



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)

In the matter of

Modaraba Al Mali

Number and date of Show Cause Notice (SCN)	No.2(424)SMD/Adj-1/2023 Dated January 08, 2024
Date(s) of Hearings:	February 13, 2024
Present at the Hearing:	i. Mr. Aftab Ahmed Chaudhry (Chief Executive Office) ii. Mr. Inamullah (Company Secretary)

ORDER

UNDER SECTION 111(c) READ WITH SECTION 126(3) OF THE SECURITIES ACT, 2015

This Order shall dispose of the legal proceedings against Modaraba Al Mali (the Acquirer or MODAM) initiated through Show Cause Notice No.2(424)SMD/Adj-1/2023 dated January 08, 2024 (the SCN) issued under Section 111(c) read with Section 126(3)(c) of the Securities Act, 2015 (the Act). MODAM is an Islamic private equity/venture capital vehicle specializing in the restructuring of defunct companies. It is a multipurpose and perpetual Modaraba floated on July 08, 1987. It is being managed by Asset Plex Modaraba Management Limited.

2. Brief facts of the case are:

- a. The Acquirer has acquired and presumed control of MetaTech Health Limited (formerly Hashmi Can Company Limited) (the Target Company) in contravention of Section 111(c) of the Act. The Target Company made announcement on Pakistan Stock Exchange (PSX) dated June 17, 2022 that its board in its meeting held on June 17, 2022 has decided as under:
 - i. Fixed the number of directors to be elected as seven (07), with three (3) as Independent, three (3) as Shareholder, and one (1) full-time professional director to be appointed as the Chief Executive Officer ("CEO");
 - ii. Acknowledge the transfer request for 489,900 (29.99%) made by the sponsors of the Company (as seller) to Modaraba Al-Mali (as buyer), to take effect once the suspension of trading of Hashimi Can Company Limited (PSX Ticker: HACC) is withdrawn by PSX in compliance with PSX Rule book.
- b. The Board of the Target Company had approved the following agenda for holding the Extra Ordinary General Meeting (EOGM) of the Target Company on July 22nd, 2022:
 - i. Election of directors for the next term.
 - ii. Consideration and approval of the Revival Business Plan for the activation of the Company's listing status on PSX with the involvement of Modaraba Al-Mali.



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- c. On June 20, 2022, the Acquirer made announcement on PSX wherein the Acquirer had disclosed as under:

“MODAM has entered into another arrangement with Hashimi Can Company Limited (PSX Ticker: HACC) to acquire 489,900 (29.99% equity capital) shares of HACC (subject to transfer upon the removal of suspension status of HACC by PSX as per PSX Rule book) and lead the revival and rehabilitation of the Company under the proposed name of MetaTech Health Limited and invest in a 3D Technology company manufacturing invisible dentures with 100% of its products exported to the foreign markets.”

- d. The Target company announced on PSX on July 13, 2022 that Mr. Zaheer A. Malik (the Seller), the Chief Executive officer and a substantial shareholder, sold 489,900 (29.99%) voting shares of the Target Company in physical form to the Acquirer at the rate of Rs. 51.03 per share on July 07, 2022. The seller was holding 1,321,568 voting shares constituting 80.90% of the total outstanding voting shares of the Target Company i.e. 1,633,500, before the said sale of shares.
- e. On August 05, 2022, the Target Company made announcement on PSX that the seller has further sold his remaining 831,668 shares (50.91%) of the Target Company at the rate of Rs. 51 per share in physical form to various persons. However, no details have been provided regarding the purchases. Thus, the seller has offloaded his entire shareholding of the Target Company in the following manner:

	Description	Number of Shares	Percentage
1.	Shares sold to the Acquirer on July 07, 2022	489,900	29.99%
2.	Shares sold to various persons as disclosed in announcement dated August 05, 2022	831,668	50.91%
3.	Total shares held by the Seller as per pattern of shareholding provided in Annual Audited Financial Statements of the Target Company for the year ended June 30, 2021	1,321,568	80.91%

3. The Acquirer assumed control of the Target Company in contravention of Section 111(c) of the Act, based on the following grounds:

- i. Subsequent to offloading of entire shareholding by the Seller, the Acquirer remained the only leading sponsor of the Target Company and thus assumed control of the Target Company, thereby becoming liable for compliance of section 111(c) of the Act, which mandatorily includes holding the public offer.
- ii. The Target Company also made announcement on July 15, 2022 on PSX wherein the Target Company itself disclosed that:

“all of the directors had been nominated by Modaraba Al Mali under whose involvement turnaround/ revival plan for the Target Company shall be implemented after its approval in the aforesaid EOGM.”

- iii. The Acquirer made following announcement to PSX on July 15, 2022:



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"As already communicated by HACC the above directors would be elected unopposed in the forthcoming EOGM to be held on July 22nd, 2022."

- iv. Hence, the Acquirer made nominations of individuals to be elected as directors and subsequently, the same individuals were elected as directors by the Acquirer as sponsor in EOGM held on July 22, 2022.
- v. Subsequent to the constitution of the board of the Target Company as nominated by the Acquirer on July 22, 2022, the new board in its meeting held on July 22, 2022 has taken the following policy/ management decisions:
 - a. *Approved the draft of the Term-Sheet for investment of PKR 300Mn in Ensmile, a 3-D invisible denture manufacturing company.*
 - b. *Approved the immediate start of the management/operating of the Islamabad located facility of Ensmile by the Company.*
 - c. *Approved the appointment of Underwriters (M/s Dawood Equities Limited and Adam Securities) and Consultant to the Issue (M/s AssetPlex Limited) for the rights shares' issuance process.*

4. Given that, pursuant to the aforementioned transaction, it has been observed that the Acquirer has *prima facie* acquired and presumed control of the Target Company which amounts to non-compliance of Section 111(c) of the Act. It has also been noted that the Acquirer was most likely enjoying the position of only leading sponsor of the Target Company and apparently in control of the Target Company. The contravention of the law attracts penal provisions provided in Section 126(3) of the Act. Consequently, SCN was served on the Acquirer calling upon it to explain reason for the aforesaid contravention.

5. In response to the SCN, the Acquirer vide letter dated January 16, 2024 submitted as under (relevant extract):

"...1. With respect to points 1 to 4 pertaining to some public announcements having been made separately by Modaraba Al Mali (MODAM) and MetaTech Health Limited (META), it is hereby responded that all announcements regarding the election of directors, and all other material information relating to the sale and purchase of shares by the sponsor shareholder of META, had been in accordance with the prevailing law and regulations.

2. As per point no. 5, the details of the sale of shares 831,668 by the seller to various persons had also been announced by META vide dated August 24, 2022.

3. Regarding point no. 6, it is respectfully submitted that this assertion of the Commission is factually and materially incorrect as MODAM did not nominate any individual for the directorship, and MODAM's inadvertent notice was clarified by following notice.

"Please be apprised that as per law (Companies Act 2017), any candidate for directorship had to file his/her consent individually and there is no concept of nomination of directors by a Company (unless some specific shareholding or the Articles/Memorandum of a particular company envisages such a practice). Hence, MODAM did not send any nomination for any directorship, whatsoever."

In this respect, the attention of the Commission officials is also invited to the following market-available information, so that the Commission becomes aware of the factual position about the process of nomination of individuals (as the candidates for the directorship):

a. On 17th Jun, 2022 the Board of META (when MODAM was not even a shareholder of the Company) comprising solely of the controlling family sponsors/ directors, had notified the market that the Board had "fixed the number of directors to be elected as seven (7), with three (3) as



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Independent, three (3) as shareholder, and one (1) full-time professional director to be appointed as the CEO."

b. On 21st Jun, 2022, META circulated its notice (when MODAM was not even a shareholder of the Company) for the holding of its EOGM on Jul 22nd, 22. In the agenda of the ordinary business related to the election of seven directors, the Notice had stated that, "the Board has selected the proposed/ nominated the independent directors, after due diligence by the Company by selecting those professionals, whose name appear in the data and are eligible to act as such, in accordance with the requirement of Section 166(1) of the Companies Act. The Notice further stated that "in terms of Section 166(3) of the Companies Act, the directors have chosen the following three professionals (namely Mr. Mohammad Iqbal, Mr. Usman Ali Shah and Mrs. Farzin Khan) have high repute and duly possess relevant experience of being directors in the listed companies, as the proposed Independent Directors who meet the criteria laid down under Section 166(2) of the Act. The Notice further stated that these directors, or any other intending independent director, having provided justification to the Company for due diligence/ record by the due date of filing of intention, will be elected through the process of election of directors, in terms of Section 159 of the Act. The said notice also contained the justification for choosing the proposed Independent Directors, as required under Section 166(3) of the Companies Act. Accordingly, the Independent Directors were proposed/ selected/ chose by then Company at the time when the Board comprised of the major family sponsors of the Company, and not by MODAM.

c. On 24th Jun 2022 (when MODAM was not even a shareholder of the Company), the then Chairman/ CEO of the Company issued the letter of appointment to Mr. Mansoor Ahmed Soomro, to be the next CEO of the Company to take effect from Jul 22nd, after his election as director of the Company.

d. On 4th July 22 MODAM became the shareholder of META after the transfer of shares in its name, from the date the removal of suspension of META's shares by PSX.

e. The Board of META (when MODAM was not even a shareholder of the Company) had fixed the date of 8th Jul 22 was fixed as the last date of the receipt of intentions/ documents from any person who seek to contest the election to the officer of a director" bring the date of fourteen days before the date of the EOGM as per the Companies Act.

f. On the close of Jul 8th, 2022 only (7) intentions/ consents were received by the Company and all of these nominations had been individually filed.

g. On 22nd Jul 2022, in the EOGM all seven (7) contesting candidates, who had individually filed their nominations were elected unopposed/ unanimously by the shareholders in which the family sponsor of the Company participated with about 55% shareholding and MODAM participated with 29.99%.

4. With reference to point, no. 7-9, it is respectfully submitted that the Company is fully compliant the provisions of the relevant Sections of the Securities Act as referred in your letter and there existed no agreement whatsoever, which may have led the Commission officials to assume that any or certain powers, of any nature had been conferred on the new Board.

The Commission has already been provided the MOU signed between the family sponsors of META and MODAM, which is only underscored that the First Party (the family sponsor of META) shall also utilize its voting power in electing a new professional board comprising of independent, female shareholder directors. Therefore, any inference that somehow the newly elected Board was conferred with any (new) powers (beyond its conventional mandate) seems totally misplaced.

5. It is also submitted that despite having explained the above position and the issuance of a corrigendum notice dated, 7th Oct 2022 in continuation to our letter dated, 15th Jul 2022, to rectify the clerical mistake of the earlier letter and clarification that the three (3) independent directors and one (1) professional as CEO had been nominated by the Board in its meeting dated 17th June 2022 (when the company's management and control was under the family sponsors) to content



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the elections, the Commission is relying its whole case on our mistakenly issued notice without even bothering to check the factual matters as explained above.

In view of the above, we hope that the above clarifications shall enable the Commission to objectively treat the matter as normal turn-around arrangement and not as a takeover as being assumed vide the above referred SCN.

Accordingly, we maintain our stance that MODAM was not contravened any of the provisions of the laws as referred to in your show cause letter and hence MODAM does not deserve the applicability of Section 111(c) and Section 126(3)(c) of the Act for the imposition of any penalty being a public fund....”

6. In order to provide the Acquirer, opportunity of personal representation, hearing in the matter was fixed for February 13, 2024. On the date of hearing, Mr. Aftab Ahmed Chaudhry (Chief Executive Officer) and Mr. Inamullah (Company Secretary) appeared before the undersigned on behalf of the Acquirer as its Authorized Representatives (**the Representatives**). During the hearing proceedings, the Authorized Representatives primarily reiterated its submissions made in its written response provided above and additionally submitted as under:

- i. *Primarily, the Authorized Representative argued that the shares of the Target Company are not being traded on the Stock Exchange due to default and hence, the provisions of the Takeover Laws are not applicable in the instant case.*
- ii. *The underlying cause of the issuance of the SCN is the announcement made by MODAM on July 15, 2022 wherein it had nominated individuals for upcoming election of the Target Company to be held on July 22, 2022. However, it was rectified through issuance of a corrigendum dated October 07, 2022 due to an inadvertent clerical mistake of the earlier letter and clarification that the three (3) independent directors and one (1) professional as CEO had been nominated by the Board in its meeting dated June 17, 2022 (when the Company's management and control was under the family sponsors) to contest the elections. The Commission is relying the whole case on the mistakenly issued notice.*
- iii. *That on June 21, 2022, the Target Company circulated its notice (when MODAM was not even a shareholder of the Company) for the holding of its EOGM on July 22, 2022 and in the same notice, the Target Company had already nominated 3 names to be elected as independent directors in the Target Company whereas, MODAM was not involved in the election of these independent directors.*
- iv. *That the Acquirer has disposed off its shareholding in the Company and they are still in the process of revive the Target Company for which the application is already in the High Court of Sindh.*
- v. *Ultimately, the Authorized Representative also admitted that they have control over the Target Company as per their responsibility to revive the Company and that control is by virtue of directorship. The Authorized Representative also submitted that they did not get any benefit out of acquisition of shares in the Target Company and the sole purpose was to revive the business of the Target Company.*

7. Subsequent to the hearing proceedings, the Acquirer made additional submissions vide its letter dated February 22, 2024, the relevant extract of which is reproduced below:

“ 2. We are of the considered opinion that the substantial take-over is not applicable because of the following legal reasons:

a. Modarabas happen to be funds, which are subscribed by investors. The Prudential Regulations for Modarabas impose limits on investments by the Modarabas in unlisted securities, and



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technically when the trading in the shares of any company remains suspended, then such shares are deemed unlisted because of having no price discovery mechanism. The Modaraba Regulations include an "unquoted share" in unlisted securities. Hence, as a policy and despite having the permission to act as an Islamic Venture Capital fund, MODAM, as a policy, doesn't acquire more than 1/3rd of the equity capital of any company. Hence, by capping its acquisition to under 30% in an unquoted security, the fund adhered to its internal policy in the matter.

b. The transfer of shares to MODAM took place after the lifting of the suspension of the shares by PSX on Jul 1, 2022. By that time, the Company (HACC/META) had already announced the election schedule.

c. The actual election of directors took place on 22nd Jul 2022, and the exact consents/nominations were received, and all directors were elected unopposed. No shareholder was deprived of the opportunity to file his/her nomination to contest the elections and MODAM did not nominate anyone to contest the elections. If the election of directors happened as per the law, then the take-over can't be assumed to have taken place on mere assumption.

d. The trading in the shares of the Company (HACC/META) stayed suspended till Jul 25, 2022. At that time (and even today) 100% shares of the Company had still not been Inducted in the CDC. Hence, due to suspension of trading and non-induction of the Company's shares in CDC leading to no price discovery arrangements, no tender offer for a substantial take-over could be legally possible.

e. The trading in the shares of the Company was revived after the purchase of shares by MODAM and the approval of the revival business plan. So due to the involvement of MODAM, the shareholders were able to freely trade the shares of the Company after 10 years as the trading in the shares of the Company had remained suspended since 2012. Had this not happened, the shareholders of the Company had continued to suffer and would not have been able to unlock their position/investment in the market. Therefore, MODAM's entry in the Company proved beneficial for the investors and not the vice versa.

f. Any revival of any defaulted/sick/dead company requires either the injection of fresh capital or the entrepreneurial leadership. MODAM believes that any investment in acquiring shares from the sponsors of a defaulted/sick/dead company is a sunk investment and not fruitful for the purposes of the growth of the Company. Hence, MODAM doesn't believe in substantial acquisition by way of making any tender offer, whatsoever.

g. Another way of finding out whether by avoiding the substantial take-over, the general investors would have suffered or otherwise, is to look at the record of the publicly held float of any company. In this case, the Company had long been having only two set of large shareholders, i.e the sponsors family (owning about 85% shares) and NIT (holding about 10-12% shares). Hence, the Company had less than 5% shareholding from the general public. Even by buying 2.5% of the free-float by way of the tender offer would not have made any difference.

h. The shareholders data, at the time of investment by MODAM, is given below:

No. of shares outstanding	1,633,500
Shareholding with Sponsors/ Directors	(1,388,475)
NIT/NBP	(165,792)



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	(1,554,267)
<i>With General Public and others – 4.85%</i>	79,233
<i>Market Price</i>	8.55
<i>Status</i>	<i>Suspended</i>
<i>Value in Rs.</i>	677,442
<i>Valuation impact could not be more than Rs. 1.00 million</i>	

Due to suspension of trading, the general public did not have any platform available for the price discovery and for responding to any potential offer which could not be made due to lack of induction of shares in CDC. Thus, even if MODAM would have made the tender offer, even then the impact of the same would have been negligible. But, it would have cost MODAM much more in terms of the fees and public offer costs for such a course of action.

1. We are enclosing the notice from PSX dated Jul 1, 2022, wherein the suspension in the trading of the shares of the Company was listed from Jul 4th, however a period of 20 days was given by PSX (before the start of trading in the Company's shares) from Jul 24th, 2022 for enabling the investors to lodge their shares in CDC. During this period of 20 days, no shares from the general public were lodged in the CDC. This shows that even the free-float of 5% was available on paper and such investors did not exist anymore.

3. As of now, Modaraba Al-Mali has no shareholding in the Company and had made the public announcement about the sale of its shareholding during March-April, 2023. Furthermore, at present, no MODAM nominee is a director of the Company.

4. Although MODAM had believed that it was a noble cause to revive the defaulted/sick companies because every 5th company on PSX happens to be in the defaulted segment. But because of having to respond to such kind of SCNs (based on assumptions only), MODAM has now adopted a policy to not involve itself in any revival business any more."

8. In view of the on-going, I would like to revert back to the provisions of Section 111(c) of the Act:

*"111. Acquisition of voting shares beyond prescribed limits or control of a company.
No person shall, directly or indirectly,
(c) acquire **control** of a listed company,
unless such person makes a public offer to acquire voting shares of the listed company in
accordance with this Part."*

9. By virtue of afore-stated provisions of the law, it is pertinent to emphasize importance of making a public offer to acquire voting shares of a listed company in accordance with the Takeover laws. Public offers provide an opportunity for shareholders to assess the offer and decide whether to tender their shares. It protects the rights of minority shareholders by giving them the chance to exit their investment at a fair price if they do not wish to remain shareholders following the acquisition. Additionally, regulatory requirements often mandate disclosure of relevant information, allowing shareholders to make informed decisions about their investments. Making a public offer before acquiring control of a target company is essential for upholding fairness, transparency, and the protection of shareholders' rights, particularly those of minority shareholders. By publicly announcing the acquisition intentions, all shareholders are provided with an equal opportunity to evaluate the offer's terms and the proposed price, thereby ensuring fair treatment and preventing any preferential treatment. This transparent process aids in determining the true market value of the company's shares, guarding against undervaluation or overvaluation. Additionally,



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public offers are subject to regulatory scrutiny, ensuring compliance with securities laws and regulations to safeguard shareholder interests. Through mandated disclosure and regulatory oversight, shareholders can make informed decisions about their investments, bolstering market integrity and investor confidence. Overall, public offers promote market liquidity, efficiency, and trust in the financial markets.

10. At this juncture, following issues are required to be addressed:

- i. **Whether the Acquirer acquired control of the Target Company?**
- ii. **Whether suspension of trading on Stock Exchange and limited free-float prohibit application of Takeover laws?**
- iii. **Whether nomination of directors by the Acquirer on the board of the Target Company attracts provisions of the Takeover Regulations?**
- iv. **What is the significance of clarification dated October 07, 2022?**

11. I have reviewed the facts of the case and considered the verbal submissions of the Acquirer and its Representatives in light of the applicable provisions mentioned in the preceding paras and the available record and I have observed that:

i. **Whether the Acquirer acquired control of the Target Company?**

The Acquirer submitted that on June 21, 2022 the Board of the Target Company had already proposed 3 names as independent directors in the Target Company when MODAM was not even a shareholder of the Company. Further, the Acquirer also submitted that on June 21, 2022, the Company had circulated its notice for holding of EOGM on July 22, 2022 related to its election of directors when the Acquirer was not even the shareholder of the Company. In this regard, it may be noted that Memorandum of Understanding (MoU) for Share Purchase Agreement and Mutual Revival of the Target Company was already signed between the CEO of the Target Company and CFO of the Acquirer on May 30, 2022 whereas, relevant clauses of the MoU indicate that the Target Company and the Acquirer had already entered into an agreement for revival of business of the Target Company. Moreover, clause (3) of 13 (Sequence of Actions) of the MoU also provides that the Target Company shall appoint a nominee of the Acquirer as the Company Secretary and as a signatory on all corporate documents to be filed on behalf of the Company. These clauses indicate the assumption of control of the Target Company by the Acquirer in contravention of Section 111(c) of the Act.

In addition to the above, it may also be noted that the Acquirer vide its notice dated June 20, 2022 had already communicated to the Stock Exchange and the Commission that it had entered into an agreement with the Target Company and lead the revival and rehabilitation of the Company and to acquire 29.99% equity share capital shares of the Target Company (subject to transfer upon the removal of suspension status of the Target Company by PSX as per PSX Rulebook). Therefore, on such date the Acquirer had already intended to acquire 29.99% equity share capital in the Target Company and the same was physically transferred to the Acquirer on July 07, 2022. Subsequent to the offloading of entire shareholding by the Seller, the Acquirer remained the only leading sponsor of the Target Company and thus assumed control of the Target Company thereby becoming liable of non-compliance of Section 111(c) of the Act, which mandatorily includes holding the public offer.

ii. **Whether suspension of trading on Stock Exchange and limited free-float prohibit application of Takeover laws:**

The suspension of trading on a stock exchange does not prohibit application of takeover laws. Trading suspensions are typically implemented by stock exchanges in response to unusual or



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significant events that may impact the normal functioning of the market. These events could include pending announcements, regulatory concerns, or other material developments related to a particular company's securities. Takeover laws, on the other hand, are usually governed by specific regulations and statutes that outline the procedures and requirements for acquiring control of a company. These laws are designed to ensure fair treatment of shareholders and maintain the integrity of the takeover process. Furthermore, with regard to the contention of the Acquirer that the majority shareholding of the Company was owned by sponsors family also does not hold merit. The Acquirer submitted that the Target Company had less than 5% shareholding from the general public and even by buying 2.5% of the free-float by way of tender offer would not have made any difference. In this regard, the Takeover laws does not define any threshold of free-float of shares for applicability of mandatory public offer under the takeover laws. While it's true that the company has historically had a minimal free float, it's important to recognize that the significance of a tender offer extends beyond its immediate impact on existing shareholders. Firstly, even though the free float may be limited, it represents the portion of shares available for trading in the open market, contributing to market liquidity and investor participation. By acquiring a substantial portion of this free float without conducting a proper tender offer, the acquirer risks distorting market dynamics and disadvantaging minority shareholders who may wish to participate in the offer. Secondly, a tender offer provides an opportunity for all shareholders, including the general public, to assess the offer price and decide whether to tender their shares. Without such an offer, minority shareholders may be deprived of the opportunity to realize the full value of their investment or participate in any potential premium offered by the acquirer. Moreover, in absence of a tender offer, potential competing acquirers are deprived of their rights to participate in the bidding process. This potentially leads to less favorable outcomes for the Target Company's shareholders.

Furthermore, in order to support its claim regarding suspension of shares of the Target Company there, limited free-float of shares and assumption of control in such matter, the Acquirer failed to raise such concerns with the PSX or the Commission. Therefore, the arguments of the Authorized Representative in this regard are not tenable.

iii. **Whether nomination of directors by the Acquirer on the board of the Target Company attracts provisions of the Takeover Regulations?**

With regard to the contention of the Authorized Representative regarding the election of directors on the board of the Target Company, it may be noted that both the Target Company and the Acquirer in its notices dated July 15, 2022 respectively have acknowledged the nomination of 7 directors including 3 independent directors by the Acquirer on the board of the Target Company.

The relevant extract of the notice of the Target Company dated July 15, 2022 is provided as under: *"... it may be mentioned that all of the above directors had been nominated by Modaraba Al-Mali, under whose involvement the turnaround/ revival plan of the Company shall be implemented after its approval in the aforesaid EOGM"*

This is further endorsed by the Acquirer's announcement dated July 15, 2022, the relevant extract of which is provided as under:

"As already communicated by HACC, the above Directors would be elected unopposed in the forthcoming EOGM to be held on July 22nd 2022"

The afore-mentioned notices indicate that all the directors on the board of the Target Company were indeed nominated by the Acquirer in pursuance of acquiring control of the Target Company.



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iv. **What is the significance of clarification dated October 07, 2022?**

The Acquirer in October, 2022 issued a corrigendum to its notice dated July 15, 2022. Hence, the argument of the Acquirer and its Authorized Representatives that it was a mere clerical mistake is not sustainable even if the corrigendum was issued in respect of the earlier notice dated July 15, 2022 by the Acquirer after approximately 4 months of its first notice. It is out of ordinary that the Acquirer took such significant time to rectify only a clerical mistake and is indication of the fact that the directors on the board of the Target Company were indeed elected by the Acquirer. Moreover, this corrigendum was issued subsequent to the examination letter issued by the Commission to the Acquirer on September 09, 2022.

Establishment of default under Section 111(c) of the Act:

In view of the aforementioned circumstances, following legal questions are posed before me to make a verdict on the matter:

- a. Whether entering into an arrangement through MoU dated May 30, 2022 for revival and turnaround of the target company (in the context of peculiar covenants of the MOU) including nominating and getting elected their nominees as directors, can be considered as co-joining/acquisition of control by the Acquirer thus triggering compliance of Section 111(c) of the Act, as prima facie the Acquirer has acquired control of the Target Company through such MOU?
- b. Subsequent to offloading of entire shareholding by the Seller, the Acquirer remained the only leading sponsor of the Target Company and thus incidentally assumed/exercised control. Can such incidental acquisition of control by the Acquirer requires compliance of section 111(c) of the Act on part of the Acquirer?

To answer the aforementioned legal queries, consultation was also acquired from the relevant department of the Commission and I conclude that:

- a. There seems to be a tacit understanding that the control of the Target Company was bestowed on the Acquirer. Further, it appears that the subsequent nomination of directors by the Acquirer, followed by the endorsement of the Target Company and inclusion of such members on the Board the Target Company, the Acquirer has acquired and assumed control of the Target Company. In addition, the Acquirer enjoys the position of only leading sponsor of the Target Company and apparently in control of the Target Company. It is also important to mention that the Authorized Representative admitted that they have control over the Target Company as per their responsibility to revive the Company and that control is by virtue of directorship.
- b. Given that, by tacit understanding and subsequently the nomination of the aforementioned individuals (Directors) on the board of the Target Company by the Acquirer, it is evident that the Acquirer has acquired and assumed control of the Target Company. The Acquirer enjoys the position of only leading sponsor of the Target Company and apparently in control of the Target Company.

12. I have gone through the facts of the case, the written and verbal submissions made by the Acquirer and its Authorized Representatives and in view of the foregoing events and the arguments, I conclude that contravention of the Section 111(c) of the Act stands established against the Acquirer. Therefore, in exercise of the powers conferred upon me under Section 126(3)(c) of the Act, I hereby impose a penalty of **Rs. 1,000,000 (Pak Rupees One Million Only)** on the Acquirer.



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13. The Acquirer is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipt voucher issued in the name of the Securities and Exchange Commission of Pakistan for information and record.

14. This Order is issued without prejudice to any other legal action that the Commission may initiate against the Acquirer in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)
Director/ Head of Department
(Adjudication Department-I)

Announced:
April 22, 2024

