



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 97 of 2017

TPL Trakker Limited

Appellant

Versus

Assistant Director (PRPD), SECP, Islamabad.

Respondent

Date of hearing:

11/10/17

Present:

For Appellant:

Mr. Danish Qazi, Company Secretary.

For Respondent:

- i. Mr. Muhammad Farooq Bhatti, Additional Director (SMD)
- ii. Mr. Asif Khan, Deputy Director (SMD)
- iii. Mr. Moeed Hassan, Assistant Director (PRPD)

ORDER

1. This Order shall dispose of Appeal No. 97 of 2017, registered on 06/10/17 (the Appeal), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the letter dated 22/09/17 (the Impugned Letter) issued by the Respondent whereby it was communicated that the proposed acquisition of TPL Direct Insurance Limited (TPL Insurance) by TPL Trakker Limited (the Appellant) is not exempted from the applicability of part IX (Takeovers) of the Securities Act, 2015 (the Act).



Securities and Exchange Commission of Pakistan

2. Brief facts of the case are that Next Capital Limited vide a letter dated August 24, 2017 (the Letter) asked the Securities and Exchange Commission of Pakistan (the Commission) to confirm the exemption from part IX (Takeovers) of the Act for acquisition of shares of TPL Insurance by the Appellant. The Respondent vide the Impugned Letter communicated that the proposed acquisition of TPL Insurance by the Appellant is not exempted from the applicability of part IX (Takeovers) of the Act. As per record, the Appellant with 24.4% shareholding and Greenoaks Global Holdings with 69.1% shareholding are the major shareholders of the TPL Insurance and had control since January 09, 2015. Prior to January 09, 2015, the Appellant had majority shares of 67.4% and control of the TPL Insurance. In view of the above facts the Appellant had applied for exemption of part IX (Takeovers) of the Act being a major shareholder under Section 109(1)(h)(iv) of the Act which exclude those transactions where shares are transferred amongst major shareholders who have been collectively exercising management control of target company for continuous period of three years prior to the proposed acquisition. The relevant part of the provision is reproduced below for reference;

"Section 109. This Part not to apply to certain transactions. (1) Except as provided otherwise in sub-section (2), nothing contained in this Part shall apply to
(h) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,
(iv) major shareholders of a target company collectively exercising management control for a continuous period of three years prior to the proposed acquisition;"

3. The Appellant has preferred this appeal inter alia on the grounds that the Impugned Letter had failed to assign any reason for refusal to grant exemption to the Appellant. The Respondent has failed to consider that the Appellant was qualified and entitled for exemption under Section 109(1)(h)(iv) of the Act and the Appellant and Greenoaks have equal representation in the board of TPL Insurance and prior to 2015, the Appellant had more than 51% shareholding in TPL Insurance. Furthermore, the Impugned Letter has failed to consider that current free float of the TPL Insurance is not as per PSX requirements and in case of acquisition of shares via public offer by



Securities and Exchange Commission of Pakistan

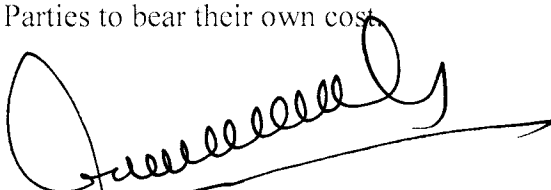
the Appellant, the free float of the TPL Insurance would further reduce and subsequently the Appellant will need to sell the acquired shares to public.

4. The Respondent has rebutted the grounds of appeal and stated that exemption of part IX (Takeovers) of the Act cannot be granted to the Appellant being a major shareholder under Section 109(1)(h)(iv) of the Act because it only exclude those transactions where shares are transferred amongst major shareholders, who have been collectively exercising management control of target company for continuous period of three years prior to the proposed acquisition.
5. The Appellate Bench (the Bench) has heard the parties (Appellant and Respondent) and perused the record. Admittedly, prior to January 09, 2015, the Appellant had majority shares of 67.4% and control of the TPL Insurance. Whereas, since January 09, 2015 the Appellant and Greenoaks Global Holdings have 24.4% and 69.1 shareholding respectively, in the TPL Insurance and being major shareholders both have equal representation and control on the board of TPL Insurance. In view of the requirement of Section 109(1)(h)(iv) of the Act major shareholders are required to have collective management control of target company (TPL Insurance) for continuous period of three years prior to the proposed acquisition. In present case the Appellant and Greenoaks Global Holdings have collective control since January 09, 2015, meaning thereby to meet the required threshold of three years, apparently, the Appellant has to wait till January 09, 2018.
6. We believe that the spirit of Section 109(1)(h)(iv) of the Act is to avoid any hasty takeover detrimental to the existence and interest of target company. As a matter of fact, prior to January 09, 2015 the Appellant had been controlling the management of the TPL Insurance independently and since January 09, 2015 it has collective control as a major shareholder. Therefore acquisition of TPL Insurance shares from Greenoaks Global Holdings would not amount to hasty takeover and it would not harm the interest of TPL Insurance.



Securities and Exchange Commission of Pakistan

7. The Bench believe that in view the spirit of law, the Appellant has control of the TPL Insurance for more than three years. therefore, we do not see any reason to bar the Appellant from acquiring the shares of TPL Insurance from Greenoaks Global Holdings. Therefore, in the above circumstances, we hereby allow this Appeal and set aside the Impugned Letter. Furthermore, we also direct the Appellant to meet the prescribed free float requirement of TPL Insurance within reasonable time.
8. Parties to bear their own cost.



(Zafar Abdullah) - -
Acting Chairman/Commissioner (SCD)



(Tahir Mahmood)
Commissioner (CCD-CLD)

Announced on: **17 OCT 2017**