



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 79 of 2023

TPL Life Trakker Limited

...Appellant

Versus

Director/Head of Department, Adjudication Department-I

...Respondent

Date of hearing:

September 21, 2023

Present:

For the Appellant:

1. Mr. Syed Bulent Sohail, Advocate
2. Mr. Salman K. Haider, Advocate

For the Respondent:

1. Mr. Mehboob Ahmad, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication-I, SECP
3. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication- I, SECP

ORDER

1. This Order shall dispose of Appeal No. 79 of 2023 filed by M/s. TPL Trakker Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated May 15, 2023 (the "Impugned Order") passed by the



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Director/HOD, Adjudication-I (the “Respondent”) under section 199 of the Companies Act, 2017 (the “Act”) read with section 479 thereof read with the regulation 5(6) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (the “Regulations”).

2. The brief facts of the case are that a review of the Appellant’s unconsolidated financial statements for the year ended June 30, 2021 revealed that there is no mechanism instituted for the recovery of accrued interest receivable from associated companies. The Securities and Exchange Commission of Pakistan (the “Commission”) sought clarifications from the Appellant regarding the recovery of mark-up in accordance with the regulatory requirements, however, no response was received from the Appellant. Subsequently, a notice was issued under section 254(1) of the Act to call for further information in the matter, to which the Appellant responded wherein *inter alia* it was stated that the mark-up will be recovered at the end of maturity. The show-cause notice dated January 11, 2023 (the “SCN”) was issued to the Appellant, and after considering the submissions of the Appellant rendered in the hearings, the Respondent, vide Impugned Order imposed a penalty of Rs. 200,000/- on the Appellant on account of contravention of the aforementioned provisions of the Act and Regulations.
3. The Appellant has preferred the instant Appeal, *inter alia*, on the grounds that the Appellant is fully committed to abide by the law and asserted that they have consistently endeavoured to adhere to the law in true letter and spirit. The Counsel for the Appellant submitted that it had sought legal advice from a reputable law firm to interpret SRO No. 1239(I)/2017 dated December 06, 2017 in conjunction with section 199 of the Act and according to the legal opinion obtained, the Appellant’s agreements were aligned with the law where it can provide loan to its associated companies. The Appellant contended that their actions were not intentional as there was no *mens rea* involved and highlighted their history of complying with the law. They assured the Appellate Bench (the “Bench”) of their commitment to fully comply with the legal requirements. The Appellant requested the setting aside of the Impugned Order.
4. The Respondent rebutted the grounds of the Appeal and presented arguments in support of their stance. It was contended by the Respondent that the Appellant’s contraventions of the Act were evident during the review. The Respondent specifically highlighted section 199 of the Act and

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regulation 5(6) of the Regulations, which explicitly prohibits providing loans to associated companies except on an 'arm's-length' basis. The Respondent also noted that, contrary to the Act, the records indicate that the Appellant provided a loan facility to its associated companies without interest. Additionally, the Respondent argued that the Appellant consistently reported losses and if the Appellant were to recover the interest amount on the loans extended to associated companies, the financial situation would have been different. It was also contended by the Respondent that accrued interest due from associated companies of the Appellant increased from Rs. 121.999 million in 2020 to Rs. 283.946 in 2021. Moreover, the Respondent submitted that imposition of penalties on the Appellant is strictly in accordance with the law.

5. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the contention of the Appellant, that failure to comply with the Act and Regulations is unintentional as it relied on a legal opinion does not absolve the Appellant from committed violations. The recovery of interest/mark-up periodically and on regular basis is a mandatory requirement under section 199 of the Act read with regulation 5(6) of the Regulations and any agreement between the Appellant and its associated companies cannot override the explicit dictates of legal provisions. The Bench also considers that the interest and trust of shareholders has been violated. The Appellant has submitted before the Bench that it has already started recovering the interest amount from its associated companies and it will provide the relevant details along with repayment schedule to the concerned department regarding recovery of the remaining interest amount. In view of the commitment to recover the interest, the Bench has not enhanced the penalty.
6. In view of the foregoing, the Bench finds no reason to interfere in the Impugned Order. Therefore, the instant Appeal is **dismissed** without any order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: 26 MAR 2024