



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I Adjudication Division

Say No to Corruption

Before

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

In the matter of

Mr. Imran Arif Dawood

Number and date of Show Cause Notice (SCN)	No.2(456)SMD/Adj-1/2024/201 Dated: April 05, 2024
Date(s) of Hearings:	May 29, 2024
Present at the Hearing:	i. Mr. Jam Naveed Zafar (Consultant)

ORDER

UNDER SECTION 110(2) READ WITH SECTION 126(3) OF THE SECURITIES ACT, 2015 READ WITH REGULATION 4(2) OF THE LISTED COMPANIES (SUBSTANTIAL ACQUISITION OF VOTING SHARES AND TAKEOVERS) REGULATIONS, 2017

This Order shall dispose of the proceedings initiated against Mr. Imran Arif Dawood (**the Acquirer**) through Show Cause Notice No. 2(456)SMD/Adj-1/2024 dated April 05, 2024 (**the SCN**) issued under Section 110(2) of the Securities Act, 2015 (**the Act**) read with regulation 4(2) of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (**the Regulations**).

2. Brief facts of the case are that scrutiny of the trade-wise data of the Acquirer was carried out by the Commission and it was revealed that the Acquirer purchased more than 10% voting shares of Tri-Star Power Limited (**the Target Company**) however, failed to disclose his shareholding as per the criteria prescribed under Section 110(1) of the Act read with Regulation 4(2) of the Regulations.

3. The matter was examined in light of the prevailing framework related to Takeovers and observed that the Acquirer by purchasing 20,000 voting shares of the Target Company on May 25, 2023 has crossed the threshold provided in section 110(1) of the Act. On May 25, 2023, total holding of the Acquirer stood at 1,520,000 shares which constitutes 10.13% of the total issued voting shares of the Target Company i.e. 15,000,000 shares.

4. Further, the Acquirer on June 08, 2023 again breached the threshold of 10% by purchasing 5,000 shares which resulted in increase in shareholding of the Acquirer from 1,500,000 (10.00%) to 1,505,000 (10.03%). Subsequently, the Acquirer started selling off his shares in the Target Company which became zero on July 12, 2023.

5. The Acquirer in terms of section 110(1) of the Act and regulation 4(2) of the Regulations was required to disclose its shareholding as prescribed in Schedule III of the Regulations to the target company, the Securities Exchange and the Commission within two working days of such acquisition. However, as per records of this office, no disclosure was filed by the Acquirer after acquiring more than



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10% voting shares of the Target Company as required under section 110(1) of the Act and regulation 4(2) of the Regulations.

6. In view of the above, the Department vide letter dated October 17, 2023 sought clarification/explanation from the Acquirer on the aforesaid non-compliance of the Act and the Regulations. However, no reply was received. In continuation, a reminder was sent to the Acquirer vide letter dated March 13, 2024. In this regard, the Acquirer responded to the Department vide email dated March 21, 2024 and stated as under:

"I Imran Arif Dawood here by want to inform you that my holding of 10% in Tri-Star power limited, I have already sold those off in the market at following mentioned prices attached below are the transactions record"

7. The stance taken by the Acquirer was not found tenable keeping in view the explicit requirement under section 110(1) of the Act and regulation 4(2) of the Regulations wherein, the Acquirer was required to disclose acquisition of voting shares beyond the threshold prescribed under section 110(1) of the Act to the target company, the Securities Exchange and the Commission within two working days of the acquisition of shares. In the instant case, the Acquirer has acquired **10.13%** voting shares of the Target Company on **May 25, 2023**. Moreover, the Acquirer on **June 08, 2023** again breached the threshold of 10% by purchasing **5,000** shares which resulted in increase in shareholding of the Acquirer from **1,500,000 (10.00%)** to **1,505,000 (10.03%)**. However, no disclosure was filed by the Acquirer as required under section 110(1) of the Act and regulation 4(2) of the Regulations.

8. While taking cognizance of the aforesaid contravention, the SCN was served on the Acquirer calling upon him to explain reason for the aforesaid contravention. In response to the SCN, the Acquirer vide his letter dated May 16, 2024 submitted as under (relevant extract):

a) *"That on May 25, 2023 the Acquirer made requisite disclosure to the Target Company, SECP and PSX. In this regard emails were sent to the Company secretary of Target CompanySECP Officials.... PSX Officials..."*

b) *On May 25, 2023 PSX as a result of receipt for disclosure from the Acquirer, announced the same disclosure on its electronic board. Electronic link of the same notice is available at <https://dps.psx.com.pk/download/attachment/209201-1.pdf>*

c) *The Target Company has a history of curbing minority shareholders rights, even aforementioned disclosure made on the PSX electronic Board was not made by the target company, it was due to Acquirer notice to PSX that his disclosure was made available to the public electronic board.*

d) *Acquirer made his best efforts to comply with the SECP Regulatory Framework and any inference of any procedural lapse, such as reporting of June 08, 2023 purchase of 5000 shares, if there is any, may have been due to inadvertent omission and was not willful.*

5. Accordingly, you are requested to close the subject matter SCN without any penalty to the undersigned."

9. In order to provide the Acquirer, an opportunity of personal representation, hearing in the matter was fixed for May 29, 2024. On the date of hearing, Mr. Jam Naveed Zafar (**Consultant**) appeared before the undersigned on behalf of the Acquirer as its Authorized Representative (**the**



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Representative). During the hearing proceedings, the Authorized Representative additionally submitted as under:

- i. *The requisite disclosure was already made to the Target Company, SECP and PSX on May 25 2023 and the same is available on PSX website.*

10. I have gone through 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 the following question posed before me to take a decision in the matter:

- i. **Whether the disclosure dated May 25, 2023 available on PSX website fulfils the criteria prescribed under Section 110(2) of the Act read with Regulation 4(2) of the Regulations?**

a) Timing of Disclosure:

In the instant matter, it has been observed that the Acquirer has made a disclosure on May 25, 2023 with captioned subject "Disclosure under Section 110 of the Securities Act 2015" which highlights the fact that the Acquirer has purchased 1,500,000 shares of the Target Company constituting 10% shareholding in the Target Company. Although, the Respondent has made timely disclosure in terms of his percentage shareholding in the Target Company however, the disclosure available on PSX website mentions only 1,500,000 (10%) shareholding in voting shares of the Target Company which was acquired on May 24, 2023. Subsequently, the Acquirer on May 25, 2023 acquired additional 20,000 shares in the Target Company thus accumulating 1,520,000 i.e. 10.13% shareholding in the Target Company which has not been disclosed as per the requirement of Regulation 4(2) of the Regulations read with Section 110(1) of the Act.

b) Deficiencies in Disclosure:

In view of the afore-mentioned, it must be noted that Regulation 4(2) of the Regulations prescribes Schedule III of the Regulations for reporting of acquisition beyond 10% shareholding in voting shares of the Company to the Target Company, the Securities Exchange and the Commission. However, the disclosure dated May 25, 2023 as highlighted by the Acquirer and its Representative has not been made in accordance with Schedule III of the Regulations. The disclosure was mainly deficient in terms of Part C (Particulars of persons acting in concert vide section 108(d) of the Act) and Part D (Detail, if the Acquirer / person acting in concert has representation on the board of directors of the target company).

- ii. **Comparison of Disclosure made by the Acquirer on may 25, 2023 versus the Disclosure requirement prescribed in Schedule III of Regulation 4(2) of the Regulations read with Section 110(1) of the Act:**

A comparison of Disclosure requirement mentioned in Schedule III of Regulation 4(2) of the Regulations versus the disclosure made by the Acquirer on May 25, 2023 is provided below:

Disclosure provided in Schedule III of the Regulations	Disclosure made by the Acquirer on May 25, 2023
Part A:	
Name of the Acquirer	Mentioned



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Date of Acquisition	Not mentioned
No. of Shares purchased	Mentioned
Rate per share	Not mentioned
Total Shareholding in the Target Company	Mentioned
Percentage Shareholding in the Target Company	Mentioned
Previous Shareholding (if any)	Not mentioned
Part B:	
Name and Address of the Acquirer	Address not mentioned
CNIC No.	Mentioned
Part C:	
Particulars of Persons Acting in Concert	Not Mentioned
Part D:	
Details, if the Acquirer / person acting in concert has representation on the board of directors of the target company	Not Mentioned

In view of the afore-said, it may be noted that the disclosure provided by the Acquirer on May 25, 2023 was deficient in terms of the requirements of Schedule III of regulation 4(2) of the Regulations read with Section 110(1) of the Act. Moreover, as described in the SCN, the Acquirer was required to made disclosure of transaction carried out on May 25, 2023 wherein he actually exceeded the 10% threshold by purchasing 20,000 shares of the Target Company thus accumulating **1,520,000 (10.13%)** shareholding in voting shares of the Target Company i.e. beyond the threshold prescribed under sub-section (1) of Section 110 of the Act.

iii. **Whether the Acquirer was required to make a disclosure on acquisition of 5,000 shares on June 08, 2023 wherein he again acquired more than 10% shareholding in the Target Company?**

In order to answer the captioned query, it may be noted that Section 110(3) of the Act provides exemption for acquiring voting shares without making a disclosure, provided as under:

"(3) An acquirer may acquire additional voting shares within a period of twelve months after acquisition of voting shares pursuant to sub-section (1) without making disclosure as required by sub-section (1) in case the total acquisition does not exceed an aggregate of thirty per cent."

The Acquirer had failed to make appropriate disclosure in terms of regulation 4(2) of the Regulations read with Section 110(1) for purchase of **1,520,000** i.e. **10.13%** shareholding in the Target Company on May 25, 2023. If the Acquirer had made appropriate disclosure on May 25, 2023, then he could acquire additional voting shares for a period of twelve months without making disclosure as required under Section 110(1) of the Act in case the aggregate shareholding did not exceed 30%. However, in the instant matter, the Acquirer on **June 08, 2023** again purchased **5,000** shares which resulted in increase in shareholding of the Acquirer from **1,500,000 (10.00%)** to **1,505,000 (10.03%)** and no disclosure was made as required under Section 110(1) of the Act read with Regulation 4(2) of the Regulations.



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11. 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 although, the Acquirer has made the disclosure of purchase of 10% shareholding in the Target Company on May 25, 2023, however, the disclosure was deficient in terms of certain clauses of Schedule III (Regulation 4(2) of the Regulations) read with Section 110(1) of the Act as explained above. Therefore, in exercise of the powers conferred upon me under Section 126(3)(c) of the Act, I hereby impose a penalty of **Rs. 50,000 (Pak Rupees Fifty Thousand Only)** on the Acquirer.

12. 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 receipted voucher issued in the name of the Commission for information and record.

13. This Order is issued without prejudice to any other 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:
June 12, 2024

