

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

In the matter of

M/s. Tri-Star Polyester Limited

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

No. & date of show cause notices	EMD/Enf-II/321/2004 Dated May 03, 2006 & May 16, 2006
Date of hearing	July 11, 2006
Present	No one appeared
Date of Order	July 20, 2006

Order

This Order shall dispose of the proceedings initiated against the directors of M/s. Tri-Star Polyester Limited (hereinafter referred to as the “Company”) for default made in complying with the provisions 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 Registrar and the Commission its quarterly accounts for the 2nd quarter ended December 31, 2005 and 3rd quarter ended March 31, 2006 by February 28, 2006 and April 30, 2006 respectively. Failure of the Company to comply with the aforesaid mandatory requirements within the prescribed time necessitated action against the responsible directors of the Company in terms of Sub-section (3) of Section 245 of the Ordinance. Consequently, show cause notices dated May 03, 2006 and May 16, 2006 were served on all the directors including the Chief Executive of the Company calling upon them to show cause as to why penalties as provided under Sub-section (3) of Section 245 read with



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Section 476 of the Ordinance may not be imposed on them for the aforesaid contravention. The Chief Executive and other directors, however, did not respond to the aforesaid show cause notices. In order to provide an opportunity of personal hearing the matter was fixed for July 11, 2006. It was also clarified in the hearing notice that in case the directors of the Company fail to appear for hearing, the matter will be decided on merit in accordance with Law on the basis of well settled principles of natural justice and record available on the file. However, neither anybody appeared on the date of hearing nor any written explanation was received. This leads me to believe that the Chief Executive and directors of the Company have nothing in their defence, and they have deliberately avoided appearance in the hearing. Therefore, I proceed to adjudicate this case on its merits.

3. Before proceeding to decide this case, I consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions of the law. The protection of the investors/shareholders is one of the primary objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. If the interest of the investors is protected, they will save and invest more. Their interest is protected by transmission of timely, adequate and meaningful information to them. It is the annual and interim accounts, which provide information to the investors about the affairs of the companies. It has unfortunately been noted that the directors of M/s. Tri-Star Polyester Limited are not observing these compulsory requirements of law.

4. From the aforesaid discussion, it is clear that the directors and Chief Executive have intentionally avoided appearance before me inspite of the fact that to facilitate them, the hearing was fixed at Karachi. It is also mentioned that the Company has failed to file the aforesaid quarterly accounts even after issuance of show cause notices. The defaults, therefore, are considered willful and deliberate. In the circumstances, it can be legitimately inferred that the Chief Executive and directors have failed to protect the interest of the shareholders. The aforesaid state of affairs is a cause of great concern for the Commission. The track record of the Company with regard to filing of quarterly/half yearly accounts is also



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not satisfactory. The Company is committing defaults in filing of half yearly accounts since December, 1999 and in filing of quarterly accounts since March, 2002 for which the directors were penalized earlier also. It has been noticed that the directors have also failed to deposit the amount of penalties imposed for the previous defaults. This led me to believe that the directors have no respect for the law and they have again deprived the shareholders of their statutory right to receive the quarterly accounts of the Company. The responsibility for preparation/circulation of quarterly accounts rests with the directors of the Company and they have to take appropriate action at appropriate time. The repetition of default clearly shows that the Company is not making any serious efforts to comply with the provisions of the law. For the foregoing reasons, the defaults under Sub-section (1) of Section 245 of the Ordinance regarding non-submission of quarterly accounts for the 2nd quarter ended December 31, 2005 and 3rd quarter ended March 31, 2006 stand established.

5. However, instead of imposing the maximum fine of Rs.100,000 on every director and a further fine of Rs.1,000 per day for the continuous default, I impose the following penalties on the Chief Executive and the directors of the Company under Sub-section (3) of Section 245 of the Ordinance:-

S. No.	Name	Penalty (Rs.)		
		2 nd quarter ended December 31, 2005	3 rd quarter ended March 31, 2006	Total
1.	Mr. Asad Ahmad, Chief Executive	50,000	50,000	100,000
2.	Mr. Tahir Ahmad, Director	50,000	50,000	100,000
3.	Mrs. Seema Ahmad, Director	50,000	50,000	100,000
4.	Mr. Tanvir Hassan, Director	50,000	50,000	100,000
5.	Mrs. Aliya Ahmad, Director	50,000	50,000	100,000
6.	Mr. Muhammad Zameer, Director	50,000	50,000	100,000
7.	Mr. M. Shahzad Khalique, Director	50,000	50,000	100,000
Total		350,000	350,000	700,000



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6. The Chief Executive and directors of M/s. Tri-Star Polyester Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.700,000/- (Rupees seven hundred thousand only) in the head of Account No. 10464-6, maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited, Central Branch, 2-Habib Bank Plaza, I.I. Chundrigar Road, Karachi, within thirty days from the receipt of this Order and furnish receipted vouchers or pay by a DD/pay order issued in the name of 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 movable and immovable property. It may also be noted that the said penalties are imposed on the Chief Executive and other directors in their personal capacity; therefore, they are required to pay the said amount from their personal resources.

Dr. Sajid Qureshi
Executive Director (CLD)