



Securities and Exchange Commission of Pakistan

Securities Market Division

Through Courier

Before The Director / HOD (MSRD) in the matter of Show Cause Notice issued to

Mr. Ziaullah Khan Chishti, Chief Executive Officer of TRG Pakistan Limited

Date of Hearing:

June 04, 2013

Present at the Hearing:

Representing Mr. Ziaullah Khan Chishti

(i) Syed Muhammad Talib Raza

Company Secretary

(ii) Mr. Amel Khan Kanshi

Legal Counsel

Assisting the Director / HOD (MSRD)

(i) Mr. Muhammad Ali

Deputy Director

ORDER

1. This Order shall dispose of the proceedings initiated through Show Cause Notice bearing No.1 (5) TRG/MSW/SMD/2013 ("SCN") dated April 30, 2013 issued by the Securities and Exchange Commission of Pakistan ("Commission") under Section 22 of the Securities and Exchange Ordinance, 1969 ("Ordinance") to Mr. Ziaullah Khan Chishti, Chief Executive Officer ("Respondent") of TRG Pakistan Limited ("TRG").

2. Facts leading to the case are that the Company Secretary of TRG vide notice dated March 21, 2013 informed Karachi Stock Exchange Limited ("KSE") that the Respondent has purchased shares of TRG as per the following details:-

Sr. No.	Trade Date	Trade Price	Number of Shares
1	19-03-2013	7.02 (Avg.)	2,256,000
2	19-03-2013	6.15	26,000,000
3	20-03-2013	7.01	1,638,000



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Subsequently, the Company Secretary of TRG vide notice dated March 22, 2013 informed KSE that the Respondent bought the shares of TRG as per the following details:-

Sr. No.	Trade Date	Trade Price	Number of Shares
1	21-03-2013	6.28	7,000,000

3. The Company Secretary vide notice dated March 22, 2013 to KSE informed that the meeting of the Board of Directors ("BOD") of TRG will be held on March 25, 2013 with the sole agenda to review the operational updates of the various operating subsidiaries of the Company. In the same notice TRG determined the closed period from March 22, 2013 to March 25, 2013 (both days inclusive) wherein no Director, CEO or Executive shall, directly or indirectly, deal in the shares of TRG in any manner during the closed period.

4. After perusal of trading data of the KSE from March 21, 2013 to March 25, 2013 ("the Period") it was revealed that the Respondent sold 38,000,000 shares of TRG through Off Market at the average rate of Rs. 4.37 to Arif Habib Corporation Limited ("AHCL"). However, the Company Secretary did not intimate the KSE regarding the sale of these shares. Further, it was also observed that the Respondent sold 6,408,000 shares of TRG on March 25, 2013 which was included in the closed period.

5. The Commission vide letter dated March 27, 2013 sought reasons/ rational from the Respondent for selling the shares of TRG at a price lower than the prevailing price in Ready Market and during the closed period. Further, the Respondent was inquired whether he intimated the Company Secretary regarding the sale of shares of TRG. The Respondent vide letter dated April 02, 2013 informed the Commission that 38,000,000 shares of TRG were sold to AHCL in Off Market and it was a negotiated deal under a REPO arrangement. The Respondent further informed that sale of shares of TRG was not an outright sale and risk and reward in the shares sold to AHCL remains with him. According to the Respondent the transactions in question were merely a REPO financing transactions and not trading transactions and neither did the closed period restriction apply on these transactions and because of these facts reporting of these transactions to Company Secretary was not required.



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6. The response of the Respondent was not considered satisfactory as it did not contain sufficient evidence and appropriate justification in respect of noncompliance to the Listing Regulations of KSE ("Listing Regulations"). Consequently, SCN dated April 30, 2013 was issued to the Respondent under Section 22 of the Ordinance for violation of Clause 16(vi), Clause 35 (vii) and Clause 35 (xxii) of the Listing Regulations. The Respondent through SCN was asked to explain its position through written reply within ten days of issuance of SCN and also required to appear in person or through an authorized representative before the undersigned at Commission's Head Office in Islamabad on May 14, 2013. The Respondent vide letter dated May 13, 2013 requested 10 days time for submission of reply to SCN and also requested for extending the date of hearing. The request of the Respondent was acceded to and the Respondent vide letter dated May 15, 2013 was required to appear before undersigned on May 28, 2013 at the same venue.

7. The Respondent vide letter dated May 15, 2013 submitted its response to the SCN. The relevant contentions raised in the response are reproduced hereunder:-

"At the outset it is submitted that the present Show Cause Notice is apparently on the allegation of violation of Clause 35 (xxiii), 35 (vii) and Clause 16(6) of the Listing Regulations of KSE which in turn is in violation of Section 22 (c) of the Securities and Exchange Ordinance 1969, which is incorrect and contrary to the facts".

"Without prejudice to the above, parawise reply to the Show Cause Notice is submitted as follows:-

"That the contents of paragraphs 1, 2, 3, 4 and 5 narrates the position which is a matter of record, however the contents of paragraph 5 below may be referred for a response where required."

"That paragraphs 6, 7, 8 and 9 are reproduction of Clause 35(xxiii), 35 (vii), Clause 16(6) of the Listing Regulations of KSE and Sub section (c) of Section 22 of the Securities and Exchange Ordinance 1969 respectively, hence need no reply."



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"In reply to the contents of paragraph 10, it is submitted that a letter bearing NO.1 (5)TRG/MSW/SMD/2013/01 dated March 27, 2013 was earlier received by me from Mr. Muhammad Atif Hameed, Joint Director (SMD) seeking my response on various observations which was replied by me vide letter dated April 02, 2013, the contents whereof may be treated as an integral part of this reply. It is submitted that no action under Section 22 of the Ordinance is warranted against me, inter alia, on the following reasons:-"

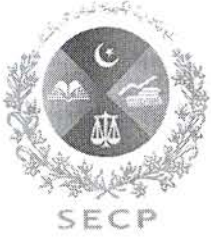
(i) "It is reiterated that the sale of 38,000,000 (Thirty Eight Million) shares by me to Arif Habib Corporation Limited ("AHCL") in off-market was part of a financing transaction and a negotiated deal under a REPO Agreement executed on 20 March 2013 between myself and AHCL. The transactions did not constitute dealing or trading on my part in the shares of TRG as contemplated by the scope of Clause 35(xxiii) of the Listing Regulations."

(ii) "That in terms of the REPO agreement, the risk and reward in the shares sold to AHCL remains with me. In fact, REPO is a secured loan and a REPO Agreement is an agreement with a commitment by the Seller to buy a security back from the purchaser at a specified price at a designated future date. As such, the transaction between myself and AHCL was not an outright sale and I throughout remained the beneficial owner."

(iii) "That the average price of Rs. 4.37 at which the shares have been sold reflects the agreed price between AHCL and myself to include a margin for the REPO transaction. The price itself indicates that it was not a trading transaction as the price was substantially lower than the prevailing market price and included security margin for the REPO transaction."

(iv) "That the actual transfer of shares by AHCL into the account of AHCL was done by AHCL to give effect to the REPO transaction and, therefore, no trading was involved within the closed period."

(v) "That the transaction with AHCL did not involve a sale and transfer of beneficial ownership interest in the shares of TRG and constituted merely a REPO financing transaction and not a trade transaction. As such, there is no violation of any provisions of the Listing Regulations."



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(vi) *"That I have already sent a copy of the REPO Agreement executed on March 20, 2013 between myself and AHCL for perusal and record with reference to letter No. 1 (5)TRG/MSW/SMD/2013 dated April 12, 2013 received from the Deputy Director (SM) SECP Mr. Muhammad Ali."*

(vii) *"That other grounds shall be urged at the time of hearing of this Show Cause Notice if required."*

"In view of the above circumstances it is respectfully submitted that I have not committed violation of any provisions of the Listing Regulations of KSE as mentioned in the Show Cause Notice, therefore, it is requested that the Show Cause Notice under reply may kindly be withdrawn or treated as satisfied in the interest of justice. If a hearing is still considered necessary, I would like the opportunity of being heard through my legal counsel."

8. On May 28, 2013 no one appeared on behalf of the Respondent. However, the Respondent vide letter dated May 29, 2013 was given final opportunity to appear before the undersigned on June 04, 2013. Subsequently, the hearing in the matter was held on June 04, 2013. Syed Muhammad Talib Raza, Company Secretary ("CS") and Mr. Amel Khan Kanshi ("Legal Counsel") appeared on behalf of the Respondent. They reiterated the arguments and submissions as presented in Respondent's above-mentioned written reply. The additional submissions made by them during the course of hearing and proceedings of the hearing are summarized as under:

i) The Legal Counsel stated that the stance of the Respondent was explained in detail in the reply to SCN. The Legal Counsel further apprised that these were REPO transactions with AHCL and shares of TRG are in possession of AHCL and same will be transferred back to the Respondent on September 25, 2013. These transactions were only took place for the purpose of REPO and same were not buy and sell transactions of shares.



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ii) The Legal Counsel stated that the ownership of the shares was with Respondent even after the REPO agreement was made and if the ownership remains with the Respondent then these transactions do not constitute the trading transactions. The Legal Counsel of the Respondent was asked regarding the Section 35 (xxiii) of the Listing Regulations wherein it is clearly stated that "No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period." In this regard, the Legal Counsel argued that in the above mentioned clause the word "deal" has been used which means "trade" but as mentioned earlier the transactions in question were REPO transactions not trading transactions so the Section 35 (xxii) is not applicable in the instant case. The Legal Counsel further contented that in Section 22 of the Ordinance it is clearly stated that the act should be willful and mensrea but in the instance case no willful act was done by Respondent.

iii) The Legal Counsel of the Respondent was inquired if the transactions in question were not trades then why these were executed in Off Market and recorded in the official KSE record. Further, he was asked regarding the logic of Off Market transactions. The Legal Counsel replied that the same issue was not addressed in the SCN. He was reminded that issue was raised in the para 3 of the SCN. The Legal Counsel contented that all the concerns raised in the SCN were addressed by the Respondent in the reply to the SCN.

iv) The attention of the Legal Counsel was invited towards Clause 35(xxiii) of the Listing Regulations wherein the word directly or indirectly has been used for trading in the closed period by the CEO or Director. The Legal Counsel in this regard reiterated its stance that



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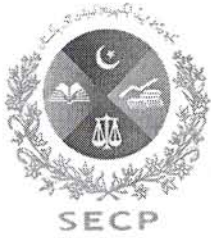
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transactions in questions were not trades or deal it was simply loan / REPO transactions which does not fall under the definition of deal.

v) The attention of Legal Counsel was invited towards Clause 35 (vii) of the Listing Regulations regarding the 7 days notice prior to the BOD meeting. The Legal Counsel stated that if the first charge on the Respondent will not prove then the second charge will not be applicable. According to the Legal Counsel the Commission should evaluate the case because the Respondent did not violate any law willfully thus attraction of any penal provision imposed on the Respondent is discriminatory.

vi) Referring to the Clause 16(vi) of the Listing Regulations, the Legal Counsel argued that the Respondent did not take any beneficial position or profit from the REPO transactions and also no price advantage was taken from it. The Legal Counsel was reminded that beneficial position is associated with beneficial ownership of shares and not with profit and loss. The Legal Counsel requested that case may be reviewed in light of REPO transactions rather than normal trade transactions.

vii) The CS was asked why the notice of BOD meeting was served only three days before BOD meeting. The CS explained that the notice of BOD on March 25, 2013 was served on March 22, 2013 and the agenda of the meeting was to review the operational updates of the various operating subsidiaries of the Company. The closed period was announced because there was possibility of taking any financial decisions in that meeting but the directors did not take any financial decision during the meeting.



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viii) At the end, the Legal Counsel prayed that Commission may take lenient view in the matter because Respondent and directors of the TRG did not hide anything from the Commission and did not indulge in any fraudulent activity by executing the REPO transactions.

9. I have perused the record and the written reply submitted by the Respondent. After a detailed and thorough perusal of the facts, information available on record and averments made by the Legal Counsel and CS during the course of the hearing, my observations on the same are as follow:

i) The contention of the Legal Counsel of the Respondent that the transactions in questions were only REPO transactions and same were not trades is not true. The Respondent bought 33,000,000 shares from March 19 to March 21, 2013 through Off Market and same were reported to KSE whereas from March 22 and March 25, 2013 the Respondent sold 38,000,000 shares to AHCL through Off Market but same were not intimated to KSE. The selling of the TRG shares by the Respondent were properly recorded in the Off Market as trading transactions and same were notified to the KSE. Trades reported and recorded in the Stock Exchange are considered legal transactions and have to comply with all the requirements of prevalent rules and regulations. Therefore, it was the duty of the Respondent to notify these transactions to the KSE which was the requirement of the Clause 16 (vi) of the Listing Regulations.

ii) The Respondent's contention that the transactions were REPO transactions, therefore, no trading was involved within closed period is not true. In Listing Regulations it is very clearly stated that "No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period". In the instance case the Respondent sold the shares to AHCL in the closed period. It



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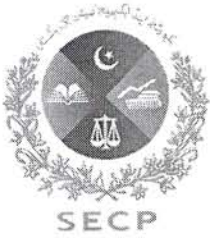
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was the duty of the Respondent to avoid trading in the scrip in any manner during the closed period as required in the Clause 35 (xxiii) of the Listing Regulations.

iii) According to the Clause 35 (vii) of the Listing Regulations the written notice shall be served at least seven days prior to the BOD meeting and same issue was raised in the SCN. The Respondent has not given his comments in the reply to the SCN regarding the above-mentioned issue. During the course of hearing the CS apprised that the agenda of the BOD was to review the operational updates of the subsidiaries of the company but CS was not able to provide any justification of issuing the notice of BOD only just three days before the BOD meeting.

iv) From the facts of the case it appeared that CS may have deliberately delayed the notice of BOD meeting because as mentioned above the Respondent bought 33 million shares of TRG from March 19 to March 21, 2013 and after the completion of his purchase the CS issued the BOD notice just three days prior to the BOD meeting and declared closed period from March 22 to March 25, 2013.

v) The Legal Counsel in his arguments has emphasized that as a prerequisite to establishing liability under Section 22 of the Ordinance, the element of 'willful act' and the 'intention' is essential to be proved. The Legal Counsel argued that the actions of the Respondent were not 'willful', therefore, they do not attract the penal provisions of Section 22 of the Ordinance. It has been argued that the judicial interpretation of 'willful' is 'knowledge or intention' and that "the word willfully is defined as meaning that the act is done deliberately and intentionally, not by accident or inadvertence....." The facts of the present case flow towards the conclusion that the assertion of the Legal Counsel that the



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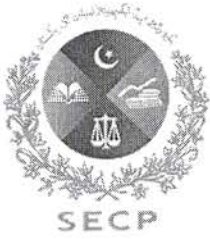
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transactions executed by the Respondent do not fall within the ambit of willful default in terms of Section 22 of the Ordinance is not correct.

vi) It is the observation of this forum that since 'knowledge' or 'intention' is a state of mind it is difficult to adjudicate the matter on this specific point alone. It is the act itself, the result and the circumstances surrounding the act which point towards the intention of a person committing an offence. If for arguments sake the contention of the Legal Counsel is accepted that the act of trading by the Respondent in the manner discussed in the preceding paragraphs was not 'willful', it would mean that the Respondent was not aware of the eventual result of its actions or is not capable or competent to understand the effect of trading. However, this is not the case as the Respondent has clearly stated that it has made the REPO transactions for obtaining the financing facility. Accordingly, the Respondent knew the consequences of the said transactions; hence act of the Respondent was willful.

10. The Respondent is having highest position in one of the well reputed companies having international presence. Accordingly, the Respondent is expected to be conversant and fully complied with the regulatory requirements. Keeping in view, the aforementioned averments made in written reply and during the course of hearing, it is established that the Respondent sold shares of TRG in the closed period thus violated the Clause 35 (xxiii) of the Listing Regulations. Further, the Respondent has failed to notify his trading to KSE thus violated the Clause 16 (vi) of the Listing Regulations.

11. In light of the above, Respondent is hereby held guilty of contravention of section Clause 16 (vi) and Clause 35 (xxiii) and in exercise of the powers under Section 22 of the Ordinance, I hereby direct the Respondent to deposit a fine of Rs. 400,000/- (Rupees Four Hundred Thousand Only) .



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12. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 11 above, in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish the copy of the deposit challan to the undersigned.

13. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission or on the same facts for violation of any other provision of the Ordinance.




(Imran Inayat Butt)
Director / HOD (MSRD)

Announced on June 27, 2013
Islamabad.