approval of the merger received a number of complaints regarding calculation of the swap ratio from the shareholders of PSCL.
- c) The Appellant's stock appearing in its financial statements for last several years amounting to Rs. 312.556 million had been written off while calculating its net assets. Similar treatment was made for amount of Rs.66.256 million for PSCIL.
- d) The Commission approved the issuance of 83.333 million right shares of the Appellant at 40% discount i.e. Rs. 6.00 per share to raise funds of Rs 500.00 million for conversion of the plant from wet to dry process technology. The Appellant, however, instead of implementing the scheme provided to the Commission, merged with the other group of companies.
4. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant's counsel contended that:
- a) The Respondent wrongly raised the issue of swap ratio in paragraph five (5) of the Impugned Order as the issue was raised by the Respondent in his comments filed in merger petition J.M. No. 39/07. The Honorable Sindh High Court rejected the objection of the Respondent on swap ratio in the merger order. The Sindh High Court's order is final and the Respondent has no jurisdiction to open this issue at this stage, hence, the Impugned Order may be set aside on this ground alone.



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- b) The Board of Directors ("BoD") of the Appellant reserved the right to reject any proposal/ scheme and the scheme for conversion of the plant from wet to dry process technology was rejected by the BoD and instead the scheme for merger was approved.
5. The departmental representatives reiterated the grounds for issuance of the Impugned Order stated in para. 3 above and in addition argued that:
- a) The contention of the Appellant that the Impugned Order was only passed to challenge the Appellant's swap ratio is baseless. The Commission in fact received complaints regarding calculation of the swap ratio from the certain shareholders of PSCL.
- b) The other grounds for carrying the inspection included: issuance of shares against payable balances of the ZPIL and PSCL; writing off huge stocks and not following the scheme of conversion of plant from wet to dry technology despite taking approval from the shareholders and the Commission.
- c) The Impugned Order is merely an administrative direction to inspect the Appellant. Section 33(1) (a) of the SECP Act specifically provides that no appeal shall lie against an administrative order given by a Commissioner or an officer of the Commission.
6. We have heard the parties and have gone through the record. The Impugned Order was not issued to ascertain the swap ratio alone. Para nine (9) of the Impugned Order states other grounds for carrying out inspection which is reproduced for ease of reference:



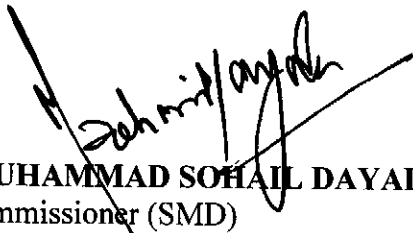
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9. *AND WHEREAS, issuance of shares against material amount of payable balances of ZPIL and PSCL that require verification, writing off huge stocks and not following the scheme of plant from wet to dry technology despite taking approval from the shareholders and the Commission are significant events and their impact on the operations of the company is material and warrants further probe into the matter.*

We have gone through the order of Sindh High Court dated 13-5-2008 passed in J.M. No. 39/07, however, as has been asserted by the Appellant's counsel in para 4 (a) above, the issue of swap ratio was neither discussed nor decided by the High Court as such the assertion of the Appellant is baseless.

7. We also concur with the view expressed by the departmental representatives that inspection under section 231(1) of the Ordinance is merely a fact finding process and essentially an administrative order. No prejudice has been caused to the Appellant as a consequence of the Impugned Order and the appeal is not maintainable in terms of section 33(1) (a) of the SECP Act.

In view of the above the appeal is dismissed. The inspector should commence the inspection and submit the inspection report within 30 days.

  
(MUHAMMAD SOHAIL DAYALA)  
Commissioner (SMD)

  
(S. TARIQ ASAF HUSAIN)  
Commissioner (LD)

Announced on: 15-3-10