



National Electric Power Regulatory Authority
Islamic Republic of Pakistan

NEPRA Office Building, G-5/1, Attaturk Avenue (East), Islamabad
Phone: 051-9206500, Fax: 051-2600026

Website: www.nepra.org.pk, Email: registrar@nepra.org.pk

OFFICE OF THE
REGISTRAR

No. NEPRA/CAD/TCD-01/11624-26

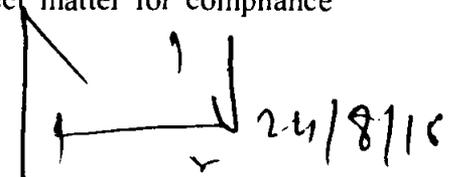
August 24, 2016

Chief Executive Officer
Peshawar Electric Supply Company (PESCO)
WAPDA House, Sakhi Chashma,
Shami Road, Peshawar

Subject: **DECISION IN THE MATTER OF COMPLAINT FILED BY BESTWAY CEMENT LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST PESCO**
Complaint PESCO-106/2014

Please find enclosed the Order of NEPRA in the subject matter for compliance within thirty (30) days of receipt of the Order.

Encl:/As above


(Iftikhar Ali Khan)
Director

Copy:-

1. General Manager (Commercial)
Peshawar Electric Supply Company (PESCO), WAPDA House, Sakhi Chashma,
Shami Road, Peshawar
2. Mr. Mahmood Afzal
Director (Works), Bestway Cement Limited, 12 KM, Tzxila-Haripur Road,
Farooqi Tehsil & District Haripur.



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NEPRA)

Complaint No. PESCO-106/2014

Bestway Cement Limited **Petitioner**
19-A, College Road, F-7, Markaz,
Islamabad.

Versus

Peshawar Electric Supply Company Limited **Respondent**
Peshawar.

Date of Hearing: March 3, 2016

Date of Decision: August 23, 2016

On behalf of

Complainant: (i). Mr. Zaka Ullah Baloch, Manager (Legal)
(ii). M. Umar K Vardag, (Legal Counsel)
(iii). Mr. Abdul Hameed, (Sr. Assistant Manager)

Respondent: (i). Qazi.M.Tahir, Superintending Engineer, Abbottabad

Subject: - **DECISION IN THE MATTER OF COMPLAINT FILED BY BESTWAY CEMENT LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 REGARDING SECURITY DEPOSIT.**

ORDER

This Order shall dispose of the complaint dated September 02, 2014 filed by Bestway Cement Limited (hereinafter referred to as "the Complainant" or "Petitioner" or "BCL") under Section 39 of the Regulation Generation, Transmission and Distribution of electric Power Act, 1997 (hereinafter referred to as "NEPRA Act") against Peshawar Electric Supply Company Limited (hereinafter referred to as "the Respondent" or "PESCO").

2. The Complainant in its complaint submitted that it is a company incorporated under the Companies Ordinance 1984 (Companies Ordinance) and is one of the largest cement producing entity of

the country. It acquired Mustehkam Cement Limited (MCL) a public sector entity through a transparent process of privatization from Government of Pakistan in 2005. MCL continued to operate as a separate legal entity till March 13, 2014. In view of the economies of scale and to carry out the business more efficiently, the managements of MCL and BCL decided to have a merger of the said companies. Accordingly, a proposal for the merger of the said companies was filed with Islamabad High Court and the same was approved. Resultantly, MCL merged with BCL under Section 287 of the Companies Ordinance vide order dated September 30, 2013 of Islamabad High Court. Due to the said merger, MCL ceases to exist anymore as a separate legal entity. In view of the said, MCL approached PESCO for change of name of the bonafide consumer appearing on electricity bill. In response, PESCO asked for submission of some documents which were duly submitted on February 10, 2014. However, after submission of documents, PESCO informed that no policy about the merger exists and asked to submit documents and security deposit (amounting to Rs. 64,080,000) for change of name. The Complainant contested that demand of PESCO for up-dation of security deposit was unjustified as there was neither any change in the factory premises nor request for new load was made. Further, there is also no change in ownership / Board of Director (BoD) of consumer.

3. The complaint was taken up with PESCO on September 15, 2014 for submission of para wise comments. After a hectic follow up, PESCO submitted its response stating MCL and BCL are its consumers with separate electricity connections located at Hattar, District Haripur and Farooqia, District Haripur respectively. A few years back, the management of BCL purchased MCL and later merged the same in itself. PESCO contested that the case pertains to change of ownership therefore, it is obligatory for the consumer to apply for change of name along with written consent of the previous owner regarding transfer of security deposit in the name of new owner. Further, PESCO stated that the Complainant was trying to avoid the updation of security deposit without going into proper procedure as envisaged in the Consumer Service Manual and wanted change of name based on the decision of Islamabad High Court.

4. The above submissions of PESCO were sent to the Complainant for its views/comments/rejoinder. In reply to the said, the Complainant submitted that MCL has merged with BCL, however, PESCO continued to issue the electricity bills in the name of MCL which ceases to exist anymore as a separate legal entity. The Complainant added that the case is not that of transfer of ownership rather it is the same as that of successor-in-interest.

5. In order to further examine the merits of the case it was considered appropriate to hold a hearing of parties (i.e. Complainant and PESCO). Accordingly, the hearing was held on March 3, 2016 at NEPRA Head Office which was attended by the representatives of both parties. During the hearing, the Complainant was asked to provide list of Board of Directors, scheme of amalgamation, acknowledgment of SECP etc. In the said hearing, the Complainant requested for allowing fifteen (15) days' time for

submission of its written arguments and other supporting documents. Subsequently, the Complainant vide its letter dated March 21, 2016 submitted the requisite documents including the name of its directors. In its arguments BCL submitted that MCL was a consumer of PESCO as stipulated under section 2(iv) of NEPRA Act. The said section clearly indicates that consumer may be a person his successor-in-interest. After the merger, BCL is successor-in-interest of MCL. The Complainant submitted that the Authority in a similar case of Dewan Hattar Cement Limited had directed PESCO for change of name without updation of security deposit and considered DHCL as successor-in-interest of Saadi Cement Limited. PESCO in its written arguments reiterated its earlier version of arguments. The case was further discussed in detail in another hearing held on May 30, 2016 which was attended by both the parties.

6. The case has been examined in details in light of documents made so available by the parties, arguments advanced during the hearings and applicable law. The conclusion in this regard as following: -

- i. The BCL purchased MCL in 2005, an entity in public sector, through Privatization Commission, Government of Pakistan in an open bidding. After the assuming of MCL, the Complainant approached the Islamabad High Court for merger of MCL with it. The Honorable High Court vide its order dated September 30, 2009 approved the merger.
- ii. The terms "consumer" has been defined in NEPRA Act Section 2(iv) as follows: - "consumer" means a person or his successor-in-interest who purchases or receives electric power for consumption and not for delivery or re-sale to other, including a person who owns or occupies a premises where electric power is supplied (emphasis added).
- iii. As per Blacks law Dictionary, Seventh Ed, successor-in-interest is one who follows another in ownership or control of property. A successor-in-interest retains the same rights as the original owner, with no change in substance.
- iv. As per provisions of Consumer Service Manual, upon change of ownership, the security deposit is required to be updated as per prevailing rates. In the instant case, the honorable Islamabad high Court approved merger of both companies in September 2009. The Complainant approached PESCO in October 2013 for change of name and at the time, there was no change in ownership, therefore demand of PESCO for updation of security deposit is not justified.
- v. In a case of similar nature, the Authority declared Dewan hattar Cement Limited as successor-in-interest of Saadi Cement Limited and the claim of PESCO with respect to updation of security deposit was dismissed.



7. It needs to be understood that amalgamation is an absorption of one company into another. The Court while sanctioning the scheme of amalgamation, approves the transfer of asset and liabilities. These include rights and power of every description and duties as well. The company from whom the transfer of property and liabilities takes place is order to be dissolved. Therefore, there is no force in the arguments of Respondent.

8. In consideration of above, PESCO is directed to approve change of name of MCL into BCL without updation of security deposit, later being successor-in-interest of the former and submit compliance report within 30 days.


Member (Consumer Affairs) 23/8/16

Islamabad, August 23, 2016

