



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan – Director/ Head Adjudication Department-I

In the matter of

Number and date of Show Cause Notice (SCN)	No.2(454)SMD/Adj-I/2024-171 dated March 22, 2024
Date of Hearing:	May 02, 2024
Present of Hearing:	Mr. Amer Latif and Mr. Shehrzad Aminullah and Ms. Faryal Mazhar

Pak Refinery Limited & Air Link Communication Limited

ORDER

Under Regulation 21(1)(e) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 read with Section 126(3)(c) of the Securities Act, 2015.

This order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. 2(454)SMD/Adj-I/2024-171 dated March 22, 2024 (**the SCN**) issued Under Regulation 21(1)(e) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (**the “Regulations”**) read with Section 126(3)(c) of the Securities Act, 2015 (**the “Act”**) against Pak Refinery Limited & Air Link Communication Limited, hereinafter referred to as (**the “Respondents and/or Acquirers”**).

2. The Acquirers made Public Announcement of Intention (**PAI**) dated July 17, 2023 through Next Capital Limited (**the manager to the offer**) to acquire 77.42% shares and control of Shell Pakistan Limited (**the Target Company**) under the Act and the Regulations. The said PAI was also published in Business Recorder and Nawa-i-Waqt (**the newspapers**) on **July 19, 2023** in compliance with regulation 6(5) of the Regulations.

3. In terms of regulation 7(1) of the Regulations, the Acquirer is required to make Public Announcement of offer (**“PAO”**) through the manager to the offer within one hundred and eighty (180) days of making the PAI in the newspaper or extend the time period for a maximum of 90 days under intimation to the Securities and Exchange Commission of Pakistan (**the Commission**) and the Securities Exchange. In the instant matter, the Acquirers were required to make Public offer by **January 15, 2024** (i.e. July 19, 2023 (date of publication of PAI in newspapers) + 180 days)

4. In terms of regulation 21(1)(e) of the Regulations, a public announcement of intention shall be withdrawn in case the time period for making the public announcement of offer and extension thereof, if availed, has lapsed and such withdrawal notice is required to be submitted to the Securities Exchange and the Securities and Exchange Commission of Pakistan (**“the Commission”**) not later than one working day of expiry of time period for making the public offer. In the instant matter, the time period for making the public offer expired on **January 15, 2024** (i.e. July 19, 2023 (date of publication of PAI in newspapers) + 180 days), therefore, the Acquirers were required to comply with the requirements of regulation 21(1)(e) of the Regulations by **January 16, 2024**.

5. It was observed that the Acquirers *prima facie* did not comply with the requirements of 21(1)(e) of the Regulations by not making the withdrawal of the subject PAI upon expiry of time period for making the public offer.

6. Keeping in view the exigent circumstances, the Commission vide letter dated January 22, 2024 sought clarification/explanation from the Acquirers on the aforesaid non-compliance of the Regulations. In this regard, the Acquirers have jointly responded to the Commission vide letter dated February 01, 2024, which may be summarized as under:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

“As you are aware that on October 31, 2023, a public announcement confirmed the acquisition of the Target Company by WAFI Energy Limited. As a result, the bidding process concluded, rendering our PAI no longer applicable. We understand your enquiry regarding the withdrawal of our Public Announcement of Intention. However, we respectfully submit that as per our understanding, the current circumstances do not necessitate the formal withdrawal of PAI. Since, the bidding process has been concluded and the Target Company has been acquired by another entity which they have publicly announced, the purpose of withdrawal of PAI has been fulfilled. Furthermore, we believe that withdrawing the PAI at this stage would serve no practical purpose and thus seems of no consequence. We believe that the closure of the bidding process serves as sufficient clarification of our current position.”

7. The aforementioned stance taken by the Acquirers was not found satisfactory. Consequently, SCN was issued to the Acquirers to explain their position with respect to default of the requirements under regulation 21(1)(e) of the Regulations. In response to the SCN the Acquirers through its letter dated April 03, 2024 submitted the following:

- *We wish to reiterate our unwavering commitment to achieving and maintaining full compliance with all applicable regulations. As evidenced by our earlier submission vide letter dated February 02, 2024, we have consistently strived to ensure adherence. Additionally, we sought further guidance from your esteemed office in that communication to enhance our understanding of the subject matter.*
- **Compliance with Regulations:** *We have meticulously reviewed and ensured adherence to all relevant provisions outlined in Regulation 21 (1)(b) of the Regulations.*
- **PAI Withdrawal Announcement:** *To formally announce the withdrawal of the PAI, we have published advertisements in both Daily Business Recorder and Daily Nawa-i-Waqt on April 3, 2024. Additionally, the withdrawal announcement has been disseminated on PSX's Platform.*
- *We respectfully request your esteemed office to consider our comprehensive actions in a lenient light.*
- *We are confident that these measures demonstrate our full compliance with all relevant regulations.*

8. In order to provide the Respondents an opportunity of personal representation, hearings in the matter was fixed for May 02, 2024, wherein Mr. Amer Latif and Mr. Shehrzad Aminullah and Ms. Faryal Mazhar appeared as the Authorized Representatives of the Acquirers (**the Representatives**). During the hearing, the Representatives were advised to explain the reasons for the alleged non-compliance, as narrated in the SCN. The Representatives reiterated the submissions already made in the written reply dated April 03, 2024 and made further submissions which are summarized under:

- The Respondents acknowledged that the matter was overlooked. Remedial measures have been implemented accordingly. Additionally, the respondents express regret for this particular instance of non-compliance.
- The Respondents respectfully request leniency in this matter, as it was a clear oversight stemming from a lack of understanding. Further Respondents stated that they have since rectified the situation and ensured compliance.
- The Respondents stated that comprehension of the law was evident, they acknowledge past instances where misunderstandings regarding the circumstances arose. Moving forward, Respondents commit to implementing more diligent measures.
- Further Respondents commit to furnishing a report within one week detailing the measures taken to prevent such defaults from occurring in the future.
- The Respondents stated that oversight occurred due to their inaugural acquisition attempt, marking the first instance in our history.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

9. I have gone through the written submissions and verbal arguments presented by the Respondents and the relevant provisions of the law and observed that:

- i. Regulation 21(1)(e) of the Regulations explicitly provides that PAI shall be withdrawn if the time period for making the public announcement of offer and extension thereof, if availed, has lapsed. In the instant matter the Acquirers have to make public announcement of offer within 180 days from the date of making PAI, however, the Acquirers did not make any public announcement of Offer within the stipulated time of 180 days and no further extension was availed by the Acquirers. Therefore, they were obliged to withdraw the PAI after the lapse of 180 days and to provide the withdrawal notice to the Commission within one working day from the date of withdrawal of PAI. It has been observed that no such notice has been made by the Acquirers in terms of withdrawal of PAI. The time period for making the public offer expired on **January 15, 2024** (i.e. July 19, 2023 (date of publication of PAI in newspapers) + 180 days), therefore, the Respondents were required to comply with the requirements of regulation 21(1)(e) of the Regulations by **January 16, 2024**. The Respondents made withdrawal of PAI on April 03, 2024 subsequent to the initiation of adjudication proceedings against them i.e. with a delay of approx. 77 days.
- ii. Further, before the expiration period of 180 days on January 15, 2024 for making public announcement of offer by the Acquirers, a PAI dated October 31, 2023 was already under public domain for acquisition of 77.42% of the total issued ordinary shares of the Target Company by another acquirer namely: WAFI Energy LLC for which Share Purchase Agreement was also reached between the Target Company and WAFI Energy LLC.
- iii. Moreover, the share price of the Target Company also remained stable after the withdrawal of PAI on April 03, 2024, hovering between Rs. 157.95 to Rs. 154.27 and no major fluctuation was observed with the withdrawal of PAI on April 03, 2024 by the Acquirers
- iv. Subsequent to the hearing proceedings, the Acquirers submitted working drafts and checklist developed for the compliance of the Act and the Regulations as a remedial strategy being implemented by the Acquirers to ensure that such requirements may not be overlooked in the future.

10. I have reviewed the fact of the case, considered the written and verbal submission made by the Respondents and Authorized representatives in light of the applicable legal provisions and records placed before me and observed that the Respondents admitted to the default made with respect to the requirement of Regulation 21(1)(e) of the Regulations read with Section 126(3)(c) of the Act vide letter dated April 03, 2024 as well as on the date of hearing i.e. May 02, 2024. However, keeping in view the existence of public announcement of intention by another acquirer namely: WAFI Energy LLC, no material movements in the share price of the Target Company with the withdrawal of PAI by the Acquirers and the subsequent remedial measures taken by the Acquirer, I hereby, conclude the proceedings with a stern warning to the Acquirers to remain vigilant with respect to the compliance of regulatory requirements in future.

11. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission, violation of the Act.

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced:
Dated: August 08, 2024

