



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

**Registrar**

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No. NEPRA/CAD/TCD 02 / 1887-90

February 9, 2018

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

**Subject: Order in the matter of Complaint filed by Bestway Cement Limited, Chakwal through Mr. Irshad Ali Ameer, General Manager (Works) under Section 39 of the NEPRA Act, 1997 against IESCO regarding Security Deposit and Change of Name**  
Complaint # IESCO-01/2017

Please find enclosed herewith Order of the Member (Consumer Affairs) dated 08.02.2018 (05 Pages) regarding the subject matter for necessary action and compliance within thirty (30) days of receipt of this Order.

Encl: As above

( Iftikhar Ali Khan )

Director  
Registrar Office

Copy to:

1. Chief Engineer / Customer Services Director  
Islamabad Electric Supply Company Ltd. (IESCO)  
Street No. 40, Sector G-7/4, Islamabad
2. General Manager (Works)  
Bestway Cement Limited,  
22 KM Kalar Kahar-Choa Saidan Sahah Road,  
Village Tatrai, Tehsil Choa Saidan Shah,  
District Chakwal
3. Bestway Cement Limited  
19-A, College Road,  
F-7/Markaz, Islamabad



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

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

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

.....

**Complainant**

**Versus**

**Islamabad Electric Supply Company (IESCO)**  
Head Office IESCO, Street No. 40, G-7/4  
Islamabad.

.....

**Respondent**

**Date of Hearing:** 30<sup>th</sup> March 2017

**Date of Order:** February 08, 2018

**On behalf of**

**Complainant:** i. Mr. Zakauallah Baloch, Manager  
ii. Mr. Muhammad Umer K Verdag, Legal Counsel

**Respondent:** i. Mr. Muhammad Naeem Jaan, Addl. Manager P&E  
ii. Mr. Waheed Akram, Manager CS  
iii. Mr. Imam Bakhsh, Addl. Dy. Manager

**Subject:** ORDER IN THE MATTER OF COMPLAINT FILED BY BESTWAY CEMENT LIMITED THROUGH MR. IRSHAD ALI AMEER, GENERAL MANAGER (WORKS) UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST IESCO REGARDING CHANGE OF NAME

**ORDER**

1. This Order shall dispose of the complaint filed by Bestway Cement Limited, Chakwal (hereinafter referred to as the "Complainant" or "BCL") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") against the Islamabad Electric Supply Company Limited (hereinafter referred to as the "Respondent" or "IESCO").

2. Brief facts of the case are that the Complainant is a public limited company and a consumer of the Respondent. BCL has executed a Scheme of Arrangement for Amalgamation, under the Sections 284 to 287 of the Companies Ordinance, 1984 between BCL and PAKCEM Limited (hereinafter referred to as "PCM"). As per the provisions of the

Companies Ordinance, 1984, the Scheme was submitted by the Complainant to the Islamabad High Court vide Civil Petition No. 08/2016. Subsequently, this Scheme of Arrangement of Amalgamation between BCL and PCM was sanctioned by the Honorable Islamabad High Court vide order dated 18<sup>th</sup> August 2016, and thereby given legal effect.

3. Subsequently, BCL informed IESCO about the court-sanctioned amalgamation, vide letter dated 8<sup>th</sup> September 2016, 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 vide letter dated 26<sup>th</sup> September 2016 submitted as under:

*“As per Commercial Procedure and NEPRA’s standing instructions in case of change of ownership, change of name is mandatory. You are therefore required to apply for proper change of name immediately to avoid complication/inconvenience in future”*

4. 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 but 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. IESCO vide letter dated 1<sup>st</sup> November, 2016 demanded from BCL to apply for change of name on the prescribed form and abridged conditions of supply along with pre-requisite documents.

5. In consequence, BCL proceeded to file a complaint with NEPRA under Section 39 of the NEPRA Act, vide letter dated 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 (hereinafter referred to as the “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.

6. The matter was taken up with IESCO. In response, IESCO vide letter dated 16<sup>th</sup> January 2017 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 vide letter dated 10<sup>th</sup> February 2017 intimated to BCL that further proceedings in the matter had been held in abeyance.

7. Subsequently, 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"*

8. The order of the Honorable High Court was intimated to NEPRA by BCL vide letter dated 24<sup>th</sup> February 2017, and proceedings on the subject matter were sought to be continued. In pursuance of the orders of the Honorable High Court, a hearing was held on 30<sup>th</sup> March 2017 at NEPRA Head Office, Islamabad to resolve the impugned issue. During the hearing, both the parties reiterated their previous arguments on the impugned issue and those already enumerated vide documents pertaining to the complaint. Further clarifications on the issue were sought by NEPRA vide letters dated 18<sup>th</sup> October 2017 and 11<sup>th</sup> December 2017, which were provided by BCL vide letter dated 22<sup>nd</sup> December 2017.

9. The case has been examined in detail in light of the relevant documents, arguments advanced during the hearing and the applicable law. The controversy in the instant case is whether the amalgamation of BCL with PCM constitutes a change of ownership (requiring payment of an updated security deposit) or a case of succession-in-interest.

10. The Complainant has applied for change of name to the Respondent in accordance with the provisions of the CSM relating to security deposits, provided as follows:

<p>5.2 SECURITY DEPOSIT</p> <p>(a) Security Deposit is non-transferrable except as follows –</p> <p>i) <u>Relocation of Premises</u></p> <p><i>If the consumer moves to a new location within the Exclusive Service Territory of DISCO and requests for a new connection at that location</i></p> <p>ii) <u>Change of Name</u></p> <p><i>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</i></p> <p>iii) <u>Through Succession</u></p> <p><i>Upon death of the consumer, the Security Deposit shall be transferred according to the Succession Certificate granted by the court of competent jurisdiction.</i></p> <p><i>Provided that the Security Deposit shall be updated and transferred if no arrears are outstanding</i></p> <p>(b) <i>In case of change of tariff category, shifting of site and <u>change of ownership</u>, the security amount shall be updated according to prevailing rates. In case of extension of load, the amount of security at prevailing rates shall be recovered to the extent of incremental load and not on the entire load.</i></p>
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11. BCL has asserted that their amalgamation with PCM is a succession-in-interest, thereby attracting the provisions of Article 5.2(a)(iii) of the CSM and requiring no revision and updation of the concerned security deposit.

12. The Courts have interpreted amalgamations under Section 287 of the Companies Ordinance, 1984 as an "absorption of one company into another" [2016 CLD 902]. This can include amalgamation of authorized capital, property, assets, etc into a single, combined, corporate entity. In the case of BCL and PCM, the Scheme of Arrangement for Amalgamation between the two entities deals with the subject matters of rights, liabilities, obligations, charges, assets etc.

13. Having said so, the issue of ownership of PCM is not a subject matter of their Scheme of Amalgamation. This is because the acquisition or purchase of PCM by BCL had previously occurred on 24<sup>th</sup> April 2015, as admitted by BCL in para (i) of their letter dated 22<sup>nd</sup> December 2017. From 24<sup>th</sup> April 2015 till 18<sup>th</sup> August 2016, PCM and BCL continued to operate as separate, distinct and functioning corporate bodies, with separate and distinct Boards of Directors (as illustrated below). As such, it is untenable to presume that during this time period, the companies had executed a transaction amounting to succession-in-interest. 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.

<b>Board of Directors of BCL and PCM as of 24-05-2015 (i.e. at the time of purchase/acquisition of PCM)</b>		
<b>S. No.</b>	<b>PAKCEM Limited (PCM)</b>	<b>Bestway Cement Limited (BCL)</b>
1.	Maj. Gen (r) Rehmat Khan	Sir Mohammed Anwar Pervez
2.	Mr. Amr Ali Reda	Mr. Zameer Mohammad Choudrey
3.	Mr. Shafqat Mahmoon Malik	Mr. Mohammed Younus Sheikh
4.	Mr. Fabrizio Angelo Olivares	Mr. Muhammad Irfan Anwar Sheikh
5.	Mr. Hugues Boissel Dombrevail	Ms. Najma Naheed Pirzada
6.	Ms. Jeannine Saleh	Mr. Dawood Pervez
7.	Mr. Shahid Anwar (Nominee NIT)	Mr. Arshad Mehmood Chaudhary

\* Reference: BCL's letter dated 22<sup>nd</sup> December 2017.

14. Further, it is pertinent to highlight that the obligation for applying for change of name and transfer of security deposit, under clause 5.2(ii) of the CSM, 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(ii) of the CSM, was obligated to apply for change in name 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.

15. In view of the foregoing, it is determined that the purchase/acquisition of PCM by BCL dated 24<sup>th</sup> April 2015 is a change in ownership rather than succession-in-interest and therefore attracts the provisions of Article 5.2(b) of the CSM. This finding is in consonance with the preceding order of the Authority dated 15<sup>th</sup> March 2017 in the matter of appeal filed by the Peshawar Electric Supply Company Limited (**PESCO**) under Section 12-A of the NEPRA Act against the decision of Member (Consumer Affairs) in the matter of complaint of Bestway Cement Limited, Haripur against PESCO regarding security deposit.

16. IESCO is hereby 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. A compliance report in this regard be submitted within thirty (30) days.

Islamabad, February 08 , 2018

Member (Consumer Affairs)