



**National Electric Power Regulatory Authority**  
**Islamic Republic of Pakistan**

**Registrar**

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No. NEPRA/DG(M&E)/LAD-02/40765-68

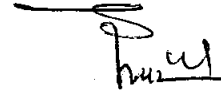
November 16, 2021

Chief Executive Officer  
Islamabad Electric Supply Company (IESCO)  
Street No 40, G-7/4  
Islamabad.

Subject: **DECISION OF THE AUTHORITY IN THE MATTER OF BESTWAY CEMENT LIMITED VS IESCO ETC IN PURSUANCE OF THE JUDGMENT OF ISLAMABAD HIGH COURT, ISLAMABAD DATED 28<sup>TH</sup> JULY 2021 IN WRIT PETITION NO. 3862/2020**  
**IESCO-01/01/2017**

Enclosed find herewith the Decision of the Authority (11 Pages) along with dissent note of Engr. Tauseef H. Farooqi, Chairman NEPRA regarding the subject matter for necessary action, please.

Encl: As above

  
16 11 21

( Syed Safeer Hussain )

Copy to:

1. Assistant Registrar (Writ)  
For Deputy Registrar (Judicial)  
Islamabad High Court, Islamabad
2. C.E./Customer Services Director  
Islamabad Electric Supply Company (IESCO)  
Street No 40, G-7/4, Islamabad.
3. Mr. Muhammad Irfan Anwar Shaikh,  
Director & Chief Financial Officer,  
Bestway Cement Limited,  
Bestway Building, 19-A, College Road,  
F-7 Markaz, Islamabad  
Tele: 051-2654856

With reference to the Honorable High Court Order dated July 28, 2021 in W.P No. 3862/2020.



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

**Complaint No. IESCO-01/01/2017**

**Bestway Cement Limited**

Through its Director & Chief Financial Officer,  
Bestway Building, 19-A, College Road,  
F-7 Markaz, Islamabad.

.....Petitioner

**Versus**

**Islamabad Electric Supply Company Limited (IESCO)**

IESCO Head Office, Street No. 40,  
Sector G-7/4, Islamabad.

.....Respondent

**Date of Hearing:** 7<sup>th</sup> September, 2021

**Present:**

- |    |                            |                            |
|----|----------------------------|----------------------------|
| 1) | Engr. Tauseef H. Farooqi   | Chairman                   |
| 2) | Engr. Rafique Ahmed Shaikh | Vice Chairman/Member (M&E) |
| 3) | Engr. Rehmatullah Baloch   | Member (CA)/(Tariff)       |
| 4) | Engr. Maqsood Anwar Khan   | Member (Licensing)         |

**On behalf of:**

**Petitioner:**

- 1) Mr. Muhammad Umer K Verdag, Legal Counsel
- 2) Mr. Asim Rauf, Legal Counsel

**Respondent:**

- 1) Raja Ishtiaq, Addl. Director - Legal
- 2) Mr. Waheed Akram, Manager Commercial
- 3) Mr. Ghazanfar, DM (Planning)
- 4) Mr. Mazhar M. Iqbal, AM (Planning)
- 5) Mr. M. Khaliq uz Zaman, Legal Counsel



**Subject:** **DECISION OF THE AUTHORITY IN THE MATTER OF BESTWAY CEMENT LIMITED VS IESCO ETC IN PURSUANCE OF THE JUDGMENT OF ISLAMABAD HIGH COURT, ISLAMABAD DATED 28<sup>TH</sup> JULY 2021 IN WRIT PETITION NO. 3862/2020**

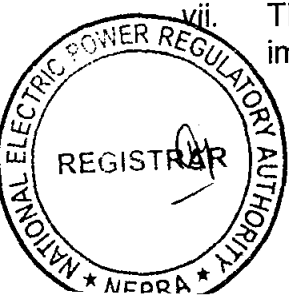
**DECISION**

Pursuant to the Judgment of the Honorable Islamabad High Court dated 28<sup>th</sup> July 2021 (received in NEPRA on 5<sup>th</sup> August 2021) in Writ Petition No. 3862/2020 titled "M/s

Bestway Cement Limited vs IESCO etc”, this decision shall dispose of the petition of Bestway Cement Limited (hereinafter referred to as the “Petitioner” or “BCL” or “Complainant”), whereby the Honorable High Court has directed to decide the complaint afresh having regard to the Honorable High Court’s observations vide its earlier order dated 30<sup>th</sup> July 2020.

2. Brief facts of the case are as under:

- i. BCL is a public limited company and it acquired/purchased majority shares of PAKCEM Limited (PCM) on 24<sup>th</sup> April 2015. From 24<sup>th</sup> April 2015 till 17<sup>th</sup> August 2016, PCM and BCL continued to operate as separate corporate bodies, with separate and distinct Boards of Directors.
- ii. Subsequently, BCL executed a Scheme of Arrangement for Amalgamation, under Section 287 of the Companies Ordinance, 1984 for an amalgamation between BCL and PCM. The Scheme was submitted by BCL to the Islamabad High Court vide Civil Petition No. 08/2016. This Scheme of Arrangement of Amalgamation between BCL and PCM was sanctioned by the Honorable High Court, vide order dated 18<sup>th</sup> August 2016, and thereby given legal effect.
- iii. Later, BCL informed IESCO about the court-sanctioned amalgamation and communicated that PCM was no longer an independent entity and “*all contracts, agreements, leases, conveyances and instruments of transfer, engagements, commitments and arrangements related to PCM executed by or subsisting in the name or in favour of PCM ... (stood) transferred to and vested in BCL*”. In response, IESCO informed BCL to apply for proper change of name immediately to avoid complication/ inconvenience in future.
- iv. In response, BCL vide letter dated 26<sup>th</sup> October 2016 asserted that the amalgamation between BCL and PCM was sanctioned by the Islamabad High Court vide its order dated 18<sup>th</sup> August 2016, and that the amalgamation has the effect of BCL being a successor-in-interest of PCM rather than a transferee of ownership. As such, BCL was not making a request for a new electricity connection, rather seeking change in name/title of an existing connection as a successor-in-interest of the now-inanimate company, PCM. Therefore, approval of change in name was sought from IESCO by BCL as a successor-in-interest.
- v. IESCO again sought application from BCL for change of name on the prescribed application form and abridged conditions of supply, along with prerequisite documents.
- vi. In consequence, BCL proceeded to file a complaint with NEPRA, under Section 39 of the NEPRA Act, on 22<sup>nd</sup> November 2016. BCL, in its complaint, submitted that IESCO had directed BCL to apply for a change of name under the relevant provisions of the Consumer Service Manual (CSM), which ‘impliedly’ refuses the recognition of BCL as a court-sanctioned amalgamated company. BCL requested that IESCO be directed to change the name of PCM to BCL without updation or revision of security deposit, on the basis of BCL being a successor-in-interest of PCM.
- vii. The matter was taken up with IESCO. In response, IESCO submitted that the impugned matter was pending adjudication before the Islamabad High Court under



Writ Petition No. 4194 of 2016 which had been concurrently filed by BCL against IESCO. Since the matter was subjudice, NEPRA intimated BCL on 10<sup>th</sup> February 2017 that further proceedings in the matter had been held in abeyance.

- viii. Subsequently, the Writ Petition No. 4194 of 2016 was dismissed by the Honorable High Court vide order dated 13<sup>th</sup> February 2017, with the following directions:

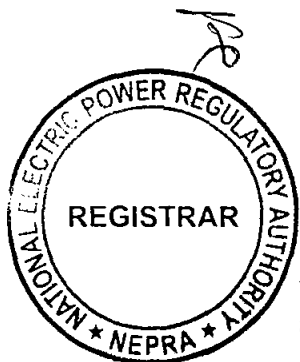
"This Court is satisfied that the remedy under Section 39 of the Act of 1997 (the NEPRA Act) is efficacious and therefore the instant petition is not maintainable. The Petition is, therefore, accordingly dismissed"

- ix. The order of the Honorable High Court was conveyed to NEPRA by BCL on 24<sup>th</sup> February 2017. After due process, the matter was decided by Member (Consumer Affairs) vide decision/Order dated 8<sup>th</sup> February 2018. The operative part of the order/decision is reproduced as under:

IESCO is directed to approve change of name of PAKCEM Limited to Bestway Cement Limited subject to updation of security deposit in accordance with the applicable provisions of the CSM.

- x. Being aggrieved, BCL filed an Appeal on 6<sup>th</sup> March 2018 under Section 12-A of the NEPRA Act, 1997. After due process, the Authority, vide its Order dated 2<sup>nd</sup> October 2018, rejected the Appeal filed by BCL and upheld the Order dated 8<sup>th</sup> February 2018.
- xi. Subsequently, BCL filed a Writ Petition No. 1274/2019 before the Honorable Islamabad High Court, and the Court referred the matter to NEPRA, vide its Order dated 30<sup>th</sup> July 2020, for decision. The operative part of the Order is reproduced as under:

... A plain reading of the said Order shows that the Authority has not appreciated the scheme of law. The sanction of merger of two juridical persons had led to extinction of PCM because on completion of the merger process, it had ceased to exist. The entity which inherited the assets of the latter was the applicant, i.e. Bestway Cement Limited. The petitioner company was, therefore, entitled to seek transfer of documents from the name of a non-existent juridical person, i.e. PAKCEM Limited. By accepting the reasoning of the Authority, this Court would be affirming acts to be done in a non-existent juridical person. This would obviously not be tenable in law... the impugned order dated 22-10-2018 is hereby set aside because it has been passed without correctly appreciating the scheme of law. The instant petition, therefore, stands allowed. The appeal filed by the petitioner company shall be treated as pending before the Authority. The latter, after affording an opportunity of hearing to the parties, is expected to decide the same in accordance with law.



- xii. In pursuance of the directions of the Honorable High Court, an opportunity of hearing was provided to both the parties on 15<sup>th</sup> September 2020, and after due

deliberation, the Appeal filed by BCL was dismissed vide Authority's Decision dated 9<sup>th</sup> November 2020.

xiii. Thereafter, BCL filed a Writ Petition No. 3862/2020 before the Honorable Islamabad Court, and the Court has again referred the matter to NEPRA for decision afresh. Main contents of the petition are as under:

- a) That the Orders dated 8<sup>th</sup> February 2018 and 9<sup>th</sup> November 2020 are patently illegal and against the facts of the case, excessive, perverse and void abinitio as having no legal or factual basis, and in contemptuous disregard of the observations and direction dated 30<sup>th</sup> July 2020 of the Honorable Islamabad High Court passed in W.P. No. 1274/2019.
- b) That NEPRA and IESCO have failed to appreciate the fact that BCL is a Public Limited Company. They also failed to appreciate that a merger and amalgamation under a scheme approved by the Honorable Islamabad high Court vide its order dated 18<sup>th</sup> August 2016 under Section 287 of the Companies Ordinance, 1984 is not a transfer of ownership, it is a merger and amalgamation of two distinct juridical persons where the surviving Company is BCL and wherein assets and liabilities of the Company being amalgamated and merged are transferred to the surviving Company and it cannot be said under the law that liabilities get transferred and assets do not; as by the operation of Section 287 of the Companies Ordinance 1984 (now Section 282 in the Act of 2017) all assets and liabilities of companies under arrangement are transferred to the surviving Company. Hence, there is no requirement of any updation of security as that would tantamount to burden the Company with illegal demands and would defeat the purposes of a merger and amalgamation, i.e. economy of scales.
- c) That NEPRA and IESCO have failed to appreciate that no clause in the previous Consumer Service Manual (CSM) was attracted to the case of the Petitioner Company, as this document, under the head 5.2 Security Deposit, deals with natural persons. These instructions are not applicable in case of BCL, as they are deficient in scope and content.
- d) That BCL had relied upon the definition of Consumer given in Section 2(iv) of the NEPRA Act. BCL also relied upon the trite law that rules or instructions do not override the provisions of a statute and if there is some deficiency, then the provisions of the statutes shall prevail over the instructions or rules or regulations. Hence, there is a legal error floating on the surface of the impugned order and the analogy built by the learned Member (Consumer Affairs) is illegal and ineffective and therefore, the impugned order is required to be set aside.
- e) That merger of PCM into the Surviving Company was in accordance with the Companies Ordinance 1984 having overriding effect and was supervised by the Regulator of the corporate sector, i.e. SECP, and the scheme of arrangement and amalgamation was given approval by the Honorable Islamabad High Court. No objections were made by the Respondents (NEPRA and IESCO) at any stage of this merger regarding any issue in the matter. Therefore, the Respondents are estopped by their



conduct and there is no 'admittance' of any concealment or wrong doing by the Petitioner.

- f) That the law, rules, regulations, instructions do not anywhere mandate that if shareholding of a company changes, then it has to apply for change of name under Clause 5.2 of the CSM. It has always been the case of BCL that this instruction is inapplicable upon it as it deals with natural persons and companies have a perpetual existence.
- g) That the earlier decision of the Authority dated 15<sup>th</sup> March 2017 in the matter of PESCO vs Bestway Cement Limited, being perverse, took more than a year to be implemented. PESCO demanded NOC from the previous BoD of Mustehkam Cement Limited whose Board or Company or juridical person neither existed and whose BoD meeting could not be convened under the law, and it was agitated before the learned Authority that its earlier decision has no binding force upon it and it can proceed in the matter by re-examining the present case with a fresh mind and it should not abandon a consumer to whims and persecution of its licensees, as happened earlier in the above-mentioned case.
- h) That the impugned orders are against the order of the Approval Scheme of Amalgamation Order dated 18<sup>th</sup> August 2016 passed by the Honorable Single Judge of the Honorable Islamabad High Court in CO No. 8/2016 under Section 287 of the Companies Ordinance 1984.

xiv. The operative part of the Order of Honorable Islamabad High Court dated 28<sup>th</sup> July 2021 in Writ Petition No. 3862/2020 is as under:




"....., the petition is allowed and it is declared that the impugned order, dated 09.11.2020, has been passed without lawful authority and without taking into consideration the crucial fact that order, dated 02.10.2018, had been set aside by this Court. The complaint of the Petitioner Company would be treated as pending before the Authority. The later, after affording an opportunity of hearing to the parties, shall decide the complaint afresh in accordance with law, inert alia, having regard to the observations made vide order, dated 30.07.2020. This court expects that the Authority will decide the matter expeditiously, preferably within ninety days from the date of receiving a certified copy of this order".

3. The above orders of the Honorable Islamabad High Court were received on August 05, 2021. In pursuance of the directions of the Honorable High Court, an opportunity of hearing was provided to both the parties, (i.e. IESCO and BCL) on 7<sup>th</sup> September 2021 at NEPRA Head Office, Islamabad. During the hearing, representatives of BCL submitted that BCL is successor-in-interest of PCM and PCM has been merged into BCL; as such the law requiring updation of security deposit for change of name in IESCO's record, is not applicable in their case. The representatives of PCM admitted the fact that BCL purchased majority shares of PCM in the year 2015. The representatives of IESCO in their arguments submitted that the BCL has purchased majority shares of PCM meaning thereby that change of ownership has occurred. Further, on a query, representatives of IESCO submitted to the Authority that they will submit report regarding change of name details took place in recent past where security deposit has been updated upon change

of name. Subsequently, IESCO submitted its report, as per which a total of 04 cases have been processed since the year 2018, wherein security deposit has been updated upon change of name.

4. Further, NEPRA sought clarification from Securities and Exchange Commission of Pakistan (SECP) w.r.t merger/amalgamation of PCM and BCL. In response, the SECP vide its letter dated 7<sup>th</sup> October 2021 submitted, as under:

- 
- i. With effect from the date of Order of Honorable Islamabad High Court sanctioning the merger of M/s Pakcem Limited (Transferor Company) with and into M/s Bestway Cement Limited (Transferee Company) i.e. August 18, 2016, the Transferor Company has been merged into Transferee Company, and the records of the Transferor Company maintained by the SECP have been combined with those of Transferee Company. Consequently, the Transferee Company being the surviving entity continues to operate under its existing name i.e. Bestway Cement Limited. Thus, in the said case, the requirements of law for change of name are not applicable.
  - ii. As per the record, in the year 2015, Bestway acquired 87.93% voting shares (through public offer & share purchase agreement) and management control of Pakcem under the then Listed Companies (Substantial Acquisition Voting Shares and Takeovers), Ordinance, 2002.
  - iii. Amalgamation in the nature of merger or purchase is not specifically defined under the Companies Act, 2017. Nevertheless, it is mentioned that Pakcem was essentially 'merged' into Bestway in the year 2016.
  - iv. As mentioned above, the date on which Pakcem was merged and amalgamated with & into Besway is August 18, 2016.

5. The case has been examined in detail in light of the record made so available by the parties, arguments advanced during the hearing, orders of the Honorable Islamabad High Court, comments of SECP and applicable law. The following has been concluded:

- (I). BCL is a public limited company and it acquired/purchased majority shares of PCM on 24<sup>th</sup> April 2015. From 24<sup>th</sup> April 2015 till 17<sup>th</sup> August 2016, PCM and BCL continued to operate as separate corporate bodies, with separate and distinct Boards of Directors. The purchase of PCM's shares by BCL was a traditional and straightforward share acquisition transaction, where the ownership of PCM was acquired by BCL as its shareholder.
- (II). The Consumer Service Manual is applicable to natural persons as well as corporate entities. There is no force in arguments of the petitioner that Consumer Service Manual is not applicable in their case. All the matters of the petitioner related to electricity are governed under the provisions of the Consumer Service Manual.
- (III). Section 45 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 stipulates that the provisions of the Act, rules and regulations made and licenses issued thereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or

regulation, [emphasis added] for the time being in force and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect from the date the Act comes into force and the Authority shall, subject to provisions of the Act, be exclusively empowered to determine rates, charges and other terms and condition for electric power services. The Consumer Service Manual lays down the instruction in pursuance of section 21 of the NEPRA Act read with rule 9 of the NEPRA Licensing (Distribution) Rules, 1999. NEPRA revised the Consumer Service Manual in January, 2021. However, previous Consumer Service Manual is applicable in the instant matter, because the BCL purchased PCM in April, 2015. The then Consumer Service Manual envisages updation of security deposit as under:

Quote

## 5.2 SECURITY DEPOSIT

(a) Security deposit is non-transferable except as follows:

i) **Relocation of Premises**

If the consumer moves to a new location within the Exclusive Service Territory of DISCO and requests for a new connection at that location.

ii) **Change of Name**

If the consumer sells the premises where the connection is installed, it shall be obligatory upon the new owner to apply to DISCO for a change of name. Such an application shall be accompanied by written consent of the previous owner regarding transfer of Security Deposit in the name of new owner.

iii) **Through Succession**

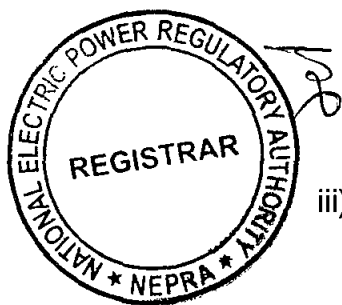
Upon death of the consumer, the Security Deposit shall be transferred according to the Succession Certificate granted by the court of competent jurisdiction.

Provided that the Security Deposit shall be updated and transferred if no arrears are outstanding.

(b) In case of change of tariff category, shifting of site and change of ownership, the security amount shall be updated according to prevailing rates.

Unquote

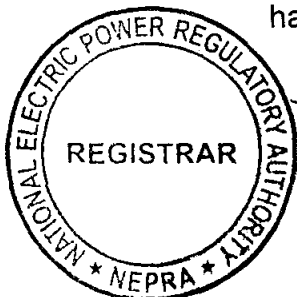
(IV). The obligation for applying for change of name and transfer of security deposit, under clause 5.2(a)(ii) of the previous Consumer Service Manual, arises at the time of sale or change of ownership. Change of ownership in the instant case took place on 24<sup>th</sup> April 2015. Therefore, BCL being the 'new owner' as defined in clause 5.2(a)(ii) of the then-CSM, was obligated to apply for change in name in the electricity bill and updation of security deposit as required under the said law. Any subsequent change in BCL's or PCM's corporate status or being, including cessation of PCM as a separate corporate body by virtue of the court-





sanctioned amalgamation, does not vitiate BCL from its outstanding obligation prescribed under the law. The purchase/acquisition of PCM by BCL dated 24<sup>th</sup> April 2015 is a change in ownership rather than successor-in-interest and therefore attracted the clause 5.2(a)(ii) and (b) of the Consumer Service Manual.

- (V). The Honorable Islamabad High Court has referred the matter to NEPRA with directions that, after affording an opportunity of hearing to the parties, NEPRA shall decide the complaint afresh in accordance with law. Even if we apply the revised/latest Consumer Service Manual in the instant matter, the security deposit is required to be updated. The clause 2.13.1(c) of CSM-2021 provides that when a company is merged/amalgamated with or acquired by another company and change of name takes place then the Security Deposit is required to be updated at prevailing rates subject to adjustment of already paid Security Deposit. Moreover, the clause 5.2.1 of the Consumer Service Manual, 2021 stipulates that in case of change of name due to any reason, the Security Deposit shall be updated a prevailing rates subject to adjustment of already paid security deposit. The Consumer Service Manual further envisages that the option of bank guarantee in lieu of security deposit shall be available to the industrial consumers under B-3 and B-4 category. In the record of IESCO, PCM is its consumer under B-4 tariff category.
- (VI). Further, a successor-in-interest is defined as "one who follows another in ownership or control of property (and) retains the same rights as the original owner, with no change in substance" [Blacks Law Dictionary, 7th Edition]. The assets and property of PCM were acquired by BCL in 2015, along with associated right and liabilities at the time of purchase. The 2016 merger sanctioned by the Court did not, in fact, transfer any rights or liabilities of PCM to BCL since the same had already vested with the latter. Hence, in this context, the 2016 merger between the two entities cannot be construed as a successor-in-interest.
- (VII). In a similar nature of case, Bestway Cement Limited purchased Mustehkam Cement Limited (in the jurisdiction of PESCO) from Privatization Commission, Government of Pakistan in the year 2005. In the year 2013 merger of Bestway Cement Limited into Mustehkam was approved by Islamabad High Court. PESCO required Bestway Cement Limited to update the security deposit for change of name. Bestway Cement Limited filed complaint with NEPRA and the Authority vide its decision dated 25<sup>th</sup> May 2017 directed Bestway Cement Limited to pay the revised security deposit due to change of ownership in accordance with the provisions of the Consumer Service Manual. The said decision was implemented and the Bestway Cement Limited submitted a bank guarantee amounting to Rs. 6,40,80,000/- in lieu of cash security deposit.
- (VIII). The merger/acquisition took place in response to purchase of majority shares of PCM by BCL which construed change of ownership. The SECP in its letter has endorsed the version of NEPRA that BCL acquired 87.93% shares of PCM, meaning thereby that change of ownership took place. If this merger had taken place due to merger of two sister companies of the same owner, then this would have been case of change of name only, rather than change of ownership.



(IX). The merger of PCM into BCL took place on 18<sup>th</sup> August, 2016 due to change in ownership on 24<sup>th</sup> April, 2015, therefore, as per the provisions of Consumer Service Manual; security deposit is required to be updated for change of name owing to change in ownership.

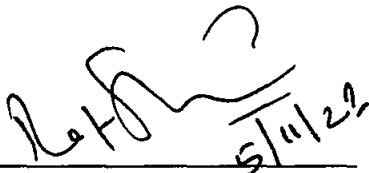
6. Foregoing in view, it is clear that the change in ownership occurred on 24<sup>th</sup> April, 2015 through acquiring majority of shares of PCM by BCL, therefore the security deposit is required to be updated (either in cash or in the form of bank guarantee) by BCL for change of name in the record of IESCO as per provisions of Consumer Service Manual.



(Engr. Rehmatullah Baloch)  
Member



(Engr. Maqsood Anwar Khan)  
Member

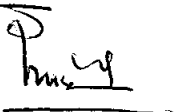
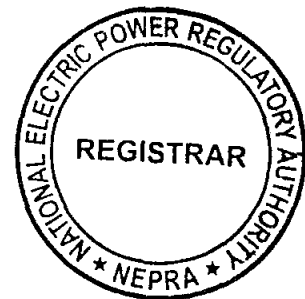
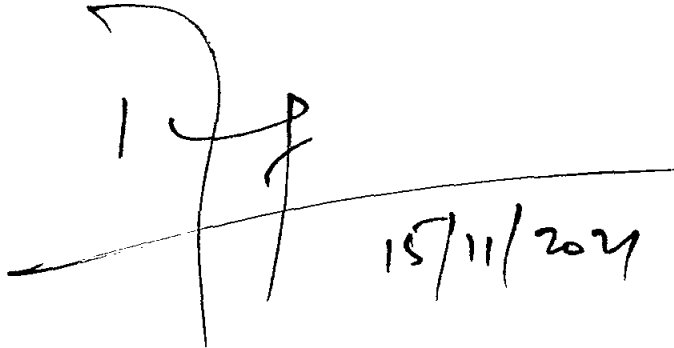


(Engr. Rafique Ahmed Shaikh)  
VC/Member



(Engr. Tauseef H. Farooqi)  
Chairman

\* My dissent note is enclosed.



**Dissenting Note by Chairman NEPRA:**

I had the privilege of reading the decision of the three learned Members of NEPRA whereby they had held that the Bestway Cement Limited (BCL) was required to update the security deposit for change of name in the record of IESCO as per provisions of Consumer Service Manual. However, with utmost respect to my learned brothers, I record my dissent to the said decision for reasons recorded herein.

2. The Honourable Islamabad High Court vide its judgment dated 28.07.2021 in Writ Petition No.3862/2020 had directed NEPRA as follows:

“5. For the above reasons, the petition is allowed and it is declared that the impugned order, dated 09.11.2020, has been passed without lawful authority and without taking into consideration the crucial fact that order, dated 02.10.2018, had been set aside by this Court. The complaint of the Petition Company would be treated as pending before the Authority. The latter, after affording an opportunity of hearing to the parties, shall decide the complaint afresh in accordance with law, inter-alia, having regard to the observations made vide order, dated 30.07.2020. The Court expects that the Authority will decide the matter expeditiously, preferably within ninety days from the date of receiving a certified copy of this order.”

[Emphasis added.]

3. The Honourable Court in its order dated 30.07.2020 in an earlier Writ Petition had directed as follows:

*“The relevant portion of the Authority’s reasoning is contained in paragraph 9 of the impugned order, dated 02.10.2018. A plain reading of the said order shows that the Authority has not appreciated the scheme of law. The sanction of merger of two juridical persons, had led to the extinction of PAKCEM Limited because upon completion of the merger process, it had ceased to exist. The entity which inherited the assets of the later was the applicant i.e. Bestway Cement Limited. The Petitioner company was, therefore, entitled to seek transfer of documents from the name of the non-existent juridical person i.e. PAKCEM Limited. By accepting the reasoning of the Authority, this court would be affirming acts to be done in a non-existent juridical person. This would obviously not be tenable in law.”*

4. Keeping the above directions of the Honourable Court in view and to consider the petition of BCL afresh with an open mind, the matter was also referred to the Securities Exchange Commission of Pakistan (SECP) for seeking a clarification in the matter, who responded vide its letter dated 07.10.2021. The operative part of the SECP is as under:

*“With effect from the date of Order of Honourable Islamabad High Court, sanctioning the merger of M/s PAKCEM Limited (transferor company) with and into M/s Bestway Cement Limited (transferee company) i.e. August 18, 2016, the transferor company has been merged into transferee company and the records of the transferor company maintained by the SECP have been combined with those of transferee company. Consequently, the transferee company being the surviving entity continues to operate*



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*under its existing name i.e. Bestway Cement Limited. Thus, in the instant case, the requirements of law for change of name are not applicable."*

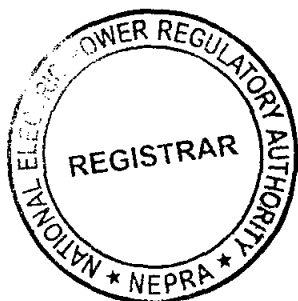
5. It appears my learned brother Members, in their decision have relied on the earlier reasoning given by the Authority in its determination dated 02.10.2018. However, the Honourable Islamabad High Court's above order clearly shows that the said reasoning was rejected by the Honourable Court being contrary to the law and NEPRA was directed to consider the matter afresh keeping in view the observations made by the Honourable Court. The said decisions of the Honourable Islamabad High Court were not challenged by any party including NEPRA and thus, the same attained finality.

6. It is pertinent to note here that the after sanction of the said merger/amalgamation by the Honourable Court, BCL absorbed PCM into itself through a horizontal merger. A horizontal merger occurs when two identical natured business are absorbed to form a single company. Consumer Service Manual (CSM) clearly states that in case the change of ownership occurs then they will have to update the security deposit which did not occur in the instant case as PCM and BCL were amalgamated/merged together meaning two separate entities were combined in which BCL took control of PCM assets and shares and did not change ownership in the traditional sense.

7. I agree with my learned brother Members that the Consumer Service Manual applicable in the instant case shall be one in force at the time the merger/amalgamation took place i.e. Consumer Service Manual 2011 (CSM 2011), and subsequent changes made in the CSM shall not apply. However, in my considered view the CSM 2011 did not contain any clauses for updating security deposit in the case of merger/amalgamation and the relevant clauses were subsequently added in 2021. Thus, the said clauses cannot be given retrospective effect. Even otherwise the fact that the clauses regarding merger/amalgamation were added in new CSM 2021 for security updation, itself shows that the same was not covered in the earlier CSM 2011.

8. My learned brother Members have also referred to Section 45 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act) to state that the provisions of the NEPRA Act, rules and regulations made thereunder shall have overriding effect on other laws. However, I find it difficult to subscribe to the preposition that the Consumer Service Manual (that is formulated by distribution licensees and approved by NEPRA) can override the Companies Act and schemes approved thereunder by the Honourable Courts.

7. Therefore, in my humble opinion, BCL does not need to update the security deposit since BCL being the transferee company is the surviving entity and continues its operations till date, as also verified by the SECP, hence clause 5.2(a)(ii) and (b) of CSM do not apply in the instant case.



**Tauseef H. Farooqi**  
**Chairman NEPRA**