THE HIGH COURT OF SINDH, KARACHI

[COMPANY BENCH]

J.C.M. No. 12 of 2025

In the matter of the Companies Act, 2017

And

of TRG Pakistan Limited

Petitioner	:	Muhammad Ziaullah Khan Chishti son of Attaullah Khan Chishti through M/s. Barrister Sarfaraz Ali Metlo, Barrister Fayaz Ali Metlo, Athar Hussain, Advocates along with Ms. Adeela Ansari and Atiya Manzoor, Advocates.
Respondent No.1	:	TRG Pakistan Limited through M/s. Abid S. Zuberi, Ayan Mustafa Memon, Muhammad Nawaz Khan, Saif Sohail and M. Arif Ansari, Advocates.
Respondent No.2	:	The Resource Group International Limited through M/s. Arshad M. Tayebaly, Sameer Tayebaly and Aitzaz Manzoor Memon, Advocates.
Respondent No. 3	:	Greentree Holdings Limited through M/s. Ali Almani, Furqan Mushtaq and Sami-ur-Rehman, Advocates.
Respondent No. 4	:	Securities and Exchange Commission of Pakistan through M/s. Muzaffar Mirza, Imran Ahmed Shamsi, Syed Ebad-ur-Rehman, Advocates along with Mr. Sabeel Shah, Deputy Director (Listed Companies), SECP.
Respondent Nos. 5-8	:	Nemo.
Respondent No. 9	:	AKD Securities Limited through M/s. Mayhar Kazi, Ahmed Imran Dewan and Sheheryar Malik, Advocates.
Applicants/Interveners	:	Abdul Qadir son of Muhammad Ilyas and Muhammad Yaqoob son of Muhammad Yousuf through M/s. Syed Ghulam Shabbir Shah, Irtafa-ur-Rehman, Mukesh Kumar Talreja, Agha Shahzaib and Anas Habib Magoon, Advocates.

Dates of hearing	:	07-04-2025, 10-04-2025, 15-04-2025, 17-04-2025, 23-04-2025, 24-04-2025, 28-04-2025, 05-05-2025, 06-05-2025 & 08-05-2025.
Date of decision	:	20-06-2025

O R D E R

Adnan Iqbal Chaudhry J. - ***Overview:*** The Petitioner holds 16% shares in TRG Pakistan Ltd. [**TRGP** - Respondent No.1], a public-listed company incorporated in Pakistan. Greentree Holdings Ltd. [**Greentree** - Respondent No.3], a Bermuda company, also holds 29.7% shares in TRGP. On 17.01.2025, Greentree made a public announcement of offer **[public offer]**[1] under Regulation 7 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations 2017 **[Takeover Regulations]**, read with section 111[2] of the Securities Act 2015, to acquire an additional 35% voting shares of TRGP to take its shareholding to 65% thus giving it control of TRGP. The Petitioner contends *inter alia* that all shares of TRGP purchased by Greentree and now the public offer as well, is funded by TRGP's own money i.e. 'financial assistance' by TRGP to buy its own shares which is prohibited by section 86(2) of the Companies Act 2017. The Petitioner submits that such maneuver by directors of TRGP to deliver control of the company to Greentree is unlawful, fraudulent and oppressive of the members of TRGP, hence this petition under section 286 of the Companies Act.

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[1] The 'public offer' under Part IX of the Securities Act 2015 is defined in section 108(f) to mean "the public offer for acquisition of voting shares of a target company and includes any competitive bid or bids made for this purpose."

[2] **111. Acquisition of voting shares beyond prescribed limits or control of a company.—** No person shall, directly or indirectly,—

(a) acquire voting shares, which (taken together with voting shares, if any, held by such person) would entitle such person to more than thirty per cent voting shares in a listed company; or

(b) acquire additional voting shares in case the acquirer already holds more than thirty per cent but less than fifty-one per cent of the voting shares of a listed company:
Provided that such acquirer shall not be required to make a fresh public offer within a period of twelve months from the date of the previous public offer; or

(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.

2. Upon the petition, an interim order was passed by this Court on 24.03.2025 that upon close of the acceptance period of the public offer, TRGP and the Manager to the Offer (Respondent No.9) shall maintain *status quo*. Such order was extended during the hearings, however, with the observation that Greentree would be free to extend the acceptance period of the public offer, which it did from time to time.

Parties to the dispute:

3. Greentree, the acquirer[3], was incorporated in Bermuda in 2020 as a wholly owned subsidiary of The Resource Group International Ltd. [**TRGIL** - Respondent No.2], also a company incorporated in Bermuda. TRGIL is an investment holding company that was funded initially with Pakistani capital. It is invested in a portfolio of companies in technology-enabled services sector primarily in the USA. While Greentree is controlled by TRGIL, the target company[4] *i.e.* TRGP holds 69% 'Series B Preferred Shares' in TRGIL *albeit* with voting rights restricted to 45% by a Stock Purchase Agreement **[SPA]** between the shareholders of TRGIL. Pursuant to that SPA, TRGP appoints 3 of the 7 directors of TRGIL. Per para 5.1 of TRGP's financial statement for year ended 30.06.2024, TRGP's shareholding in TRGIL represents:

> *"This represents investment in TRGIL, an associate incorporated in Bermuda having par value and additional paid up share capital of US$0.01 and US$ 0.99 per share respectively. The registered office of TRGIL is situated at Crawford House 50, Cedar Avenue, Hamilton HM I I, Bermuda. The Company holds 60,450,000 shares in TRGIL representing 68.8% of the total shares in issue (June 30, 2023: 68.8%), but with voting power of 45.3% (June 30, 2023: 45.3%). Furthermore, the Company does not control the composition of the Board i.e. it does not have the power to appoint a majority of directors on TRGIL's board nor does it exercise or control more than fifty percent of TRGIL's voting power as per the contractual arrangements in place, thereby making TRGIL an associate. The percentage holding for share of associate accounting is calculated after taking into account the features of each class of shares and assets that have been earmarked for respective shareholders, which has*

[3] Section 108(a) of the Securities Act 2015: "acquirer" means any person who, directly or indirectly, acquires or intends to acquire voting shares or voting rights in, or control of the target company, either by himself or through any person acting in concert.

[4] Section 108(i) of the Securities Act 2015: "target company" means a listed company or holding company of a listed company whose voting shares or control are directly or indirectly acquired or intended to be acquired.

> *resulted in 100% effective beneficial interest over its residual net assets after taking into account the interest accruing to other shareholders (June 30, 2023: 100%).”*

4. The management of TRGP and TRGIL is overlapping. Six directors of TRGIL are amongst the ten directors of TRGP. The Chairman of the Board of TRGP is the CEO of TRGIL. The CEO of TRGP is the Chief Investment Officer and director of TRGIL. Thus, the directors of TRGIL are in majority on the Board of TRGP. However, directors of TRGP themselves hold less than 1% shares in the company. The sole material asset of TRGP, which also constitutes the principal line of its business, is its shareholding in TRGIL.

5. The Petitioner was the founder/sponsor, shareholder and director of both TRGP and TRGIL. He was also the CEO of TRGP and Chairman of the Board of TRGIL. In 2019, he was embroiled in a sexual harassment scandal in the USA leading to legal proceedings that drew negative publicity and pressure from investors. Therefore, on 29.11.2021, the Petitioner was impelled to resign from office in TRGP and TRGIL. Per the Respondents 1-3, the Petitioner has since been trying to get back control of TRGP. They have highlighted said scandal in their pleadings to insinuate that if the Petitioner were to find his way back into control of TRGP, that would not fare well for the company. But even so, I do not see how that aspect can prejudice rights and remedies provided to the Petitioner by the Companies Act as shareholder of TRGP.

Chronology of events:

6. The events leading to Greentree’s public offer to acquire control of TRGP and the events leading to this petition are as follows.

6.1 In December 2021, TRGIL offered to buy-back/redeem its shares from certain proceeds and liquid assets allocated to its shareholders. Such offer was also made to TRGP. However, the Board of TRGP decided against it and requested TRGIL to park

TRGP's share of the liquid assets in a special purpose vehicle **[SPV]** abroad. TRGIL accepted. On 20.12.2021, TRGP made a disclosure to the Pakistan Stock Exchange **[PSX]**, as a requirement of sections 96 and 131 of the Securities Act, that an SPV of TRGIL will utilize liquid assets of TRGP to purchase its shares. Later, Greentree emerged as the designated SPV. This arrangement between TRGP, TRGIL and Greentree is alleged to be the 'financial assistance' given by TRGP to purchase its own shares in violation of section 86(2) of the Companies Act.

6.2 On 10.03.2022, Greentree made a public disclosure under section 110[5] of the Securities Act, 2015 that it had acquired 10% shareholding in TRGP by purchases made at the PSX.

6.3 In May 2022, the SECP issued a show-cause notice to TRGP to explain alleged violation of section 86(2) of the Companies Act. Against that, TRGP filed Suit No. 1584/2022. By an interim order dated 21.10.2022 the Court restrained the SECP from taking coercive action against TRGP.

6.4 In October 2022, TRGP filed Suit No. 1589/2022 against its shareholders namely the JS Group[6], the Petitioner and others, to injunct them from a hostile take-over of the company. It was alleged that said defendants, acting in concert, had cumulatively acquired more than 30% shares without adhering to the provisions of the Securities Act. By an interim order dated 19.10.2022, the Court restrained those defendants from acting on voting shares of TRGP in excess of the 30% threshold. The JS Group retaliated by Suit No. 1599/2022, contending that the interim order in Suit No. 1589/2022 had been obtained surreptitiously to deprive them of voting in the

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[5] **110. Acquisition of more than ten per cent voting shares of a company.—** (1) Any acquirer who acquires voting shares, which, taken together with voting shares, if any, held by the acquirer, would entitle the acquirer to more than ten per cent voting shares in a listed company, shall disclose the aggregate of his shareholding in that company to the said company, the securities exchange on which the voting shares of the said company are listed and the Commission as provided in subsection (2).

[6] Jahangir Siddiqui & Co. Ltd., JS Bank Ltd., JS Infocom Ltd., Energy Infrastructure Holding (Pvt.) Ltd., JS Global Capital Ltd., Trustees of JS Bank Ltd.-Staff Gratuity Fund and certain individuals in that group.

AGM of TRGP scheduled for 25.10.2022. By order dated 24.10.2022, the Court then restrained TRGP from holding the AGM till further orders.

6.5 On 06.01.2023, TRGIL filed Suit No. 19/2023 against the Petitioner and the JS Group contending that the Petitioner had pledged shares of TRGP with the JS Group in violation of the SPA. By an interim order the Court restrained the JS Group from creating third-party interest in those shares.

6.6 In January 2023, TRGIL invoked the arbitration clause of its SPA with the Petitioner and filed a claim against him before the Judicial Arbitration and Mediation Center (JAMS), New York **[Arbitrator]**, contending that the Petitioner had breached the SPA in transferring shares of TRGP and TRGIL without the consent of the investor-party to the SPA.

6.7 In February 2023, the Petitioner filed a counter-claim before the Arbitrator, contending that it was TRGP and TRGIL who had breached the SPA in December 2021 while redeeming shares of TRGIL. However, upon a suit filed by TRGP in the U.S. Federal District Court, Southern District of New York, the arbitration was stayed by an order dated 02.02.2024 on the submission that the Petitioner had earlier waived legal action against TRGP and TRGIL by executing a Release Agreement.[7]

6.8 In June 2024, the Petitioner filed Suit No. 695/2024 against TRGP, TRGI and their directors as a shareholder's derivative action against breach of the SPA. The suit was however withdrawn by the Petitioner on 13.09.2024 apparently to comply with an anti-suit injunction dated 10.09.2024 ordered by the U.S. Federal District Court, Southern District of New York on a motion by TRGIL contending that the dispute was covered by arbitration.

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[7]A brief of those proceedings appears in para 26.1 of the financial statement of TRGP for the year ended 30.06.2024.

6.9 In September 2024, the JS Group holding 14.45% shares in TRGP, filed JCM No. 22/2024 under section 286 of the Companies Act, alleging mismanagement in the affairs of TRGP *inter alia* by violation of section 86(2) of the Companies Act. This JCM was prior to Greentree's public offer.

6.10 In the meantime, Greentree continued to purchase shares of TRGP from the open market, and by December 2024 it had built its shareholding in TRGP to 29.7%.

6.11 On 26.12.2024, Greentree made a public announcement of intention under Regulation 6 of the Takeover Regulations to acquire further shares and control of TRGP. Following up on that, Greentree made the impugned public offer on 17.01.2025 under Regulation 7 of the Takeover Regulations stipulating the closing date as 12.03.2025. The purchase price offered was Rs. 75 for each share of TRGP. However, due to a restraining order passed by the Islamabad High Court in Writ Petition No. 731/2025 filed by another shareholder, the time-line for the public offer could not be followed. That petition was eventually dismissed on 12.02.2025 for want of territorial jurisdiction. Thereafter, by notice dated 20.03.2025, the Manager to the Offer (Respondent No.9) extended the closing date of the public offer to 04.04.2025, which was then extended by the Manager from time to time owing to this petition.

6.12 The three-year term of directors of TRGP was set to expire on 14.01.2025. On 02.01.2025, Greentree filed JCM No. 01/2025 under section 286 of the Companies Act to restrain TRGP from hold election of directors on the ground that newly elected directors may impede Greentree's public offer. No restraining order was passed. Also pending is another JCM No. 05/2025 by Greentree, again under section 286 of the Companies Act complaining that shareholders of TRGP are impeding the public offer.

6.13 On 27.01.2025, the Arbitrator gave an Interim Award restraining the Petitioner from transferring his shares in TRGP contrary to section 8.6(a) of the SPA, excepting shares purchased

between 04.10.2005 and 10.10.2022. That award was then reissued on 04.02.2025 as a Partial Final Award. For enforcement of said awards under the Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral Awards) Act 2011, TRGIL has filed JM No. 5/2025 and JM No. 23/2025. In JM No. 5/2025 the Court passed an interim order restraining the Petitioner in terms of the award.

Submissions by the Petitioner:

7. To allege that affairs of TRGP are being conducted unlawfully it is averred in the petition and was submitted by Mr. Sarfraz Metlo Advocate:

- that TRGP has failed to hold an AGM for three consecutive years from 2022 to 2024;
- that the Directors of TRGP, who hold less than 1% stake in the company, have caused considerable loss to the company;
- that on 10.12.2021, TRGP had made a public disclosure that TRGIL owed to it funds/dividend of USD 195 million; but instead of receiving those funds, TRGP made another public disclosure on 17.12.2021 that they had decided to reinvest those funds in TRGIL, and through it in Greentree, specially for purchasing shares of TRGP from TRGP's own money, thereby violating section 86(2) of the Companies Act; that Greentree therefore used TRGP's money to build its shareholding to 29.7% and the public offer now made by Greentree is from the same money;
- that refusal by TRGP's directors to hold election of directors after 14.01.2025 is violative section 158(2) of the Companies Act; that the delay is deliberate, *malafide*, aimed at ensuring that Greentree takes control of TRGP so that the present directors can re-elect themselves by exercising their vote on the Board of TRGIL which controls Greentree;
- that the public offer by Greentree falls within the definition of 'merger' under Regulation 3(c) of the Competition (Merger Control) Regulations, 2016, which requires prior approval of the Competition Commission under section 11 of the

Competition Act, 2010; and that the public offer is also contrary to the provisions of the Securities Act;

- that minutes of meetings of TRGP's Board held in December 2021, coupled with public disclosures made by them manifest that shares of TRGP acquired by Greentree and the public offer as well is from TRGP's funds in the hands of TRGIL;
- that after the last substantial shareholder of TRGIL and taken the offer of redemption of shares, TRGP was the sole beneficial owner of all assets of TRGIL, thus for all intents and purposes TRGIL was a subsidiary of TRGP;
- that the decision taken by TRGP to reinvest in in TRGIL/Greentree was beneficial for TRGIL, not for TRGP, especially in light of the fact that all other shareholders of TRGIL had taken the offer of redemption of shares, even Mr. Mohammad Khaisghi who was the Chairman of TRGP; that majority directors of TRGP who were also directors of TRGIL were clearly acting in the interest of TRGIL; that by giving consent to reinvest in TRGIL and to amend the SPA, the directors of TRGP compromised the rights of the company; that the decision to reinvest also by-passed the condition imposed on TRGP by the SBP *vide* letter dated 07.04.2003 which required dividends on investments to be repatriated to Pakistan forthwith.

8. In its rejoinder-affidavit, the Petitioner took additional legal grounds. The Respondents were therefore permitted to respond by an affidavit of sur-rejoinder. Upon the additional grounds, Mr. Sarfraz Metlo, learned counsel for the Petitioner submitted:

- that the decision by TRGP's Board to reinvest funds in TRGIL, and through it in Greentree, was investment in a subsidiary which required a special resolution by members of TRGP as mandated by section 199 of the Companies Act which was never obtained;

- that TRGP has never disclosed to public shareholders that Greentree's public offer is funded by TRGP's own money which is also a violation of Regulation 6(8) of the Takeover Regulations;
- that directors of TRGP who were also on the Board of TRGIL were in a situation of conflict of interest in deciding to reinvest in TRGIL; these directors breached fiduciary duty owed to shareholders of TRGP under section 204(4) of the Companies Act and violated Regulation 24(3) of the Takeover Regulations.

Submissions by TRGIL (Respondent No.2):

9. Apart from objections to the maintainability of the petition which are discussed separately *infra*, the pleadings of TRGIL and arguments advanced in support thereof by its counsel, Mr. Arshad Tayebaly, were as follows:

- that Greentree' public offer is in the interest of TRGP's shareholders, therefore is no question of oppression of minority shareholders;
- that the arrangement between TRGIL and TRGP did not violate section 86(2) of the Companies Act as explained under:

  "*Respondent No.2* [TRGIL] *offered to redeem, in whole or in part, or not to redeem at all, the shares held by Respondent No.1* [TRGP] *in Respondent No.2 in December 2021 (an offer that Respondent No.2 had made to each of its shareholders), Respondent No.1 never took that offer and thus never received any of Respondent No.2's assets. Instead, Respondent No.1 voted for an alternative arrangement by a vote of nine votes to one in the meeting of the board of directors in December 2021 – opting to reject the redemption and instead convey a request to Respondent No.2 to continue to own and manage the assets and find a different mechanism to provide liquidity and value to Respondent No.1's shareholders. Respondent No.2 then proceeded to do exactly that through a foreign Special Purpose Vehicle, Respondent. No.3, which has already provided about $86 million in liquidity to Respondent No.1's shareholders through purchase of its shares in the open market. These funds have been remitted by Respondent No.3 to Pakistan through normal banking channels provided foreign exchange in the national interest and have benefited a large number of minority shareholders of Respondent No.1 by providing them liquidity of $86 million";*

- that the petition is *malafide* and frivolous; it is to settle a personal score with directors of TRGP; that matters agitated

are *subjudice* in other proceedings which have been suppressed; therefore, the Petitioner is not entitled to any equitable relief under section 286 of the Companies Act (reliance placed on PLD 1988 Lah 1; 2021 CLD 578; 2015 CLC 877);

- that election of directors could not be held by TRGP due to the restraining order dated 24.10.2022 in Suit No. 1599/2022;
- that pursuant to the public offer by Greentree, over 200 million shares of TRGP have been received in acceptance by the Manager to the Offer thus creating third-party rights;
- that the Petitioner cannot participate in the public offer as the arbitration award against him imposes a restriction on share-transfers by him.

10. Mr. Arshad Tayebaly, learned counsel for TRGIL further submitted that violation of section 86(2) of the Companies Act does not constitute oppression or mismanagement within the meaning of section 286 of the Companies Act (reliance placed on 2021 CLD 7); and since election of directors of TRGP was stayed by a Court order, the existing directors continued by virtue of section 158(1) of the Companies Act. He submitted that the petition is on the misconception that TRGIL is a subsidiary of TRGP; that since TRGP holds only 45% voting shares in TRGIL, the latter does not fall within the definition of 'subsidiary' in section 2(68) of the Companies Act; in fact, as body incorporated abroad, TRGIL also does not fall within the definition of 'company' in section 2(18) of the Companies Act. He submitted that dividends unless declared by a company cannot be claimed by a shareholder as a right (reliance placed on 1987 CLC 1408; 2007 CLD 1210); that section 199 of the Companies Act was not attracted as TRGP had simply decided not to take the offer of redemption of shares; and that the books of TRGP do not reflect money owed by TRGIL but only shares held in TRGIL, therefore there was no financial assistance by the former to the latter.

Submissions by TRGP (Respondent No.1):

11. TRGP's reply to the petition is the same as TRGIL's, however with additional objections to the maintainability of the petition which are discussed separately *infra*. On the merits, Mr. Abid S. Zuberi, learned counsel for TRGP supported the arguments of Mr. Tayebaly while adding that the facts alleged do not make out a case of winding-up as required by section 286 of the Companies Act; that TRGIL's letter dated 09.12.2021 was not a declaration of dividends but only a proposal to see if TRGP wanted to sell its shares back to TRGIL; that the Board of TRGP deliberated and a decision was taken in the best interest of shareholders *viz.* to continue with the investment in TRGIL; therefore, no money was due to TRGP; consequently, there is no question of violating section 86(2) of the Companies Act.

Submissions by Manager to the Offer (AKD Securities – Respondent No.9):

12. Per the counter-affidavit of the Manager to the Offer (Respondent No.9), the public offer by Greentree is for all shareholders of TRGP including the Petitioner; that if the Petitioner does not desire to sell his shares, he cannot deprive others the opportunity to sell especially when the Petitioner himself has not made a competitive bid under the Takeover Regulations; and that the public offer complies with the Securities Act and the Takeover Regulations. Mr. Mayhar Kazi, learned counsel for Respondent No.9 assisted the Court on the scheme of the Securities Act and the Takeover Regulations. He discussed the time-line of the public offer and explained its contents. He submitted that conditions to a public offer in-built by the Securities Act and the Takeover Regulations ensure that in a take-over bid minority shareholders are provided an opportunity to sell lest they apprehend oppression by the acquirer, therefore the remedy of section 286 of the Companies Act is not envisaged against a public offer; that under the Takeover Regulations the target company plays only a passive role, in fact it is prohibited from defeating the public offer which remains a matter

between the acquirer and shareholders; and that the intent of the legislature is not to police the public offer (reliance placed on AIR 2013 SC 2360). He submitted that once shareholders give their acceptance to the public offer by depositing their shares in the CDC account of the Manager, they are committed to the sale.

Submissions by Greentree (Respondent No.3):

13. Pleadings of Greentree are the same as TRGIL's. Mr. Ali Almani, learned counsel for Greentree adopted the submissions made before him and added that since the remedy in section 286 of the Companies Act was a substitute to winding-up, the Petitioner has to meet a higher threshold and actually demonstrate that he is prejudiced by the public offer which he has failed to do; that the Petitioner's antecedents do not merit any discretion; that the public disclosure made by Greentree under the Takeover Regulations ensure transparency in the public offer; therefore, it cannot be argued that shareholders of TRGP are kept from making an informed choice to sell or not to sell their shares; that even if the Petitioner does not want to sell his shares, he has no right to stop others.

Comments of the SECP (Respondent No.4):

14. Mr. Muzaffar Mirza, Chief Prosecutor for the SECP took the Court through the comments of the SECP and informed that though a show-cause notice was issued to TRGP against violation of section 86(2) of the Companies Act and for failure to maintain proper record, that did not proceed further in view of the restraining order passed in Suit No. 1584/2022. He submitted that 543 applications had been submitted by public shareholders in response to the public offer and therefore the Court may consider the interest of such shareholders who have an exit opportunity under the public offer.

Petitioner's rebuttal:

15. In rebuttal, Mr. Sarfaraz Metlo, learned counsel for the Petitioner submitted:

- that the restraining order passed in Suit No. 1599/2022 was only against holding an AGM by TRGP, not against election of directors; that under section 158(2) of the Companies Act, a director whose term expires can continue to a maximum of 90 days during which time election has to be held; had the election been held, the present directors would certainly not be elected and the new directors, who would also have been on the Board of TRGIL, would not have allowed Greentree to ahead with the public offer;
- the fact that certain monies were due from TRGIL to TRGP was acknowledged in the financial statement of TRGP as of 30.06.2022; that clause 8.13 of the SPA between TRGP and TRGIL obliged the latter to pay dividends to the former, therefore, the Board of TRGP had no authority to make any other arrangement with TRGIL; that neither TRGIL nor Greentree have denied using the funds of TRGP to purchase its shares;
- that if not a subsidiary, TRGIL was admittedly an associated company or undertaking of TRGP and therefore section 199 of the Companies Act was attracted to the reinvestment made by TRGP in TRGIL;
- that there is a clear violation of clauses (b), (g)(i), (iii) and (iv) of section 301 of the Companies Act which are grounds to wind-up TRGP, and therefore the petition meets the test of section 286 of the Companies Act.

Opinion of the Court

Submissions by Intervenors:

16. CMA No. 3051/2025 and CMA No. 3053/2025 are applications under Order I Rule 10 CPC by two shareholders of TRGP who have accepted the public offer made by Greentree. They seek to become parties on the ground that the petition seeks to prevent them of the opportunity to sell their shares at a premium. They plead that they have already submitted acceptance letters to

the Manager to the Offer (Respondent No.9) and have deposited their shares in the CDC account of the Manager. Their counsel, Mr. Shabbir Shah Advocate submitted that there was thus a concluded contract between the Intervenors and Greentree which could not be jeopardized by the Petitioner. In my view, assuming there is such a contract, that is subject to the Takeover Regulations which envisage that the transaction is not complete until payment is made to the shareholders. Admittedly, that stage has not arrived. In fact, on 24.03.2025, when this Court passed a *status quo* order, the acceptance period of the public offer had not even expired and has since been extended by the Manager to the Offer. Therefore, applications for joinder by Intervenors are premature. They are not necessary parties to the petition. CMA No. 3051/2025 and CMA No. 3053/2025 are dismissed. This also answers similar submission made by learned counsel for TRGIL, TRGP and Manager to the Offer.

Whether the petition is time-barred:

17. It was submitted by learned counsel for TRGIL that on 20.12.2021 TRGP had made a public disclosure under sections 96 and 131 of the Securities Act that a subsidiary of TRGIL will use the liquid assets of TRGP to purchase shares of TRGP for the benefit of TRGP's shareholders; that on 10.03.2022, Greentree made the public disclosure under section 110 of the Securities Act that it had acquired 10% shareholding in TRGP; that it is further acknowledged in para 11 of the petition that on 08.03.2022 the Petitioner had knowledge that Greentree had acquired 10% shareholding in TRGP; therefore, the Petitioner had knowledge all along that Greentree is purchasing shares of TRGP from the latter's liquid assets with TRGIL but never objected; resultantly, this petition filed on 22.03.2025 after 3 years of the aforesaid events is time-barred under Article 181 of the Limitation Act, 1908.

On the other hand, learned counsel for the Petitioner submitted that TRGP's disclosure dated 20.12.2021 does not even mention Greentree; that Greentree's disclosure dated 10.03.2022 did not disclose the source of funds for acquiring shares of TRGP; that

the Petitioner first came to know that such source was TRGP from an email dated 04.05.2022 received by him from TRGIL's General Counsel, Mr. Pat Costello, and from that date the petition is within 3 years.

18. Firstly, the date of 08.03.2022 in para 11 of the petition is mentioned as the date Greentree purchased shares of TRGP, not the date the Petitioner acquired knowledge thereof. Secondly, the disclosures dated 20.12.2021 and 10.03.2022 respectively by TRGP and Greentree, were made to the PSX and the record does not reflect how those disclosures were disseminated to shareholders of TRGP. Article 181 of the Limitation Act, 1908 is a residuary provision dealing with "Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908". The period of three years thereunder begins from the date "when the right to apply accrues". In *B and T Ag v. Ministry of Defence* (2023 SCC OnLine SC 657), while dealing with the *pari materia* Article 137 of the Indian Limitation Act, 1963, the Supreme Court of India observed that:

> "This being a residuary Article to be adopted to different classes of applications, the expression 'the right to apply' is an expression of a broad common law principle and should be interpreted according to the circumstances of each case."

Apparently, learned counsel for both sides construe the 'right to apply' from the date of knowledge of relevant facts. If that were to be accepted, then date of knowledge itself is a question of fact and then the Petitioner's contention that he came into knowledge of the relevant facts on 04.05.2022 has force. Be that as it may, in my opinion, it is difficult to reconcile Article 181 of the Limitation Act with section 286 of the Companies Act.

19. Section 286[8] of the Companies Act is of course titled as 'Application to Court' *albeit* it goes on to describe the same as "an

[8] **286. Application to Court.—**(1) If any member or members holding not less than ten percent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than ten percent of the paid up capital of the company, complains, or complain, or the Commission or registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner

application to the Court by petition for an order under this section".[9] But then, an application/petition under section 286 of the Companies Act is self-reliant for the purposes of limitation. It provides recourse only when affairs of the company "are being conducted, or are likely to be conducted" as alleged. This means that the affairs complained of must either be continuing when the petition is made, or it is imminent that affairs will be so conducted. The latter scenario also manifests circumstances prevailing at the time of the petition to urge that affairs are likely to be conducted as apprehended. When section 286 of the Companies Act itself does not

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not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner that is unfairly prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the Commission or registrar may make an application to the Court by petition for an order under this section.

(2) If, on any such petition, the Court is of opinion—

(a) that the company's affairs are being conducted, or are likely to be conducted, as aforesaid; and

(b) that to wind-up the company will unfairly prejudice the members or creditors;

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of purchase by the company, for, the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in, or addition to, a company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, the company shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; and the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so modified accordingly.

(4) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar for registration; and if the company makes default in complying with this sub-section, the company and every officer of the company who is in default shall be liable to a penalty of level 1 on the standard scale.

(5) The provisions of this section shall not prejudice the right of any person to any other remedy or action.

[9] Sections 286 and 304 of the Companies Act provide that such applications shall be way of a 'petition'. Then, the action under section 136 is described as a 'petition', not application. On the other hand, remedies provided by sections 59, 94(b), 116, 117, 126, 160, 197, 279, 288, 307, 313 are by 'application', not petition. Sections 5(6), 6(2)(a), 6(3) and 6(12) refer both to 'petitions' and 'applications', whereas sections 6(2)(e) and 6(13) refer only to 'applications'. It seems that the Companies Act distinguishes an 'application' from an 'application by way of petition' and therefore it can be argued that the latter is not an application in the sense of the Limitation Act, 1908. However, I leave that aspect for deliberation in some other case.

provide recourse against an act already committed which does not continue, Article 181 of the Limitation Act serves no purpose for such an application. In that respect, the *pari materia* section 241 of the Indian Companies Act, 2013 is different as it envisages a *terminus a quo* for limitation by including affairs that "have been conducted", but not affairs "likely to be conducted". Also, section 433 of the Indian Companies Act 2013, which came into effect in 2016, makes applicable the provisions of the Indian Limitation Act to proceedings before the Tribunal. However, before that, under sections 397 and 398 of the Indian Companies Act, 1956 it was settled that the words "affairs are being conducted" signified that the affairs impugned must be present and continuing as observed in the following treatise:

- *A Ramaiya, Guide to the Companies Act*, 18th Edition, page 4215: "Past oppressive conduct or mismanagement is not enough. It must have continued or existed at the time of the application. As ROXBURGH, J., observed in the above cited case of *In re, H.R. Harmer Ltd.,* "the purpose of this section [s. 210 of English Act] is not so much to take up the past as to redeem the future".

- *Tata Consultancy Services Ltd. v. Cyrus Investments (Pvt.) Ltd.* (AIRONLINE 2021 SC 179) where it is held by the Supreme Court of India that the words "are being conducted" in sections 397 and 398 of the Indian Companies Act, 1956 meant that the conduct of the company's affairs in a manner that warrant interference, should be 'present and continuing'.

20. There is another vital aspect of the words "are being conducted" as those appear in section 286 of the Companies Act *viz.* the continuing consequences of acts committed in the past. Allegations of oppression and mismanagement under section 286 are usually demonstrated by a series of events/acts spread over a timeline with ensuing consequences. Even in India, where the dominant view at the time of the Companies Act, 1956 was that the Limitation Act did apply, there also the continuing effect of acts already committed was accepted as reflected under:

- "In *Ramashankar Prosad v. Sindri Iron Foundry (P.) Ltd.,* AIR 1966 Cal 512, it was held that a petition under s. 397 of the 1956 Act [now s. 241 of the 2013 Act] would be maintainable

even if the oppression was of a short duration and of a singular conduct if its effects persisted indefinitely. If the effects of the single act which is burdensome, wrongful and oppressive are of continuing nature, and the member concerned is deprived of a right and privileges for all time to come in the future, then the petition under s. 397 of 1956 Act [now s. 241 of the 2013 Act] can be filed even in respect of a single act. *Maharashtra Power Development Corp. Ltd. v. Dabhol Power Co. Ltd.* (2003) 56 CLA 263: (2003) 48 SCL 180: (2003) 117 Com Case 506: (2003) CLJ 1: (2004) CLC 96(Bom)." - *A Ramaiya, Guide to the Companies Act*, 18th Edition, page 4115.

- "In *Surinder Singh Bindra v. Hindustan Fasteners Ltd.,* AIR 1990 Delhi 32, it was held that events which occurred prior to the period of 3 years can be looked into:
  (i) if those events form part of a continuous process of oppression or mismanagement continuing up to the date of filing of the petition;
  (ii) if the acts complained of form part of the same transaction constituting oppression or mismanagement;
  (iii) if the effect of even a single wrongful act is such that its effect will be a continuous course of oppression or mismanagement." – *Ibid*, page 4216.

21. In my humble view, the remedy in section 286 of the Companies Act is based on the doctrine of continuing wrong which is also embodied in section 23 of the Limitation Act.[10]

22. To submit that Article 181 applies to a petition/application under section 286 of the Companies Act, Mr. Arshad Tayebaly relied on the case of *Bentonite Pakistan Ltd. v. Bankers Equity Ltd.* (2023 SCMR 1353). On the other hand, Mr. Sarfraz Metlo relied on the case of *Naila Naeem Younus v. Indus Services Ltd.* (2022 SCMR 1171) to submit that Article 181 of the Limitation Act does not apply to applications under the Companies Act.

23. In *Bentonite Pakistan Ltd. v. Bankers Equity Ltd.* (2023 SCMR 1353), a three-member Bench of the Supreme Court agreed with the

[10] **23. Continuing breaches and wrongs.** In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

High Court that Article 181 of the Limitation Act applies to applications under the Companies Act. It was observed:

> "4. It is to be noted that subsection (2) of section 1 of the Limitation Act, 1908 (the Act of 1908) provides that it extends to the whole of Pakistan. Thus, by virtue of said provision, all the proceedings under the Act of 2017 are subject to the Act of 1908, except where any proceeding is expressly brought out of the purview of the said Act. The only provision in this regard in the Act of 2017 is section 410, which speaks only about limitation regarding filing of suit by a liquidator for the recovery of any debt due to the company. Thus, the exclusion is only to the extent of the said suit; however, for all other applications and proceedings, the Act of 1908 would be applicable. It is to be noted that there is no specific provision in the Act of 1908 which deals with the applications or proceedings filed under the Act of 2017, except Article 112 thereof, which deals with "a call by a company registered under any Statute or Act"; therefore, the general provision dealing with the applications would be applicable to the applications filed under the Act of 2017. The general provision, which deals with the applications, where no period of limitation is provided in the Act of 1908, etc., is Article 181 thereof which reads as under:
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> ……
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> It is apparent from the above provision that all the applications, for which no period of limitation is provided elsewhere in this Schedule to the Act of 1908 or by section 48 of the Code of Civil Procedure, 1908, would be governed by Article 181 ibid. Thus, any application filed under the Act of 2017 would be governed by Article 181 ibid and there would be a period of limitation of three years for such applications."

24. On the other hand, in *Naila Naeem Younus v. Indus Services Ltd.* (2022 SCMR 1171) a two-member Bench of the Supreme Court held that Article 181 of Limitation Act does not apply to an application under section 152 of the Companies Ordinance, 1984. It was held that:

> "11. …….. Neither the Limitation Act nor the Ordinance mentions an application for the rectification of the company's register of members or denture-holders nor prescribes a particular period within which such an application is to be filed. Article 181 of the First Schedule to the Limitation is in respect of, 'Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908 (V of 1908)', and for such applications prescribes a three years period. Therefore, the question to be considered is whether Article 181 also applies to an application for the rectification of the register of a company.
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> 12. The Ordinance (substituted by the Companies Act, 2017) is a self-contained law and attends to all matters pertaining to companies, including the maintenance of the register of members and debenture- holders and provides the mechanism to rectify if a fraud is committed or omission made therein. The Ordinance does not prescribe any period within which an application for

rectification may be submitted. Therefore, it would not be appropriate to do so on account of a tenuous connection with Article 181 of the Limitation Act. Section 152 of the Ordinance does not distinguish between rectification necessitated on account of a fraud having been committed and rectification required to correct an omission in the register of members. Fraudulent changes made to the register and omissions therefrom are both categorized as offences. There is no limitation period in Pakistan to prosecute and punish a crime; unlike some countries where there are statutes of criminal limitations. A fraudster, who had illegally transferred shares of another into his own name commits a crime and could be convicted for this offence. However, if the impugned order is upheld, the one defrauded could not get back his/her shares, if the application to rectify the company's register was filed after a period of three years. But this irreconcilable contradiction does not arise if Article 181 is held not to apply to an application to rectify the company's register. SECP is quite correct to state that when section 152 of the Ordinance is read with the section following it (section 153) it removes all doubts, if there were any, that the legislative intent was not to prescribe a period of limitation in filing a rectification application, or to make it subject to Article 181, or to any other provision of the Limitation Act.

……..

17. In a number of precedents this Court has also held that there is no limitation period in respect of inheritance claims, which would include the right to shares owned by someone who has died. It would be anomalous if a shareholder could not seek rectification of the register of members to assert his/her ownership to shares after three years, but after his death his/her heirs could do so.

18. Significantly, Article 181 of the Limitation Act does not state that it also applies to applications filed under the company law. Article 181 is a saving clause, and states, in general terms, that it applies to - applications for which no period of limitation is provided elsewhere. To extinguish proprietary rights without a clear and definite provision mandating this, by applying a general clause/ provision of the Limitation Act, would be unconscionable."

25. In arriving at the aforesaid conclusion, *Naila Naeem* drew support from *Naeem Finance Ltd. v. Bashir Ahmed Rafiqui* (PLD 1971 SC 8), where a three-member Bench of the Supreme Court observed that the consensus of judicial opinion was that Article 181 of the Limitation Act applies only to applications under Code of Civil Procedure. A view to the contrary taken by a two-member Bench of the Supreme Court in *M. Imam-ud-Din Janjua v. Thal Development Authority* (PLD 1972 SC 123) was distinguished by *Naila Naeem* with the opinion that such view was expressed for applications under the Arbitration Act, 1940 for which limitation

was specifically provided in Articles 158 and 178 of the Limitation Act. However, these cases are not noticed in *Bentonite*.

26. Though *Bentonite* is a leave refusing order, Mr. Tayebaly is correct that it enunciates a principle of law as to the applicability of Article 181 of the Limitation Act to applications under the Companies Act. As held in *Muhammad Tariq Badar v. National Bank of Pakistan* (2013 SCMR 314), a leave refusing order that enunciates a principle of law is binding authority under Article 189 of the Constitution of Pakistan. It is also settled law that in the event of a conflict between two judgments of the Supreme Court, the High Courts are to follow the view expressed by a Bench of greater numerical strength.[11] Having said that, the question is what is the conflict between *Bentonite* and *Naila Naeem*. To examine that, I am inclined towards the approach recently propounded by the Supreme Court of India in *A.P. Electrical Equipment Corporation v. The Tahsildar* (2025 INSC 274, judgment dated 25.02.2025) that:

> "If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathern, 1901 AC 495 at p.506 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:
>
> > "…… every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand."

27. The application subject matter of *Naila Naeem* was under section 152 of the Companies Ordinance, 1984 for rectification of members register. The applicants had contended that their shares had been transferred fraudulently which was evident from the fact that there was no transfer deed in favor of the transferee. The High Court was of the view that the transfer was apparent from the Form A filed by the company with the SECP long ago, hence the rectification application was time-barred under Article 181 of the

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[11] *Hassan v. The State* (PLD 2013 SC 793).

Limitation Act. The Supreme Court, however, agreed with the petitioners that the Companies Ordinance itself did not prescribe limitation for a rectification application and allowed the same to restore the applicants' shares to them. The *ratio decidendi* of the judgment is in para 12 *viz.* that section 152 of the Companies Ordinance had to be read with section 153, and upon construing them together it was apparent that the Limitation Act was not intended to apply to an application under section 152.

28. In contrast, the application subject matter of *Bentonite* was under section 310 of the Companies Act for leave of the High Court to sue Bankers Equity Ltd. in liquidation after the previous banking suit had been consigned to record in 2002 as the plaintiff had not sought leave of the High Court to continue with that suit.[12] The application to the High Court was made after 17 years of the first suit, thus perceived by the Court as an application to frustrate liquidation proceedings and held to be time-barred under Article 181 of the Limitation Act. The petitioners before the Supreme Court did not dispute the applicability of the Limitation Act, rather their case was that their application was for leave to file a fresh suit, not for leave to revive the previous suit, and therefore the application was not time-barred. It appears that Article 181 of the Limitation Act was not an issue in contention in *Bentonite*.

29. The view respectively taken in *Naila Naeem* and *Bentonite* on the applicability of Article 181 of the Limitation Act are based on different provisions of the Companies Act/Ordinance. Further, the view in *Naila Naeem* is on a contention raised to the applicability of the Limitation Act, whereas there was no such contention in *Bentonite*. Mr. Tayebaly submitted that *Bentonite* nonetheless holds that "all proceedings" under the Companies Act are subject to the Limitation Act. However, that observation is qualified by the words **"except where any proceeding is expressly brought out of the**

[12] To sue a Banking Company in liquidation or to continue with pending legal proceedings against it, the relevant provisions appear to sections 61 and 62 of the Banking Companies Ordinance 1962.

purview of said (Limitation) Act" and that is the exception drawn there.

30. In my humble view, the *ratio decidendi* in *Bentonite* is that where the provision of the Companies Act under which an application is made does not suffice for the purposes of limitation, only then will Article 181 of the Limitation Act come into play. Such finding does not conflict with *Naila Naeem* where section 152 of the Companies Ordinance was construed as excluding limitation. As already discussed above, section 286 of the Companies Act is also self-reliant for the purposes of limitation and therefore an application/petition thereunder is not governed by Article 181 of the Limitation. Consequently, this petition is not hit by the case of *Bentonite*.

31. Assuming that the arrangement arrived between TRGP, TRGIL and Greentree in December 2021 amounted, as alleged, to financial assistance by TRGP to purchase its own shares in violation of section 86(2) of the Companies Act, then each time in 2022 to 2024 when Greentree used that financial assistance to purchase shares of TRGP, and now in 2025 to make the public offer, it can be argued that affairs of TRGP "are being conducted" unlawfully at present thus falling within the time-line envisaged in section 286 of the Companies Act. There is also no question of latches in such circumstances.

Whether petition is barred by res-judicata

32. Learned counsel for TRGIL had submitted that the petition is barred by Order II Rule 2 CPC as the Petitioner had earlier filed Suit No. 695/2024 for essentially the same relief which was then withdrawn by him unconditionally without reserving the remedy under section 286 of the Companies Act; that the petition is also barred by *res-judicata* in view of the arbitration award against the Petitioner; and that the petition is barred by the doctrine of election as the Petitioner has already filed a claim before the Arbitrator with similar prayers where his application for injunction against the

public offer made by Greentree has been dismissed by the Arbitrator.

33. Suit No. 695/2024 referred to by learned counsel, was brought by the Petitioner as a shareholder's derivative action against TRGP, TRGI and their directors for breach of fiduciary duty in violating the SPA between them. Though the plaint mentioned acquisition of TRGP shares by Greentree, that was pleaded as a breach of the SPA by TRGIL as the holding company of Greentree. The suit was filed in June 2024, much before Greentree's public offer and therefore Greentree was not party. The suit was however withdrawn by the Petitioner on 13.09.2024, apparently to comply with an anti-suit injunction dated 10.09.2024 ordered by the U.S. Federal District Court, Southern District of New York on a motion by TRGIL contending that the dispute was covered in the ongoing arbitration.

34. The bar in Order II Rule 2 CPC is against a subsequent 'suit'. Learned counsel for the Respondents did not assist the Court on the question whether such bar can also be invoked where the subsequent proceeding is an application/petition under section 286 of the Companies Act, and especially when sub-section (5) of section 286 provides that: "The provisions of this section shall not prejudice the right of any person to any other remedy or action." Nevertheless, Suit No. 695/2024 did not, and could not have sought relief that is otherwise available before the Company Bench under section 286 of the Companies Act. The bar in Order II Rule 2 CPC is not attracted where relief claimed in the second suit could not have been claimed in the first suit.[13] It is also not attracted where the first suit was incompetent or barred by law.[14] Thus, Order II Rule 2 CPC has no relevance here.

35. The Interim Award dated 27.01.2025 against the Petitioner, which was reissued by the Arbitrator on 04.02.2025 as a Partial Final Award, is on the claim of TRGIL filed in 2023. The Award restrains

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[13] *Matloon Ellahi Paracha v. Raja Arshad Mahmood* (PLD 2024 SC 663).
[14] *Ghulam Nabi v. Muhammad Yaqub* (PLD 1983 SC 344).

the Petitioner from transferring certain shares of TRGP contrary to clause 8.6(a) of the SPA. Greentree of course was not party to the arbitration and shares acquired by Greentree in TRGP are also not subject matter of the Award. The Petitioner does not seek to upset the Award by way of this petition. Therefore, nothing in said Award is *res judicata* for this petition.

36. As regards the Petitioner's counter-claim pending before the Arbitrator, again that was filed in February 2023 in respect of alleged breaches of the SPA committed by TRGP and TRGI in December 2021, which were much before the acquisition of TRGP shares by Greentree and the public offer. In any case, that counter-claim before the Arbitrator appears to be stayed by order dated 02.02.2024 passed by the U.S. Federal District Court, Southern District of New York on a suit filed by TRGP. Though the Petitioner made an application to the Arbitrator on 28-01-2025 to restrain Greentree's public offer and to direct TRGP to hold election of directors, the injunction was declined for the reason that Greentree was not party to the arbitration and election of directors of TRGP was a matter before the Court in Pakistan. That order does not decide any part of the Petitioner's counter-claim. The question of *res judicata* does not arise. Since the remedy under section 286 of the Companies Act against alleged oppression and/or mismanagement is not available before the Arbitrator, the doctrine of election is also not attracted.

Whether the petition is barred by the Securities Act, 2015:

37. I now turn to the other objections to the maintainability of the petition. It was submitted by learned counsel for TRGP, TRGIL, Greentree and the Manger to the Offer:

A. that TRGP being a listed company, the remedy before the Court against the conduct of its affairs is provided under section 99 of the Securities Act[15] which empowers

[15] **99. Remedy in cases of unfair prejudice by listed companies.—** (1) If it appears to the Commission from any information, record or other document obtained under this Act or the rules or regulations made under the Act or any other legislative power, that the affairs of a listed company is being or has been conducted in a manner unfairly prejudicial to the interests of some or all of its shareholders, the Commission may make an application to the Court for an order under this section.

only the SECP to make such an application, not a member of the company. In other words, it was submitted that to the extent of listed companies, section 286 of the Companies Act is overridden by section 99 of the Securities Act;

B. that since TRGP (target company) has no control over the public offer made by Greentree (acquirer), the public offer cannot be an act of oppression or mismanagement by the Board of TRGP in conducting the affairs of TRGP; resultantly, section 286 of the Companies Act is not attracted;

C. that the public offer under Part IX, section 111 of the Securities Act to takeover a listed company is under a special regulatory framework separate from the Companies Act; that in the event the public offer contravenes Part IX, then section 126 of the Securities Act[16] empowers the SECP to take action; therefore,

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(2) If on an application under this section the Court is of the opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the Court may, with a view to bringing to an end the matters complained of —

(a) make an order restraining the carrying out of the act or conduct;
(b) order that the company shall bring in its name the proceedings the Court considers fit against the persons, on the terms, the Court orders;
(c) appoint a receiver of the whole or apart of the company's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration; and
(d) make any other order it considers fit, whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital or otherwise.

(3) Where an order under this section makes an alteration in or an addition to the constitution of a company, the company shall not have power without the leave of the Court to make any further alteration in or addition to the constitution inconsistent with the order.

[16] **126. Penalties for non-compliance.—** (1) In the event of withdrawal of public offer, except as provided in section 122, or contravention of any provision of this Part, the Commission may, after providing reasonable opportunity of hearing, by an order in writing, debar the acquirer and any person acting in concert from acquiring voting shares of a listed company for a period of three years.
(2) In case any member of the board of directors or management of the target company contravenes any provision of this Part, such person shall, on a finding by the Commission, after providing reasonable opportunity of hearing, stand disqualified to hold the office of director, chief executive officer, by whatever name called, chief financial officer or company secretary in a listed company for a period of two years.
(3) If any person—

(a) refuses or fails to furnish any document, paper or information which he is required to furnish by, or under, this Part;

against the public offer, no application/petition can lie before the Court;

D. that under sub-section (4) of section 86 of the Companies Act, a violation of section 86 is punishable only by the SECP by way of a penalty, therefore a petition under section 286 does not lie against such violation.

38. Regards objection 'A', it is correct that like section 286 of the Companies Act, section 99 of the Securities Act also provides a remedy before the Court against affairs being conducted to the prejudice of shareholders *albeit* only in relation to a listed company. But, as pointed out by learned counsel, section 99 of the Securities Act unlike section 286 of the Companies Act, confines that remedy to the SECP and does not make it available to a member of the company. The question is, does that by implication override section 286 of the Companies Act ? I think not.

Firstly, the Companies Act was enacted after the Securities Act. Had the intent of the legislature been to take away the remedy of section 286 of the Companies Act from members of a listed company, it would have done so expressly. The argument that the Securities Act operates independent of the Companies Act is also misconceived. In fact, these are complementing statutes. Even on the enactment of the Securities Act, the provisions of the Companies Ordinance that were repealed were specifically mentioned in the Schedule to the Securities Act. Section 290 of the Companies Ordinance, 1984 (now section 286 of the Companies Act) was not amongst the provisions repealed. Secondly, on a comparison of section 99 of the Securities Act and section 286 of the Companies Act it appears that the former is by way of a special remedy to the SECP

(b) refuses or fails to comply with any order or direction of the Commission made or issued under this Part; or

(c) contravenes or otherwise fails to comply with the provisions of this Part,

the Commission may, if satisfied, after giving the person an opportunity of being heard, that the refusal, failure or contravention was willful, impose penalty which may extend to one hundred million rupees as may be specified in the order.

as regulator to deal with listed companies found violating the Securities Act and rules made thereunder.

39. Regards objections 'B' and 'C', I am of the view that in the absence of an express statutory bar, the petition cannot be dismissed on the broad proposition that a public offer by an acquirer to take-over a listed company under the Takeover Regulations can have nothing to do with conducting the affairs of the target company. For example, if the Petitioner can demonstrate that the public offer by Greentree (acquirer) is enabled by financial assistance rendered by TRGP (target company) which is prohibited by 86(2) of the Companies Act, then *prima facie* the Petitioner has a case to answer However, if the Petitioner cannot demonstrate violation of section 86(2), then the public offer by Greentree is off the hook to the extent of these proceedings and the alleged violation of Part IX of the Securities Act can best be examined by the SECP section 126 of the Securities Act.

40. As regards objection 'D', it is correct that under sub-section (4) of section 86 of the Companies Act the violation of section 86 is an offence punishable by the SECP by imposing a penalty. However, section 479 of the Companies Act that deals with adjudication of offences and imposition of penalties itself provides in sub-section (6) that:

> "479(6): The penalty imposed under this section by the Commission, the registrar designated for the purpose or the officer incharge of the company registration office, shall be without prejudice to any other action for the violation or contravention as provided under the relevant provision of this Act."

Therefore, the power of the SECP under sub-section (4) of section 86 of the Companies Act to penalize a company has no bearing on the power of the Court under section 286 of the Companies Act.

41. For the foregoing reasons, the objections to the maintainability of the petition do not succeed.

Whether the Petitioner had waived his right to sue:

42. Mr. Abid S. Zuberi, learned counsel for TRGP had then submitted that when the Petitioner had accepted TRGIL's offer of redemption of shares, he had executed a Release Agreement dated 10.01.2022 waiving all claims and legal proceedings against TRGIL, its affiliates and subsidiaries, which would include TRGP and Greentree; and therefore the Petitioner is estopped by contract from instituting this petition. However, the record reflects that said Release Agreement was executed by the Petitioner in consideration of a 'Conditional Consent and Waiver' dated 10.01.2022 executed by Pinebridge GEM II G.P. as party to the SPA to waive restrictions on the Petitioner under the SPA from transferring shares held by him in TRGIL. It was in that connection the Petitioner had executed the Release Agreement and undertaking not to sue *'TRGIL, its affiliates and subsidiaries'*. Shares held by the Petitioner in TRGP do not appear to be subject matter of the Conditional Consent and Waiver and the Release Agreement dated 10.01.2022. In any case, Greentree's public disclosure under section 110 of the Securities Act of having acquired 10% shareholding in TRGP was made on 10.03.2022, and the public offer was made in 2024 *i.e.* after the Release Agreement and therefore the dispute in this petition is after the period for which the Release Agreement was executed.

Scope of section 286 of the Companies Act:

43. It is not disputed that the Petitioner is a member of TRGP with a shareholding of more than 10% and is therefore eligible to make a complaint under section 286 of the Companies Act. The discussion on section 286 henceforth is in the context of a complaint by a member of the company.

44. Section 286 of the Companies Act seems to envisage three types of grievance/complain by an eligible member:

(a) that affairs of the company are being conducted or are likely to be conducted in an unlawful or fraudulent manner, or in a manner not provided for in its

memorandum (hereinafter referred to as 'mismanagement'), or

(b) that affairs of the company are being conducted or are likely to be conducted in a manner oppressive to the member(s) (hereinafter referred to as 'oppression'), or

(c) that affairs of the company are being conducted in a manner that is unfairly prejudicial to the public interest.

While a complaint of oppression (type b) is usually where the petitioner is directly affected, a complaint of mismanagement (type a) and prejudice to public interest (type c) is where the petitioner is indirectly affected, hence he/she is permitted by section 286 to bring what would otherwise be a derivative action on behalf of the company for correcting the affairs of the company.

The complaint under section 286 may be against mismanagement only; against oppression only; against both; against prejudice to public interest only; against the latter coupled with mismanagement or/and oppression. While acts underlying oppression and mismanagement may be overlapping, it is important to distinguish between the two.

45. From sub-section (2) of section 286 of the Companies Act it will be seen that the Court will make an order only if it is of the opinion: (a) that the company's affairs are being conducted, or are likely to be conducted as mentioned in sub-section (1), AND (b) that to wind-up the company will unfairly prejudice the members or creditors. The latter condition further signifies:

(i) that the complaint under section 286(1) should be premised on grounds that are also grounds for winding-up the company; and

(ii) that the Court is satisfied that there is a ground for winding-up the company but to do so will unfairly prejudice the members and creditors, and therefore an order under section 286 should be passed instead.

It is therefore said that section 286 is an alternative to winding-up.[17]

46. Grounds for winding-up a company are then set-out in section 301 of the Companies Act.[18] As per clause (g)(iii) of section 301, a company may be wound up by the Court: "if the company is - conducting its business in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company." Oppression of minority members by the company is thus a recognized ground for winding-up the company. This means that where 'oppression of minority' is established under section 286, it is implicit that there will be cause to wind-up the company. Consequently, once the threshold of oppression is crossed, the threshold of winding-up is automatically crossed. Similarly, where it is established under section 286 that the affairs of the company are

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[17] *Khursheed Ismail v. Unichem Corporation (Pvt.) Ltd.* (1996 CLC 1863). *Associate Biscuits International Ltd. v. English Biscuits Manufacturers (Pvt.) Ltd.* (2003 CLD 815):

[18] **301. Circumstances in which a company may be wound up by Court.—**A company may be wound up by the Court—

(a) if the company has, by special resolution, resolved that the company be wound up by the Court; or

(b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting; or

(c) if default is made in holding any two consecutive annual general meetings; or

(d) if the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years; or

(e) if the number of members is reduced, in the case of public company, below three and in the case of a private company below two; or

(f) if the company is unable to pay its debts; or

(g) if the company is—

(i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities; or

(ii) carrying on business prohibited by any law for the time being in force in Pakistan; or restricted by any law, rules or regulations for the time being in force in Pakistan; or

(iii) conducting its business in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company; or

(iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or

(v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Act or failed to carry out the directions or decisions of the Commission or the registrar given in the exercise of powers under this Act; or

(h) if, being a listed company, it ceases to be such company; or

(i) if the Court is of opinion that it is just and equitable that the company should be wound up; or

(j) if a company ceases to have a member; or

(k) if the sole business of the company is the licensed activity and it ceases to operate consequent upon revocation of a licence granted by the Commission or any other licencing authority; or

(l) if a licence granted under section 42 to a company has been revoked or such a company has failed to comply with any of the provisions of section 43 or where a company licenced under section 42 is being wound up voluntarily and its liquidator has failed to complete the winding up proceedings within a period of one year from the date of commencement of its winding up; or

(m) if a listed company suspends its business for a whole year.

being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, a case for winding-up can be triggered *inter alia* under clause (g)(i), (g)(ii), (g)(iv) and (g)(v) of section 301.

47. The provisions of the Indian Companies Act, 1956 were somewhat different. There, the remedy against oppression and mismanagement was split into sections 397 and 398 respectively. Most notably, the condition there that facts should otherwise justify a winding-up order was only for a petition against oppression under section 397, not for a petition against mismanagement under section 398. Secondly, section 397 expressly stated that the relevant ground for winding up would be the 'just and equitable' clause. Section 210 of the English Companies Act, 1948 was similar. However, the requirement that facts of oppression should justify a winding-up order were omitted in the enactment of section 459 of the English Companies Act, 1985 and is also not there in the succeeding section 996 of the English Companies Act, 2006. On the enactment of the Indian Companies Act, 2013, the remedy against oppression and mismanagement both is now in section 241; the qualification for invoking section 241 is in section 244; and considerations for passing an order by the Tribunal are in section 242, which requires both for oppression and mismanagement that facts should justify that otherwise a winding-up order would be 'just and equitable'. The 'just and equitable' ground for winding up of course has a higher threshold, thereby restricting the scope of intervention by the Court against oppression and mismanagement. In comparison, section 290 of the Companies Ordinance, 1984 and now section 286 of the Companies Act, 2017 do not restrict the Court's intervention to the just and equitable ground for winding-up. Therefore, in Pakistan the scope of intervention by the Court against oppression and mismanagement has been broader than the one across the border. It is important to keep this distinction in mind while examining precedents from India and England on corresponding provisions.[19]

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[19] A similar observation appears in *Pakistan Wapda v. Kot Addu Power Co. Ltd.* (PLD 2000 Lahore 461).

48. Section 301 of the Companies Act added grounds for winding-up a company that did not previously exist in section 305 of the Companies Ordinance, 1984. As a consequence, the legislature seems to have further enlarged the scope of the Court's interference under section 286.

Mainstay of the petition:

49. The mainstay of the petition is against the purchase of TRGP shares by Greentree and the public offer made by Greentree to take-over TRGP. Grounds and submissions that do not go that end are therefore irrelevant. Furthermore, to question the proposed take-over by Greentree within the ambit of section 286 of the Companies Act, it is principally the affairs of TRGP that come under scrutiny. Submissions by the Petitioner that the public offer by Greentree contravenes the provisions of the Securities Act, the Takeover Regulations, the Competition Act, 2010 or the Competition (Merger Control) Regulations, 2016, are all acts of Greentree independent of TRGP and therefore beyond the pale of scrutiny under section 286, and for which the Petitioner may invoke other remedies that may be available to him. It appears that the Petitioner was conscious of such scope of section 286 in pitching the petition on the ground that shares of TRGP purchased by Greentree and now the public offer by it as well, was/is funded by TRGP which is 'financial assistance' to buy it's own shares and prohibited by section 86(2) of the Companies Act; and that such maneuver by the Board of TRGP to deliver control of TRGP to Greentree is unlawful, fraudulent and oppressive of the members of TRGP.

The averment of 'financial assistance' by TRGP to purchase its own shares – violation of section 86(2) of the Companies Act:

50. As noted at the outset, TRGIL is an investment holding company in which TRGP holds shares 69% shares, whereas Greentree is a wholly-owned and controlled subsidiary of TRGIL and was set-up by TRGIL for acquiring shares of TRGP. The disclosure form of the public offer also acknowledges that:

> "The Acquirer is a relatively recent formed Special Purpose Vehicle set up for the purpose of acquiring shares of the Target. As such its, financials are of a limited nature and essentially reflective of the change in value of the shares of the Target."

For the purposes of the public offer, TRGIL as the holding company of Greentree, is deemed to be a "person acting in concert" with the acquirer by virtue of section 108(d)(ii)(A) of the Securities Act. In fact, the public announcement of intention dated 26.12.2024, published under Regulation 6 of the Takeover Regulations disclosed TRGIL as the 'ultimate acquirer'. That being the relationship between the parties, the question is whether shares of TRGP purchased/acquired by Greentree were with the 'financial assistance' of TRGP, an act prohibited by section 86(2) of the Companies Act as under:

> "**86. Prohibition of purchase by company or giving of loans by it for purchase of its shares.** (1) [omitted]
> (2) No public company or a private company being subsidiary of a public company shall give financial assistance whether directly or indirectly for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of any shares in the company or in its holding company.
> (3) Nothing in sub-section (2) shall apply to—
>
> (a) the lending of money by a banking company in the ordinary course of its business;
>
> (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be specified, for the purchase of, or subscription for shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by a trust for the benefit of the employees or such shares held by the employee of the company;
>
> (c) the provision or securing an advance to any of its employees, including a chief executive who, before his appointment as such, was not a director of the company, but excluding all directors of the company, for purchase of shares of the company or of its subsidiary or holding company.
>
> (4) Any violation of this section shall be an offence liable to a penalty of level 1 on the standard scale."

51. Section 86(2) of the Companies Act is an extension of the rule laid down by the House of Lords in *Trevor v. Whitworth*, (1887) 12 AC 409, that a limited company cannot purchase its own shares except by way of reduction of capital with the sanction of the Court. The reason for such restriction is that purchase by the company of its

own shares either amounts to 'trafficking' in its own shares thereby enabling the company, in an unhealthy manner, to influence the price of its own shares on the market, or it operates as a reduction of capital which can only be effected with the sanction of the court and in the manner laid down by the statute.[20]

52. TRGP is a public company to which section 86(2) of the Companies Act will apply. The provision prohibits TRGP from giving financial assistance 'whether directly or indirectly' for the purpose of, or in connection with, a purchase by 'any person' of any shares in the company. The circumstances that are excluded by sub-section (3) do not exists here and are not relevant for present purposes. A similar prohibition existed in section 54 of the English Companies Act 1948, section 151 of the English Companies Act 1985, section 77(2) of the Indian Companies Act 1956, now section 67(2) of the Indian Companies Act, 2013. "Any valuable consideration paid out of the company's assets will make a transaction amounting to a purchase and, therefore, invalid."[21] The prohibition on financing the acquisition of a company's own shares is to prevent improper use of its assets by speculators in management of a company who, by such acquisition, may seek to obtain control of the company for their own advantage.[22] "A contract entered into by a public company or a private company which is the subsidiary of a public company contrary to the provisions of this section is unlawful and on proof of knowledge on the part of the directors of which facts constituting illegality they and all other parties to the agreement are liable to the company in conspiracy. In Buckley on the Companies Act, 14th Edition, it is observed (at page-156):

> What is made unlawful by the section appears to involve three elements:
> (a) It must be something which can in the ordinary sense of the word be said to constitute the giving of help;

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[20] *A Ramaiya, Guide to the Companies Act*, 18th Edition, page-1296.
[21] Supreme Court of India in *Ramesh B. Desai v. Bipin Vadilal Mehta* (AIR 2006 SC 3672).
[22] *A Ramaiya, Guide to the Companies Act*, 18th Edition, page-1297.

(b) The help must be of a financial nature, which presumably involves money in one way or another (note the words "directly or indirectly"); and
(c) What is done must have been done either "for the purpose of" or "in connection with" the past or contemplated (note the words 'made or to be made') purchase or subscription and this must surely require an investigation of what was in the mind of those (normally the directors) who procured the company to do the act."[23]

In *Belmont Finance Corporation v. Williams Furniture Ltd. & others (No.2)* – [1980] 1 All ER 393, Lord Buckley held that a breach of section 54 of the English Companies Act, 1948 occurred if a company, without regard to its own commercial interests, bought something from a third party with the sole purpose of putting the third party in funds to acquire shares in the company, notwithstanding that the price paid was a fair price. It was held that even though the agreement for the purchase of share capital of M Ltd. by B Ltd. was a satisfactory commercial transaction for both buyer and seller, it nevertheless contravened section 54 because it was not a commercial transaction in its own right but merely part of a scheme to enable Mr. G to acquire B Ltd. at no cash costs to himself and was not a transaction in the ordinary course of B Ltd. as it did not enable B Ltd. to acquire anything which it genuinely needed for its own purposes.

53. For the evidence of the alleged financial assistance rendered by TRGP to purchase its own shares, the Petitioner relied upon the record of TRGP discussed below, which documents are not disputed by the contesting Respondents *albeit* they submit that the underlying transaction does not amount to financial assistance by TRGP.

53.1 The assets of TRGIL included shares of Ibex Holding Ltd., Afiniti Ltd. and e-Telequote. In 2021, TRGIL sold its shares in e-Telequote and made the following offer to TRGP by letter dated 09.12.2021:

> *"As of today, there are two categories of potential transactions that the Company has planned for its shareholders. For those shareholders that*

[23] *Ibid*, page-1298.

prefer to be redeemed, the Company intends to repurchase their shares in the Company in exchange for a combination of cash (largely sourced from the Company's sale of its economic interest in Etelequote), and certain shares of various portfolio companies held by the Company. As TRGP is the holder of approximately 60 million Series B Preferred Shares, this offer will also be made to TRGP, should it wish to redeem and exit from its investment in the Company either fully or in part. For those shareholders who prefer to not be redeemed, or who prefer to not be redeemed in full, their shareholding will continue at the Company. Such shareholding would track the shareholder's implied share of the Company's assets that would otherwise have been used for redemption of shares that the shareholder has chosen to not redeem in this proposed redemption transaction. "

53.2 In a meeting of the Board of TRGP held on 09.12.2021, the aforesaid offer was explained by Mr. Mohammad Khaishgi [MK] who was both Chairman of TRGP and CEO of TRGIL. The minutes of that meeting record:

"MK gave a detailed presentation to the Board and informed them that the board of directors of TRGI has approved the allocation of its liquid assets to all its shareholders in its meeting held on December 06, 2021. He informed that TRGI's assets essentially compromise approximately USD 250 million in cash, 11.4 million shares of Ibex Limited and 18.5 million shares of Afiniti Limited. TRG Pakistan's portion of the liquid assets would be approximately USD 120 million (inclusive of approximately USD 10 million in deferred cash) plus approximately 5.4 million shares of Ibex Limited. He explained that the Baseline Model from TRGI would simply distribute the share of each of the shareholders to them.
MK explained that in addition to the Baseline Model there is also an Alternate Model being offered by TRGI which has its pros and cons that he explained. He also explained that post the distribution, only Afiniti would be left in TRGI and the economics of the remaining TRGI shareholders would remain unchanged from the current state. MK continued with his presentation and explained that under the Alternate Model TRGP's share of cash and Ibex shares would be deposited in a SPV which would be used to carry out any transactions and he also explained all the features, consents and approvals of the Alternate Model. The Board also continued with their questions on the Alternate Model in order to develop a better understanding."

53.3 Since the offer made by TRGIL was 'price sensitive information' received by TRGP as a public-listed company, TRGP made the following disclosure to the PSX *vide* letter dated 10.12.2021 as required by section 96 of the Securities Act:

"The Resource Group International Limited (TRGI) has informed TRG Pakistan Ltd. that the TRGI Board has approved the allocation of its liquid assets of its shareholders. TRG Pakistan's portion of the liquid assets would be approximately USD 120 million (inclusive of approximately USD 10 million in deferred cash) plus approximately 5.4 million shares of its listed portfolio company, Ibex Limited. The process and structure for utilization of the above allocation is expected to be finalized by 31 December 2021, and TRG Pakistan will announce further details at that time."

The Petitioner refers to this disclosure to plead that: *"On 10-12-2021, TRGI owed TRGP a dividend of approximately of USD 195 million, consisting of USD 120 million in cash and USD 75 million in NASDAQ traded shares of 'Ibex'."*

53.4 The Board of TRGP formed a sub-committee to evaluate TRGIL's offer. In the meantime, by an email to the Board members on 13.12.2021, Mr. Mohammad Khaishgi gave his analysis as under:

> *"TRGI's board has indeed made the decision to allocate / distribute its liquid assets to all its shareholders. In so doing, TRGI wants to know in what form TRGP (its largest shareholder) would like to receive its share of those liquid assets (which currently come out to $120m in cash / deferred cash & 5.4m shares of IBEX), whether directly or indirectly. That was the context of the letter.*
> *There are 3 natural choices for TRGP to obtain exposure to those liquid assets (and in a manner that preserves for all shareholders their current economic & voting interests):*
> *(a)*
> *Directly - via dividend (which would require TRGI to declare a dividend of cash and IBEX shares for TRGP's class of shares Preferred B).*
> *(b)*
> *Directly - via partial redemption of TRGP's TRGI shares.*
> *(c)*
> *Indirectly - by choosing neither of the above and retaining those assets within TRGI, in which case certain arrangements ideally need to be taken to make sure that TRGP's status quo ante economics / voting arrangements are retained.*
> *- Choice (a) above is not yet on the table (as TRGI has not yet declared a dividend) but could be if TRGP would like to go in that direction as it is very straightforward to execute (and would not require any documentation with TRGP). Our understanding is that this brings up tax considerations for TRGP.*
> *- Choice (b) is on the table as TRGI has the latitude to do so for any & all of its shareholders. Our understanding is that this is also not an ideal choice for TRGP for those same tax considerations. The purpose of the letter was to seek confirmation that TRGP is not interested in this option. That response would then allow for TRGI to undertake redemptions for other Preferred B shareholders (mainly Zia - who is interested in taking his share by way of a redemption) as if any one shareholder within a certain class of shares gets redeemed, then all shareholders within that class have to be redeemed as well unless they explicitly say so otherwise.*
> *- Choice (c) is the choice we had presented at the board meeting (as an alternative to (a) / (b)). This choice involves TRGP retaining its share of liquid assets within TRGI (and therefore be able to undertake a purchase of TRGP shares). If this is indeed the choice that TRGP goes with, there is nothing that TRGP needs to explicitly do, as it is maintaining its status quo; but the way TRGP's economic interest is maintained is via an amendment to the Pinebridge agreement. The core points within that amendment will be: ……"*

53.5 On 17.12.2021, all directors of TRGP saving one resolved as follows:

> *"After having considered the matter in detail and keeping in view the long-term strategy and objectives of the Company, the Board of Directions decided that the Company should choose option (ii) and to continue to work towards further maximizing value and capital return of its proceeds for the Company and its shareholders. The Company further requested TRGI to consider and implement an alternate means of providing direct or indirect value, benefit, and liquidity to the shareholders of TRGP."*

53.6 Thereafter, by letter dated 20.12.2021, TRGP made the following disclosure to the PSX under section 96 of the Securities Act:

> *"Further to our disclosure of material information dated 10 December 2021, the Board of Directors of TRG Pakistan Ltd. ("TRGP" of "the Company") considered the options offered to it by The Resource Group International Limited ("TRGI"), i.e. either to (i) directly receive (by way of full or partial redemption) its shares of TRGI's liquid assets namely cash and certain number of shares of Ibex Limited owned by TRGI ("Liquid Assets"), or (ii) continue with its investment in TRGI.*
> *After having considered the matter in detail and keeping in view the long-term strategy and objectives of the Company, the Board of Directors decided that the Company should choose option (ii) and to continue to work towards further maximizing value and capital return of its proceeds for the Company and its shareholders. The Company further requested TRGI to consider and implement an alternate means of providing direct or indirect value, benefit, and liquidity to the shareholders of TRGP.*
> *TRGI has duly considered the request, and now intends to implement TRGP's request through housing TRGP's portion of the Liquid Assets in a separate wholly owned subsidiary of TRGI ("SPV"). This SPV will, as soon as practicable, utilize all or part of these Liquid Assets to purchase shares of TRGP from the stock market from time to time, in order to provide value, benefit, and liquidity to the shareholders of TRGP. Such transactions will be conducted independently by the SPV in accordance with applicable laws."* (underling supplied for emphasis)

54. This last disclosure dated 20.12.2021 made by TRGP to the PSX under section 96 of the Securities Act clearly states that TRGIL held certain liquid assets for TRGP; that there was an agreement between TRGP and TRGIL that the latter would utilize those liquid assets to purchase shares of TRGP from the stock market (PSX); and that such purchases would be made through a subsidiary of TRGIL. It is then not disputed that Greentree is the designated subsidiary which started purchasing shares of TRGP and eventually built up such shareholding to make a public offer to acquire control of TRGP. *Prima facie*, this disclosure is an admission by TRGP that it permitted TRGIL to purchase it's (TRGP's) shares through Greentree with funds otherwise payable to TRGP. Confronted with that, the argument of learned counsel for the contesting Respondents was that TRGIL had never declared a dividend; that until a dividend was

actually declared the liquid assets referred to remained the property of TRGIL; hence there was no financial assistance by TRGP within the meaning of section 86(2). They further submitted that the Petitioner has misconstrued the arrangement between TRGP and TRGIL borne out of TRGIL's letter dated 09.12.2021.

55. TRGIL's letter dated 09.12.2021 and the briefing given to TRGP's Board by Mohammad Khaishgi, who was also CEO of TRGIL (minutes dated 09.12.2021) reflect that upon realizing proceeds of its shares in e-Telequote, the board of directors of TRGIL had "*approved the allocation of its liquid assets to all its shareholders in its meeting held on December 06, 2021*". The reason for such allocation is then manifest in the *'Written Consent of Members of the Company'* dated 19.12.2021, which was a resolution passed by the members of TRGIL, including TRGP, and which recites:

> *"WHEREAS, the Company's Board of directors (the "Board"), at meetings of the Board held on 6 December, 2021, 13 December, 2021 and 19 December, 2021, has approved certain matters related to the repurchase of all of the outstanding Shares as well as any option interests therein, namely:*
>
> *30,855,843 Class A Common Shares;*
> *2,564,930 Class B Common Shares;*
> *73,196,694 Series B Preferred Shares; and*
> *26,785,711 Series A Preferred Shares;*
> *(Collectively, the "Authorized Redemptions"); ……..*
>
> *WHEREAS, by signature to these Resolutions, in accordance with section 5C of Certificate of Designation for the Series B Preference Shares, the holders of a majority of the Series B Preferred Shares confirm that appropriate provision has been made by the Company to ensure that the holders of Series B Preferred Shares thereafter have the right to acquire and receive such shares, securities or assets as holder of Class A Common Shares is entitled to receive in the Common Recapitalization and Selected Redemptions;*
> *WHEREAS, the holder of a majority of the Series B Preferred Shares is agreeable to the Transactions pursuant to terms and conditions generally consistent with "Option 2" attached hereto as Exhibit C (the "TRG Pakistan Structure")"*

56. The above document reflects that at the time of TRGIL's letter dated 09.12.2021, it had resolved to redeem (buy-back) it shares from members who held redeemable shares. TRGP of course held redeemable preference shares in TRGIL, classified as 'Series B Preferred Shares'. By virtue of clause 5C of a "*Certificate of Designation*" dated 29.04.2016, TRGIL had certified to TRGP as a

holder of Series B Preferred Shares, that in the event there is any transaction which entitles holders of Class A Common Shares to receive shares, securities or assets from TRGIL, then prior to such transaction, TRGIL shall make appropriate provisions to ensure that holders of Series B Preferred Shares also have the same right. Since holders of Class A Common Shares had decided to take TRGIL's offer of redemption of shares and receive proceeds/securities from TRGIL, it was bound by contract to make a similar provision for TRGP, hence the 'allocation' of cash and securities for TRGP as well. While TRGIL's letter dated 09.12.2021 was not a declaration of dividend, that is besides the point. Such letter was nonetheless a proposal to remit certain liquid assets in cash and kind to TRGP under a scheme of redemption of shares. That aspect precisely was explained by Mr. Mohammad Khaishgi himself, the CEO of TRGIL and Chairman of TRGP by email dated 13.12.2021 reproduced above.

57. Redemption of shares by TRGIL, a Bermuda company, was regulated by section 42 of the Bermuda Companies Act 1981 as under:

> **"42. Power to issue redeemable preference shares**
> (1) Subject to this section, a company limited by shares, or other company having a share capital, may issue preference shares which—
>
> (i) if so authorised by its bye-laws, are, or at the option of the company are to be liable, to be redeemed;
>
> (ii) if so authorised by its memorandum at the option of the holder are to be liable to be redeemed:
>
> Provided that—
>
> (a) no such shares shall be redeemed except out of the capital paid up thereon or out of the funds of the company which would otherwise be available for dividend or distribution or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
>
> (b) the premium, if any, payable on redemption, is provided for out of funds of the company which would otherwise be available for dividend or distribution or out of the company's share premium account before the shares are redeemed.
>
> (2) Subject to this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by or determined in accordance with the bye-laws of the company; however, no redemption of preference shares may be effected if, on the date on which the redemption is to be effected, there are reasonable grounds for believing that the company is, or

after the redemption would be, unable to pay its liabilities as they become due.
(2A) [REPEALED]
(3) The redemption of preference shares under this section shall not be taken as reducing the amount of the company's authorised share capital.
(4) On the redemption of preference shares under this section, any amount due to a shareholder may —

(a) be paid in cash;
(b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or
(c) be satisfied partly under paragraph (a) and partly under paragraph (b)."

It will be seen that under the company law applicable to TRGIL, any offer by it to redeem its shares (buy-back) could only be made from funds otherwise available for dividend or distribution. That is exactly what TRGIL proposed by its letter dated 09.12.2021 *viz.* that funds otherwise payable as dividend could be remitted to TRGP if it sells its shares back to TRGIL. That is why TRGP made the disclosure dated 10.12.2021 to the PSX under section 96 of the Securities Act that a certain proceeds were due to it from TRGIL.

58. Learned counsel for the contesting Respondents had then submitted that since TRGP did not eventually take the offer of redemption of shares, the funds/liquid assets allocated by TRGIL for such purpose continued to be the property of TRGIL. Again, the submission skirts the main issue. Though TRGP decided against redemption, that is not where the matter ended, for such decision was categorically taken in lieu of another transaction intended with TRGL, *viz.* to utilize the funds allocated for the redemption to purchase shares of TRGP through Greentree. Such intention is manifest in Mr. Mohammad Khaishgi's email dated 13.12.2021 addressed to the Board of TRGP *i.e*:

> *"Choice (c) is the choice we had presented at the board meeting (as an alternative to (a) / (b)). This choice involves TRGP retaining its share of liquid assets within TRGI (and therefore be able to undertake a purchase of TRGP shares)".*

Thereafter was finalized the agreement between TRGP and TRGIL to transfer TRGP's allocated liquid assets to an SPV (Greentree), which was done *vide* resolutions under the *'Written*

Consent of Members of the Company' dated 19.12.2021 reproduced above. The *'transaction'* referred to as *'Option 2'* therein is such agreement. The said *Written Consent* was an acknowledgement by TRGIL that the liquid assets allocated to TRGP under the offer of redemption of shares were the property of TRGP. Had those been the property of TRGIL as now being contended, there would have been no need for the *Written Consent*.

The reason for not taking the offer of redemption for funding a purchase of its own shares is then clearly spelled out in TRGP's disclosure letter dated 20.12.2021 to the PSX as under:

> *"TRGI has duly considered the request, and now intends to implement TRGP's request through housing TRGP's portion of the Liquid Assets in a separate wholly owned subsidiary of TRGI ("SPV"). This SPV will, as soon as practicable, utilize all or part of these Liquid Assets to purchase shares of TRGP from the stock market from time to time, in order to provide value, benefit, and liquidity to the shareholders of TRGP."*

59. The third argument of learned counsel for the contesting Respondents was that section 86(2) of the Companies Act is attracted only where 'financial assistance' flows from the company (TRGP) and to the person purchasing shares, whereas in this case the financial assistance flows from TRGIL to Greentree. However, such argument is negated by section 86(2) itself in using the words "directly or indirectly". These words are intended to address any camouflage of the financial assistance such as the one here where financial assistance to Greentree is routed through its holding company, TRGIL. "As observed in *Charterhouse Investment Trust Ltd. v. Tempest Diesel Ltd.*, (1986) BCLC 1 (Ch D) the term 'financial assistance' should be given its normal commercial meaning; thus, the section requires that there should be assistance or help for the purpose of acquiring the shares and that the assistance should be financial."[24] Nevertheless, it is not the case of Greentree that shares of TRGP purchased by it, and now the public offer, is from any other source. Admittedly, Greentree does not carry on any other business. Nor is it the case of TRGIL that it's books still carry the funds that had been allocated for redeeming shares held by TRGP. Conversely, the financial statement of TRGP as on 30.06.2022 recorded:

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[24] *A Ramaiya, Guide to the Companies Act*, 18th Edition, page-1299.

> *"Net assets of TRGIL also include the Company's portion of liquid assets from the sale of an investment of TRGIL (e-Telequote Limited) which portion was initially approximately USD 120 million (inclusive of approximately USD 10 million in deferred cash) plus approximately USD 5.4 million shares of its listed portfolio company, Ibex Limited".*

60. In view of the foregoing, it is established that shares of TRGP purchased by Greentree from time to time, and now the public offer by it to acquire control of TRGP is the result of financial assistance given by TRGP in violation of section 86(2) of the Companies Act. Had TRGP not given such financial assistance, Greentree could not have built its shareholding in TRGP to become eligible for making the public offer under the Takeover Regulations. At the same time, such financial assistance diverted the funds/assets of the company for no apparent gain to the company.

61. Learned counsel for the Petitioner had further submitted that the agreement between TRGP and TRGIL to park TRGP's funds/liquid assets in Greentree, was an 'investment' in an 'associated undertaking', the latter defined in section 2(4) of the Companies Act, and which required a special resolution of the members of TRGP as per section 199(1) of the Companies Act. However, such submission cannot be examined without considering the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 which were not noticed by any of the learned counsel. Therefore, I do not proceed to consider that aspect.

62. The other ground taken by the Petitioner under section 286 of the Companies Act is that the Board of TRGP, acting in collusion with Greentree and TRGIL, delayed election of directors of TRGP to pave the way for a smooth take-over by Greentree. It was submitted by learned counsel for the Petitioner that such act by the Board of TRGP was also violative of section 158 of the Companies Act. On the other hand, learned counsel for the contesting Respondents submitted that election of directors could not be held by TRGP due to a restraining order dated 24.10.2022 operating in Suit No. 1599/2022.

63. As discussed in the chronology of events *supra*, the restraining order dated 24.10.2022 operating against TRGP in Suit No. 1599/2022 was against holding the AGM scheduled for 25.10.2022. As per the agenda of that AGM reproduced in the plaint of that suit, the AGM had not been called for election of directors as the term of directors had not expired. Admittedly, the term of TRGP's directors expired on 14.01.2025. Though an AGM called under section 132 of the Companies Act may include an agenda for election of directors, that can only be where the date of election coincides with the date of the AGM. Otherwise, it is an extra-ordinary general meeting that has to be called under section 133 for electing directors. Therefore, I do not see how the restraining order dated 24.10.2022 could be construed against election of directors falling due on 14.01.2025, and which had to be held within 90 days as required by sub-section (2) of section 158 of the Companies Act.[25]

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[25] **"158. Retirement of first and subsequent directors.—**(1) All directors of the company--

(a) on the date of first annual general meeting; or

(b) in case of subsequent directors on expiry of term of office of directors mentioned in section 161,

shall stand retired from office and the directors so retiring shall continue to perform their functions until their successors are elected.

2) The directors so continuing to perform their functions shall take immediate steps to hold the election of directors and in case of any impediment report such circumstances to the registrar within forty-five days before the due date of the annual general meeting or extra ordinary general meeting, as the case may be, in which elections are to be held:

Provided that the holding of annual general meeting or extra ordinary general meeting, as the case may be, shall not be delayed for more than ninety days from the due date of the meeting or such extended time as may be allowed by the registrar, for reasons to be recorded, only in case of exceptional circumstances beyond the control of the directors, or in compliance of any order of the court.

(3) (2), either—

(3) The registrar, may on expiry of period as provided in sub-section (2), either --

(a) on its own motion; or

(b) on the representation of the members holding not less than one tenth of the total voting powers in a company having share capital; or

(c) on the representation of the members holding not less than one tenth of the total members of the company not having share capital of the company,

directs the company to hold annual general meeting or extra ordinary general meeting for the election of directors on such date and time as may be specified in the order.

(4) Any officer of the company or any other person who fails to comply with the direction given under sub-section (3) shall be guilty of an offence liable to a fine of level 2 on the standard scale."

64. Apparently, when the term of TRGP's directors expired on 14.01.2025, Greentree had already made the public announcement of intention on 26.12.2024 under Regulation 6 of the Takeover Regulations. On 02.01.2025, Greentree filed JCM No. 01/2025 under section 286 of the Companies Act. It was contended that the Board of TRGP is about to hold a meeting on 03.01.2025 to schedule election of directors and unless restrained the newly elected directors may create impediments in the public offer. It is apparent that both TRGP and Greentree were conscious at the time that the restraining order dated 24.10.2022 passed in Suit No. 1599/2022 would not be a ground to stall election of directors. The reliance on such order now is clearly an after-thought. Though no restraining order was passed in JCM No. 01/2025, TRGP still did not schedule an election of directors. Its Directors continue to hold office even after expiry of 90 days of their term. Therefore, the Petitioner's submission that election of directors was deliberately delayed by directors of TRGP so that they could ensure a smooth take-over of the company by Greentree is established along with the violation of section 158(2) of the Companies Act.

65. The question now is whether the affairs of TRGP conducted by its Board contrary sections 86(2) and 158(2) of the Companies Act amount to oppression and/or mismanagement under section 286 of the Companies Act.

66. The expression 'oppressive conduct' in section 286 (as distinct from acts of mismanagement) has not been defined in the Companies Act. However, over the years superior Courts have illustrated actions which amount to oppressive conduct as under:

- "The earliest interpretation is found in the words of Lord Cooper in the case of *Elder v. Elder and Whatson Ltd.* (1952) SC 49, as 'the conduct complained of should at lowest involve a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every share holder who entrusts his money to the company is entitled to rely'. In *Scottish Cooperative Whole Sale Society Ltd. v. Meyer* (1958) 3 All ER 66, Lord Keith interpreted the expression as 'lack of probity and fair

dealing in the affairs of a company to the prejudice of some portion of its members or to public interest'. In same case Viscount Simonds, taking the dictionary meaning of 'oppression', said that it meant exercise of authority in a manner that is 'burdensome, harsh and wrongful'."[26]

- "Oppression would be made out:
  (a) Where the conduct is harsh, burdensome and wrong.
  (b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis- `-vis the others.
  (c) The action is against probity and good conduct.
  (d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression."[27]

- "There must lie a justifiable lack of confidence in the conduct and management of the company's affairs, at the foundation of applications for winding up." More importantly, "the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company". But, "wherever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter."[28]

However, in each case, the Court has not attempted to lay down an exhaustive definition of 'oppressive conduct'. It is perhaps a concept that should not even be exhaustively defined.[29]. Even in the case of *Needle Industries* it was observed that: "As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact." Therefore, the settled view is that it is left to the Court to decide on the facts of each case

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[26] *Inam Ullah Khan v. AKSA Solutions Development Services (Pvt.) Ltd.* (2019 CLD 355).
[27] Supreme Court of India in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* (1981) 3 SCC 333.
[28] Supreme Court of India in *Tata Consultancy Services Ltd. v. Cyrus Investments (Pvt.) Ltd.,* (AIRONLINE 2021 SC 179) citing the Privy Council in *Loch v. John Blackwood*.
[29] *Neelofar Shah v. Ofspace (Pvt.) Ltd.* (2013 CLD 114).

whether there exists oppression that may be called as ground of winding up.[30]

67. In defense, it was argued by learned counsel for the contesting Respondents that the public offer by Greentree is for the benefit of minority shareholders of TRGP who will receive a premium (of around Rs.15/-) over the price of their shares and thus there can be no oppression of such shareholders. The argument has two crucial flaws. Firstly, the benefit to minority shareholders is only if they part with their shares. It can conversely be argued that had TRGP accepted the offer of redemption made by TRGIL, the proceeds would have increased the market price of TRGP's shares than what is being presently offered by Greentree, and that shareholders of TRGP may even have received dividends whilst preserving their shares. Secondly, as already discussed, the money used by Greentree to purchase TRGP shares and the money intended to be paid by Greentree under the public offer is not of Greentree or of TRGIL or even of the shareholders of TRGP, but of TRGP itself, a person distinct from its shareholders, whose money has been and will be expended for no benefit resulting to it.

68. It is equally frivolous to argue that when the Board of TRGP violates the statute, diverts the funds/assets of a public-listed company to create the largest shareholder (Greentree), and then maneuvers its affairs to deliver control to such shareholder then that does not oppress other shareholders who could have been contenders for control on a level-playing field. For the same reason there is also no force in the submission that no other shareholder has made a competitive bid under the Takeover Regulations. The lack of confidence here in the Board of TRGP does not spring from a mere apprehension of being outvoted on the business affairs or the domestic policy of the company, but it is rested on a lack of probity in the conduct of the company's affairs. In my opinion the aforesaid acts committed by the Board of TRGP in collusion with the largest

[30] *Shahamatullah Qureshi v. Hi-tech Construction Pvt. Ltd.* (2004 CLD 640); *Inam Ullah Khan v. AKSA Solutions Development Services (Pvt.) Ltd.* (2019 CLD 355).

shareholder i.e. Greentree, do oppress minority shareholders such as the Petitioner who are in the category of 'substantial shareholder' as defined in section 2(7)(d) of the Companies Act *i.e.* holding an interest of 10% or more in the company. As already discussed, once oppression of minority shareholders is established, a case for winding-up stands made out in view of clause (g)(iii) of section 301 of the Companies Act and the Court may then consider corrective orders instead under sub-section (2) of section 286.

69. The violation of section 86(2) of the Companies Act to divert the funds/assets of the company for no apparent gain to the company; and the deliberate violation 158(2) of the Companies Act to delay election of directors at the behest of the largest shareholder (Greentree), is also mismanagement by the Board of TRGP (separate from oppression) *i.e.* conducting the affairs of TRGP in an unlawful and fraudulent manner within the meaning of section 286. In my opinion, in the given circumstances, these become grounds for winding-up the company under clauses (g)(i) and (g)(iv) of section 301 *i.e.* where the company has been carrying on, unlawful or fraudulent activities; and is being run and managed by persons who commit fraud, misfeasance or malfeasance in relation to the company. Here again, the dual test of sub-section (2) of section 286 is satisfied.

Order under sub-section (2) of section 286 of the Companies Act:

70. Having concluded that the affairs of TRGP are being conducted in an unlawful and fraudulent manner and in a manner oppressive to members such as the Petitioner, the case falls for corrective orders under sub-section (2) of section 286 of the Companies Act.

71. Under sub-section (2) of section 286 of the Companies Act the Court may make 'such order as it thinks fit'. The Court is therefore not confined to the prayer made in the petition. However, the guiding words are that such order should be 'with a view to

bringing to an end the matters complained of'.[31] Powers of the Court under sub-section (2) of section 286 are then amplified by section 287 of the Companies Act[32] giving diverse remedial powers for regulating the affairs of the company. These powers are not subject to other provisions of the Companies Act which deal with corporate management of the company in the normal course.[33]

72. Within the contours of the Court's powers under sections 286 and 287 of the Companies Act, I am inclined to remedy the affairs of TRGP with the following order:

(i) Shares held by Greentree (Respondent No.3) in TRGP (Respondent No.1) are declared to be the property of TRGP which shall be deemed to have been purchased by TRGP from its shareholders under section 88 of the Companies Act and held as treasury shares which are subject to the conditions set-out in sub-section (3) of section 88. The Central Depository Company of Pakistan Ltd. is directed to amend the central depository register accordingly.

(ii) TRGP is directed to amend the register of its members accordingly and make other consequential alterations to its record.

(iii) As a consequence of the above, the public offer made by Greentree to acquire controlling shares of TRGP stands

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[31] *Tata Consultancy Services Ltd. v. Cyrus Investments (Pvt.) Ltd.,* (AIRONLINE 2021 SC 179)

[32] **287. Powers of Court under section 286.—**Without prejudice to the generality of the powers of the Court under section 286, an order under that section may provide for—

(a) the termination, setting aside or modification of any agreement, or award compensation, however arrived including but not limited to between the company or any other company or any director, including the chief executive or any other officer, wherein the Court concludes that such agreement suffers from conflict of interest on the part of any director or the Board or any such agreement or contract is prejudicial to the interest of members upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances;

(b) setting aside of any transfer, delivery of goods, payment, execution or other transactions not relating to property made or done by or against the company within ninety days before the date of the application which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; and

(c) any other matter, including a change in management, for which in the opinion of the Court it is just and equitable that provision should be made.

[33] *Associate Biscuits International Ltd. v. English Biscuits Manufacturers (Pvt.) Ltd.* (2003 CLD 815).

abated. The Manger to the Offer (Respondent No.9) is directed to return the shares tendered by shareholders of TRGP to the respective shareholders.

(iv) The Board of directors of TRGP are directed to forthwith issue notice for calling an extra-ordinary general meeting of the company for electing directors.

(v) The Board of Directors of TRGP constituted after election shall then decide whether to retain the treasury shares, to cancel them or to sell them as per Regulation 13 of the Listed Companies (Buy-Back of Shares) Regulations, 2019; provided that, where the treasury shares exceed the limit fixed by Regulation 9, the shares exceeding such limit shall be cancelled or sold.

Petition is allowed in the above terms.

JUDGE

Karachi
Dated: 20-06-2025

**SADAM*