



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before
Shahzad Afzal Khan - Director/
Head of Department

In the matter of
TPL Trakker Limited

Show Cause Notice No. & Date: No. CSD/ARN/147/2015-180 dated June 26, 2023
Date of hearing August 2, 2023
Hearing attended by: Malik Sheheryar, Chief Financial Officer; Mr. Danish Qazi, Company Secretary; Ms. Shayan Mufti, Assistant General Counsel;

ORDER

Under regulation 3(1) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 read with regulation 8 thereof

This order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. CSD/ARN/147/2015-180 dated June 26, 2023 (the SCN) issued in terms of regulation 3(1) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (the Regulations) and regulation 8 thereof against TPL Trakker Limited (the Company) and its board of directors, herein after collectively referred to as the Respondents.

2. The brief facts of the case are that the examination of notice of Annual General Meeting (AGM) dated October 3, 2022 (the Notice), it was, *inter alia*, transpired that the Company proposed special businesses for making investments in following associated companies:

- (i) TPL Corp Limited (TPLC);
- (ii) TPL Middle East LLC (TME);
- (iii) TPL Tech Pakistan (Pvt.) Limited (TPLTP);
- (iv) TPL Holding (Pvt.) Limited (TPLH);
- (v) TPL Security Services (Pvt.) Limited (TPLS); and
- (vi) TPL Properties Limited (TPLP).

3. In this regard, the statement of material facts annexed with the Notice was found deficient in terms of the disclosure requirements provided in regulation 3 of the Regulations. The Securities and Exchange Commission of Pakistan (the Commission) through its letter dated April 4, 2023 sought necessary clarifications from the Company for the aforesaid deficiency in disclosures which were required to be made in the statement of material facts annexed with the Notice. The Company in this regard through reply dated April 20, 2023, *inter alia*, stated that:

- a. The omission of the same was unintentional, however the said information was duly covered under Note 18.1 of the Annual Accounts.
- b. The only salient feature of the investment which is the markup rate which was already covered under Note 18.1, therefore the same was not disclosed under the said header.
- c. None of the directors have any interest in the subject investments however, the following entities

265



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

are associated entities through the common directorship of Mr. Jameel Yusuf; the same was also disclosed under Note 1.6 to the Annual Accounts. TPLC, TPL Tech, TPLP, TPLS, whereas Trakker Middle East LLC is associated through shareholding as well as common management.

- d. The fact which is already disclosed in note 18.1 that these balances are under current account arrangement, we are of the view that these do not require performance review as these don't qualify as investment and instead are of current account balances.

4. The Company's admission to the fact that non-compliances were unintentional, and it transpired that the Company has, *prima facie*, failed to make in particular following disclosures in the statement of material facts annexed with the Notice, in contraventions to the regulation 3(1)(a)(B)(ii), (iv), (v) and (vi) of the Regulations for which the penalty is provided in terms of regulation 8 of the Regulations:

- a. Purpose, benefits likely to accrue to the investing company and its members from such investments and period of investment;
- b. Salient feature of the agreement(s), if any, with associated company or associated undertaking with regard to the proposed investment;
- c. Direct or indirect interest of the directors, sponsors or majority shareholders (*except in case of TPLH*);
- d. In case any investment in associated company or associated undertaking has already been made, the performance review of such investment including complete information/justification for any impairment or write offs.

5. The afore-said reasons furnished by the Company was not found satisfactory. Therefore, taking cognizance of the alleged non-compliances, proceedings were initiated against the Respondents through the SCN. The Company has not furnished any written reply in respect of SCN.

6. In order to afford the Respondents an opportunity of representation, hearing in the matter was fixed for August 2, 2023. On the date of hearing, the authorized representatives, Malik Sheheryar, Chief Financial Officer; Mr. Danish Qazi, Company Secretary; and Ms. Shayan Mufti, Assistant General Counsel; appeared. During the hearing, it was, *inter alia*, submitted that the Company would submit a reply to the SCN and also reiterated the reply given through earlier letter dated April 20, 2023. Subsequent to the hearing, the Company through letter dated August 8, 2023 elaborated relevant references of disclosures made in the annual audited financial statements of the Company for the year ended June 30, 2022 with regard to the deficient information.

7. I have reviewed the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:

- i. As per regulation 3(1)(a)(B)(ii) of the Regulations, it is required to disclose in the statement of material facts the purpose, benefits likely to accrue and period of investment. In case of the proposed investments, relevant disclosures in the statement of material facts stated as "Not Applicable" against the purpose. The Company through reply dated August 8, 2023 informed that the purpose of the said investments to be made in TPLC, TME, TPLTP, TPLH, TPLS and TPLP was disclosed to the members in the AGM. In view of the aforesaid, the purpose including benefits likely to accrue were not disclosed in the statement of material facts annexed with the Notice. The disclosure of afore-said information to members during AGM does not fulfil the requirement of above referred

266



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

regulations, therefore, the Respondents' stance is not cogent. Hence, violation of regulation 3(1)(a)(B)(ii) of the Regulations is attracted.

- ii. Regulation 3(1)(a)(B)(iv) of the Regulations requires that salient features of the agreements, if any, with the associated companies with regard to the proposed investments be disclosed. The Company's statement of material facts annexed with the Notice, however, stated that the disclosure was "Not Applicable" and did not disclose the salient features of the agreements. However, pursuant to the SCN, it was informed that the Company in its relevant notes 18.1 and 18.2 disclosed relevant features of the agreements made pertaining to the repayment schedule and amount of mark-up. The notes 18.1 and 18.2 to the Accounts, however, did not disclose that the disclosures were pursuant to the agreements made with regard to the proposed investments in associated companies. The Company has not denied that the agreements of investments to be made in TPLC, TME, TPLTP, TPLH, TPLS and TPLP existed at the time of issuance of Notice, however, has mainly relied on the disclosures given in the Accounts. I am of the view that the aforesaid stance of the Company is not cogent. The Company by not specifically disclosing the aforesaid information in the statement of material facts annexed with the Notice, has contravened to the requirements of regulation 3(1)(a)(B)(iv) of the Regulations.
- iii. As regard to the direct or indirect interest of the directors, sponsors or majority shareholders, it has been stated that none of the directors or sponsors had any such interest in the proposed investments. However, in the statement of material facts annexed with the Notice, except in case of TPLH, direct or indirect interest of the directors, sponsors or majority shareholders was not disclosed pursuant to the requirements of regulation 3(1)(a)(B)(v) of the Regulations.
- iv. As regard to the requirement of regulation 3(1)(a)(B)(vi) of the Regulations, for the performance review of such investments including complete information/justification for any impairment or write offs, it was informed that such disclosures were made in the statement of material facts. Review of the statement of material facts disclosed "none" for performance review of the proposed investments. However, pursuant to the SCN, the Company is of the view that "financial performance" of the associated companies as highlighted in the statement of material facts is their performance reviews as per the requirements of the regulation 3(1)(a)(B)(vi) of the Regulations. I am of the view, that specific disclosure pursuant to the requirement of the regulation 3(1)(a)(B)(vi) of the Regulations is required to be made in the statement of material facts under appropriate heading.
- v. From the above it is clear that, in terms of the requirements of regulation 3 of the Regulations, that the company shall disclose the information in the statement annexed to the notice, pursuant to sub-section (3) of Section 134 of the Act, of a general meeting called for considering investment decision under Section 199 of the Act. The disclosure requirements provided in terms of regulation 3 are specific with respect to the statement of material facts annexed with the notice of general meeting and disclosures made in the Accounts for the purpose of the Regulations cannot be construed as compliance of the Regulations.

267



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

8. Keeping in view and after careful consideration of all the facts of the case, the requirements of aforesaid requirements of regulation 3(1)(a)(B)(ii), 3(1)(a)(B)(iv) and 3(1)(a)(B)(v) of the Regulations for the proposed investments in TPLC, TME, TPLTP, TPLH, TPLS and TPLP have been contravened and for this contravention, the Respondents are liable under regulation 8 of the Regulations. In exercise of the powers conferred under the said provision, I hereby impose a penalty of **Rs. 100,000/- (Rupees One Hundred Thousand only)** on the Company i.e. **TPL Trakker Limited**. I also warn other Respondents to remain careful in future regarding compliance of the regulatory framework in letter and spirit.

9. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the Securities and Exchange Commission of Pakistan within thirty days of the date of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the said penalty, proceedings under Section 485 of the Act will be initiated for recovery of the same as arrears of land revenue.

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



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

Announced:

Dated: August 11, 2023

Islamabad