

**Before Dr. Sajid Oureshi, Executive Director (Company Law)**

*In the matter of*

**M/s. TeleCard Limited**

(Under Sub-section (3) of Section 245 of the Companies Ordinance, 1984)

Number and date of show cause notice	EMD/ENF-II/477/04 Dated November 25, 2005
Date of hearing	December 21, 2005
Present	Syed Viqar Husain, G.M. Finance, Arfeen International (Pvt) Limited
Date of Order	December 23, 2005

## **Order**

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This Order shall dispose of the proceedings initiated against the Directors of M/s. TeleCard Limited (hereinafter referred to as the “Company”) for default made in complying with the requirements of Sub-section (1) of Section 245 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The facts leading to this case briefly stated are that in terms of the provisions of Section 245 of the Ordinance, the Company was required to prepare and transmit to the members and simultaneously file with the Commission its quarterly accounts for the 1<sup>st</sup> quarter ended September 30, 2005 by October 31, 2005. The Company failed to file the aforesaid accounts with the Commission within the prescribed time and the same were received on December 01, 2005 i.e. with a delay of 1 month and 1 day. Consequently, a show cause notice dated November 25, 2005 was served on the Chief Executive and directors of the



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Company calling upon them to explain as to why penalties as provided under Sub-section (3) of Section 245 read with Section 476 of the Ordinance may not be imposed on them for the aforesaid contravention. The said notice was responded by Mr. Habib A. Farooqi, Company Secretary vide his letter dated November 30, 2005 which was examined, however, the reply was not found satisfactory.

3. In order to provide an opportunity of personal hearing, the matter was fixed for December 21, 2005. On the date of hearing, Syed Viqar Husain, G.M. Finance from M/s. Arfeen International (Pvt) Limited (the authorized representative) appeared before me to argue the case on behalf of the Chief Executive and other directors of the Company. He admitted the default and also filed written explanation vide letter dated December 20, 2005 duly signed by Mr. Haroon Iqbal, Chief Financial Officer. In the written submissions as well as in the arguments advanced verbally at the time of hearing, Mr. Viqar reiterated almost the same arguments as were earlier offered by the Company Secretary in his letter dated November 30, 2005. He further contended that the Commission allowed the company an extension of time for 15 days i.e. upto November 15, 2005 in the holding of its Annual General Meeting (AGM) and filing of annual accounts for the year ended on June 30, 2005. Accordingly, the delay in holding of AGM and finalization of annual accounts for the aforesaid period resulted in delay in preparation of accounts for 1<sup>st</sup> quarter ended on September 30, 2005. He stated that the default was not willful and intentional. He also regretted for the delay and requested for a lenient view and assured strict compliance of the provisions of the Ordinance in future.

4. Having considered the written as well as verbal submissions, I am of the opinion that the contentions of the Respondents do not carry any merit. Late finalization of the annual accounts is not a justifiable excuse for delay in circulation and filing of quarterly accounts which is a separate mandatory requirement under Section 245 of the Ordinance. Further, the AGM of the Company was held on November 15, 2005 for which the accounts were required to be circulated to the shareholders on October 25, 2005 i.e. 21 days before the holding of



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AGM. Since the annual accounts are required to be circulated after approval of the Board of Directors which requires a notice period of 7 days. As such the said annual accounts should have been ready with the Company by October 18, 2005. It was, therefore, quiet easy for the Company to prepare and circulate the quarterly accounts for the 1<sup>st</sup> quarter ended September 30, 2005 within the prescribed time, i.e. on or before October 31, 2005. However, these accounts were filed with the Commission on December 01, 2005 i.e. with the delay of 1 month and 1 day. The respondents have, therefore, failed to offer justifiable excuse for such an inordinate delay in filing of the quarterly accounts. I have also reviewed the track record of the Company with regard to filing of quarterly accounts, which is very disappointing. A perusal of the record reveals that the Company is submitting its annual, half yearly and quarterly accounts with significant delays for which the directors were also penalized on two occasions, whereas at least at ten occasions the Commission took a lenient view while adjudicating defaults in submission of these accounts in the past. It appears that the lenient view taken by the Commission has not produced good results rather it made the management careless in compliance of the mandatory provisions of law. For the foregoing reasons, the default under Sub-section (1) of Section 245 is considered willful and deliberate which attracts the penal provisions of Sub-section (3) of Section 245 of the Ordinance.

5. Although the default is established, yet keeping in view of the fact that the Company has filed the quarterly accounts, though with delay, and respondent's assurance for future compliance, I am inclined to take a lenient view in the matter and instead of imposing the maximum fine of Rs. 100,000/- on every director and a further fine of Rs. 1,000/- per day for continuous default, I impose the following fines under Sub-section (3) of Section 245 of the Ordinance on the Chief Executive and the directors of the Company as per details given hereunder:-

S. #	Name	Penalty (Rupees)
		<b>For the quarter ended 30-9-2005</b>
1	Mr. Fazal Hussain, Chief Executive	30,000



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2	Mr. Sultan-ul-Arfeen, Director	10,000
3	Mr. Khalid Firoz, Director	10,000
4	Mr. Shahid Firoz, Director	10,000
5	Mr. Javaid Firoz, Director	10,000
6	Mr. Aamir Niazi, Director	10,000
7	Mr. Bo Ericsson, Director	10,000
8	Mr. Peregrine Moncreiffe, Director	10,000
	<b>Total</b>	<b>100,000</b>

6. The Chief Executive and directors of the Company are hereby directed to deposit within thirty days of the date of receipt of this Order the aforesaid fines aggregating to Rs.100,000/- (Rupees one hundred thousand only) in the Commission's designated bank account No. 10464-6 maintained at Central Branch, 2-Habib Bank Plaza, I.I. Chundrigar Road, Karachi or by a DD/Pay order issued in the name of Commission and send a copy of the receipted vouchers to the Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 will be initiated which may result in the attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the directors in their personal capacity, therefore, they are required to pay the said amounts from their personal resources.

**Dr. Sajid Qureshi**

Executive Director (Company Law)