



Registrar

National Electric Power Regulatory Authority
Islamic Republic of Pakistan

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No. NEPRA/CAD/TCD 01/ 8018-19

May 25, 2017

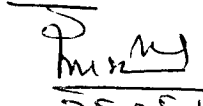
1. Chief Executive Officer,
Peshawar Electric Supply Company Ltd.
WAPDA House, Shami Road,
Sakhi Chashma,
Peshawar
2. Bestway Cement Limited
19-A, College Road,
F-7 Markaz, Islamabad.

Subject: **ORDER OF THE AUTHORITY REGARDING APPEAL FILED BY PESHAWAR ELECTRIC SUPPLY COMPANY LIMITED (PESCO) AGAINST THE DECISION OF MEMBER (CONSUMER AFFAIRS) DATED 23RD AUGUST 2016 IN THE MATTER OF COMPLAINT OF BESTWAY CEMENT LIMITED AGAINST PESCO REGARDING SECURITY DEPOSIT**

Reference is made to Appeal filed by Peshawar Electric Supply Company Limited (PESCO) against the decision of Member (Consumer Affairs), NEPRA dated 23rd August 2016 regarding the subject matter.

2. Enclosed find herewith the Order of the Authority (05 pages) regarding the subject Appeal for information and necessary action, please.

Encl: As above


25.05.17
(Syed Safer Hussain)



BEFORE THE
NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
(NERPA)

Peshawar Electric Supply Company Limited
WAPDA House, Warsak Road, Peshawar

Appellant

Versus

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

Respondent

Date of Hearing: December 22, 2016

Date of Order: March 15, 2017

On Behalf of

Appellant:

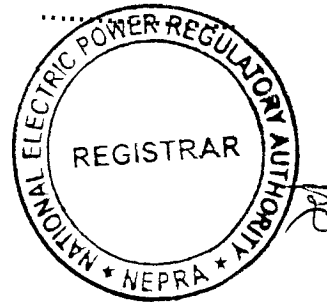
(i) Qazi M. Tahir
(ii) Mr. Saeed Khan

Superintending Engineer, Abbottabad
Legal Counsel

Respondent:

(i) Mr. Zaka Ullah Baloch
(ii) Mr. Umar K. Vardag
(iii) Mr. Abdul Hameed

Manager (Legal)
Legal Counsel
Sr. Assistant Manager



SUBJECT: **ORDER IN THE MATTER OF APPEAL FILED BY PESHAWAR ELECTRIC SUPPLY COMPANY LIMITED (PESCO) UNDER SECTION 12-A OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST DECISION OF MEMBER (CONSUMER AFFAIRS) IN THE MATTER OF COMPLAINT OF BESTWAY CEMENT LIMITED AGAINST PESCO REGARDING SECURITY DEPOSIT.**

ORDER

1. This Order shall dispose of the Appeal filed by the Peshawar Electric Supply Company Limited (hereinafter referred to as the "Appellant" or "PESCO") under Section 12-A of the Regulation Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") against the decision of Member (Consumer Affairs), dated August 23, 2016, in the matter of Complaint filed by Bestway Cement Limited (hereinafter referred to as the "Respondent" or "BCL").

2. Brief facts of the case are that NEPRA received a complaint, dated September 2, 2014, from BCL wherein it was submitted that it is a company incorporated under the Companies Ordinance, 1984 (the "Companies Ordinance") and is one of the largest cement producing entities in the country. As part of the privatization process of the Government of Pakistan,

Mustehkam Cement Limited (the "MCL"), a former public sector entity, was merged into Bestway Cement Limited as per decision of the Islamabad High Court, dated September 30, 2013.

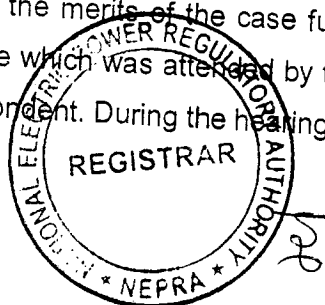
3. Consequently, BCL approached PESCO for change of name on electricity bills to be issued to the new corporate entity, vide letter No. MCL-Admin-155-7033 dated October 22, 2013. PESCO responded by requesting further documentation from BCL, which was duly submitted by the same. After receiving all required documentation, PESCO responded to BCL, vide letter No. M(P&E)/1180 dated March 07, 2014, that 'no policy exists regarding merger of name' and advised BCL to instead submit an application for change of name from Mustehkam Cement Limited to Bestway Cement Limited. Accordingly, BCL was informed that the required security deposit for the post-merger entity was to be revised up to Rs. 64,080,000 by PESCO.

4. BCL proceeded to file a complaint under section 39 of the NEPRA Act, submitting that upward revision of the concerned security deposit was unjustified as the merger did not cause any change in factory premises or electricity load, ownership or management of the consumer.

5. The complaint was taken up with PESCO on September 15, 2014 for submission of para wise comments on the matter. After a prolonged pursuit by the Authority, PESCO submitted its response stating that MCL and BCL are its consumers with separate electricity connections located at Hattar and Farooqia, District Haripur, respectively. In the preceding years, the management of BCL purchased MCL and later merged the same in itself. It was asserted that the case pertained to change of ownership and, 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. PESCO further alleged that BCL was attempted to evade upward revision of the security deposit, as per prescribed procedure under the Consumer Service Manual, and instead sought change of name based on the decision of Islamabad High Court.

6. PESCO's submissions were forwarded to BCL for review and comment. In response, the Respondent submitted that MCL has merged with BCL, which is a case of successor-in-interest rather than change in ownership. MCL was merged with BCL and the former consequently ceased to exist as a legal entity. It was further submitted that despite of the foregoing, PESCO continued to issue the electricity bills in the name of MCL.

7. In order to examine the merits of the case further, a hearing was held on March 3, 2016 at NEPRA Head Office which was attended by the representative(s) of both parties i.e. the Appellant and the Respondent. During the hearing, the Respondent was asked to provide



a list of Board of Directors, a scheme of amalgamation, acknowledgement of the SECP and other documentation relating to the merger.

8. The Respondent submitted the requested documentation, vide its letter dated March 21, 2016, along with written arguments. The arguments forwarded were that section 2 clause (iv) of the NEPRA Act explicitly stipulates that a 'consumer' include a person or his successor-in-interest. BCL, being a successor-in-interest of MCL due to a merger between the two, is a consumer of PESCO as a successor-in-interest and therefore, falls within the definition of 'consumer' under the NEPRA Act. Furthermore, in a similar case of Dewan Hattar Cement Limited (DHCL), PESCO was directed to process the case as that for a change of name without revisions to the security deposit and consider DHCL as a successor-in-interest of Saddi Cement Limited.

9. PESCO in its written arguments reiterated its earlier submissions.

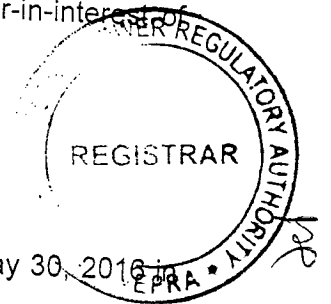
10. The case was deliberated upon in detail in another hearing held on May 30, 2016 in which both parties were in attendance.

11. The case was examined in detail in light of documents made so available by the parties, arguments advanced during the hearings and applicable law. Accordingly, the complaint was disposed of vide decision of Member (Consumer Affairs) dated August 23, 2016, whereby PESCO was directed to approve change of name of MCL to BCL without any upward revision of the security deposit as BCL was a successor-in-interest of MCL.

12. Being aggrieved with the preceding decision of the Member (Consumer Affairs), PESCO filed the instant Appeal under Section 12-A of the NEPRA Act. The Appeal was admitted by the Authority and a hearing was held on December 22, 2016 at NEPRA Head Office, Islamabad.

13. During the hearing, representatives of PESCO submitted that BCL and MCL were two distinct entities, where the former acquired the latter in 2005 and applied to PESCO for change of name in 2013. As such, the case pertains to change of ownership rather than change of name and requires upward revisions to the required security deposit, as per Chapter 5 of the Consumer Service Manual and the applicable Abridged Conditions of Supply.

14. Representatives of BCL highlighted that MCL was purchased by BCL from the Privatization Commission of the Government of Pakistan and was merged into BCL through the orders of the Islamabad high Court, dated September 30, 2013. As such, all assets rights and liabilities were transferred to the amalgamated and merged company, namely BCL.



Further, the merger was not a court sanctioned change of ownership under section 287 of the Companies Ordinance, which prevails over other laws in such cases being a special law on the subject matter. The Respondent also emphasized a preceding decision of the Authority, namely the Dewan Hattar case, which, on similar facts, was decided against PESCO. It was also contended that the provisions of the Consumer Service Manual (CSM) relating to security deposits deal with individuals and are not applicable in the case of corporations or companies.

15. This case has been examined in detail in light of the relevant documents, arguments advanced during the hearing and the applicable law. The provisions of the CSM relating to security deposits provide as follows –

5.2 SECURITY DEPOSIT

(a) Security Deposit is non-transferrable 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

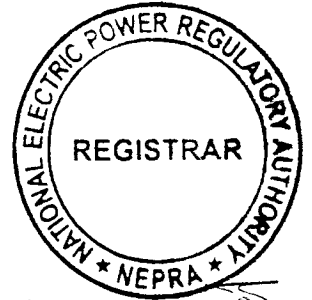
iii) Through Succession

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

16. As explained above, security deposit is non-transferable except in cases of relocation of premises, change of name or succession. In such cases, a security deposit shall be updated and transferred only where no arrears are outstanding. Further, clause 5.2(b) of CSM envisages that in case of change of ownership, the security amount shall be updated according to prevailing rates.

17. MCL was purchased/acquired by BCL from the Privatization Commission, Government of Pakistan in the year 2005. At the time of purchase, the Board of Directors of both companies were separate and distinct. In the year 2013, the merger of BCL and MCL was approved by the Islamabad High Court, wherein management of the newly merged company was



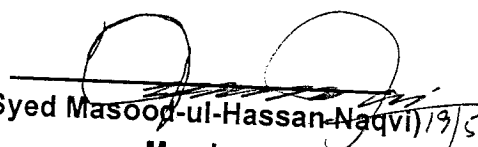
sanctioned and MCL ceased to exist as a separate legal entity. As such, it is untenable to presume that the merger between the two entities is that of succession-in-interest, since BCL had already acquired BCL, in 2005, at the time when the court approved the merger, in 2013

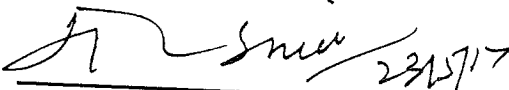
18. Further, a successor-in-interest is defined as "one who follows another in ownership or control of property (and) retains the same rights as the original owner, with no change in substance" [Blacks Law Dictionary, 7th Edition]. The assets and property of MCL were acquired by BCL in 2005, along with all associated rights and liabilities at the time of purchase. The 2013 merger sanctioned by the Court did not, in fact, transfer any rights or liabilities of MCL to BCL since the same had already vested with the latter. Hence, in this context, the 2013 merger between the two entities cannot be construed as a succession-in-interest.

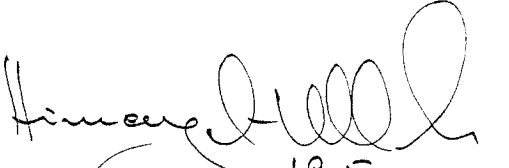
19. Lastly, the facts of the Dewan Hattar case are different from the facts of the instant case. In the case of Dewan Hattar, the concerned company applied for change of name prior to promulgation of the Consumer Service Manual, which came into effect as of May 3, 2010. In the instant case, change of name was conducted in 2013 and therefore, the provisions relating to the subject matter in the Consumer Service Manual are applicable.

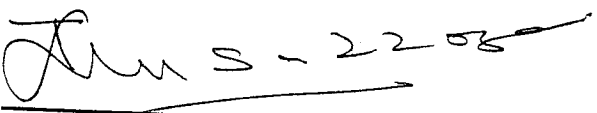
20. Having examined the relevant documents, applicable law and arguments forwarded by the disputing parties, the Authority finds that the transfer/purchase of MCL by BCL constitutes a change in ownership, rather than succession-in-interest, and therefore attracts the requirement of revision of security deposit under 5.2(a)(ii) & 5.2(b) of the Consumer Service Manual.

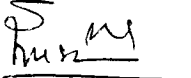
21. In view of foregoing, the Appeal filed by PESCO is hereby accepted and the order of the Member (Consumer Affairs) dated August 23, 2016 stands repudiated. BCL is hereby directed to pay the revised security deposit due to change of ownership in accordance with the provisions of the Consumer Service Manual.


(Syed Masood-ul-Hassan-Naqvi) 19/5
Member


(Maj. (Retd.) Haroon Rashid)
Member


19.5.17
(Himayat Ullah Khan)
Member


(Tariq Saddozai)
Chairman


25.05.17

