



Securities and Exchange Commission of Pakistan
Enforcement Department

Before Rashid Sadiq, Executive Director

ORDER

In the matter of

M/S Pakistan Telephone Cables Limited

(under clause (b) of sub-section (1) of section 160 of the companies ordinance, 1984)

Number and date of notice	EMD/Enf-II/465/2003 Dated November 21, 2003
Date of hearing	March 10, 2004
Present	Mr. Muhammad Ishaq Ahmed, G.M Finance/Corporate Secretary
Date of Order	May 14, 2004

This is a case of violation of Clause (b) of Sub-section (1) of Section 160 of the Companies Ordinance, 1984 (the “Ordinance”), which requires that a statement of material facts shall be annexed to the notice of general meeting where any special business is to be transacted.

2. The relevant facts for the disposal of this case are that M/s. Pakistan Telephone Cables Limited (the “Company”) issued a notice on September 23, 2002 for its 19th Annual General Meeting (the “AGM”) which was held on October 24, 2002 for consideration and approval of a special resolution to consider expansion plan, to authorize the board of directors to have transaction with the associated undertakings and to enhance the salaries of directors. The Enforcement Department examined the resolution and considering that the above referred businesses were “Special Business” and not ordinary businesses, in terms of Clause (b) of sub-section (1) of Section 160 of the Ordinance and that a statement of material facts was required to be annexed to the aforesaid notice of AGM for this business, the Enforcement Department decided to take up this matter with the Company and its directors/Chief Executive and hence a notice dated November 21, 2003 was issued to the Chief Executive and directors of the Company to show cause as to why fine may not be imposed on them as provided under Clause (a) of Sub-section (8) of Section 160 of the Ordinance for the aforesaid contravention. However, no reply to the notice was received. In order to provide an opportunity of personal hearing to the chief executive and directors, the case was fixed for March 10, 2004. On the said date Mr. Muhammad Ishaq Ahmed G.M



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Finance/Corporate Secretary (the “Authorized Representative”) appeared on behalf of all the respondents and pleaded the case.

3. Authorized Representative, while admitting the default requested for condonation of default on the grounds that it was an inadvertent mistake and that the matter was thoroughly discussed in the AGM. In support to his contentions he also provided the minutes of the said meeting.

4. Before dealing the matter, it is relevant to have a look into the provisions of law which deal with issue. The relevant provision of law is contained in Clause (b) of sub-section (1) of Section 160 of the Ordinance. These provisions, to the extent relevant, are reproduced hereunder:-

Quote:

“Where any special business, that is to say business other than consideration of the accounts, balance sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of the remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting, a statement setting out all material facts concerning such business, including, in particular, the nature and the extend of the interest, if any of therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement” (Unquote).

5. The aforesaid provisions of law are quite clear and unambiguous and make it mandatory for every Company, if a special business is to be considered in a meeting, to annex to the notice of the meeting, a statement of material fact setting out all material facts concerning such business and this mandatory provision can not be ignored even if a matter is thoroughly discussed in the meeting.

6. The objective of the annexation of statement of material facts is that all members of the Company must know as to what was the exact nature of the business to be transacted at the meeting so that they can make up their mind to attend the meeting considering the nature of the business from their point of view and to make a conscious decision by using their rights effectively. Material facts are those facts, which have a bearing on the business to be transacted and which could influence the shareholders while making a decision of approving the proposed business. In the case in hand, there was a proposal for expansion plan of the



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Company whose material facts i.e. details of expansion, effect of expansion on the business of the Company and the amount of cash involved was not disclosed to the shareholders for their consideration and approval. Similarly for other special businesses, approved in the AGM, the relevant details were not disclosed to the shareholders. These facts would have enabled the shareholders to take a decision to attend the meeting and to vote upon this business. The notice of meeting, therefore, did not comply with the provisions of Section 160 of the Ordinance.

7. On bringing these matters to the notice of the Authorized Representative, he assured that the requirements of law shall be complied with, in future and requested to condone the default.

8. In view of the foregoing, although the default is established and admitted however, keeping in view the assurance of the Authorized Representative that the requirements of law shall be complied with in future, I am inclined to take a lenient view of the default and instead of imposing a maximum penalty of Rs. 50,000/- on all the directors of the Company, I impose a fine of Rs. 20,000/- on the Chief Executive of the Company only. The other directors of the company are reprimanded to be careful in future.

9. The Chief Executive of the Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish receipted challans to the Commission.

(Rashid Sadiq)
Executive Director (Enforcement)

Announced:
May 14, 2004
ISLAMABAD