

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

*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 notice	EMD/Enf-II/321/2006 Dated January 30, 2006
Date of hearing	April 27, 2006
Present	No one appeared
Date of Order	May 02, 2006

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## **Order**

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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 3<sup>rd</sup> quarter ended March 31, 2005 and 1<sup>st</sup> quarter ended September 30, 2005 by April 30, 2005 and October 31, 2005 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, a show cause notice dated January 30, 2006 was 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 Section 476 of



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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 notice. In order to provide an opportunity of personal hearing the matter was fixed for March 14, 2006. However, neither anybody appeared on the date of hearing nor any written explanation was received. To afford another opportunity the matter was fixed for April 13, 2006 which was adjourned and finally fixed for April 27, 2006 at Karachi. Again nobody attended the hearing instead a written request was received for adjournment on the plea that the Chief Executive was out of country and would not be able to attend hearing on the given date and time. The request was examined but not found cogent because no documentary evidence to this effect was furnished. Moreover, the directors of the Company had already been provided two opportunities which they failed to avail. This leads me to believe that the Chief Executive and directors of the Company have nothing in their defence, and they are deliberately avoiding 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 in spite of the fact that to facilitate them, the final 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 notice. The default, therefore, is 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



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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 not satisfactory. The Company is committing defaults in filing of half yearly accounts since December, 2000 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 within the prescribed time limit. 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 default under Sub-section (1) of Section 245 of the Ordinance regarding non-submission of quarterly accounts for the 3<sup>rd</sup> quarter ended March 31, 2005 and 1<sup>st</sup> quarter ended September 30, 2005 stands 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 in Rs.	
		3 <sup>rd</sup> quarter ended March 31, 2005	1 <sup>st</sup> quarter ended September 30, 2005
1.	Mr. Asad Ahmad, Chief Executive	50,000	50,000
2.	Mr. Tahir Ahmad, Director	30,000	30,000
3.	Mrs. Seema Ahmad, Director	30,000	30,000
4.	Mr. Tanvir Hassan, Director	30,000	30,000
5.	Mrs. Aliya Ahmad, Director	30,000	30,000
6.	Mr. Muhammad Zameer, Director	30,000	30,000
7.	Mr. M. Shahzad Khalique, Director	30,000	30,000
	<b>Total</b>	<b>230,000</b>	<b>230,000</b>



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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.460,000/- (Rupees four hundred and sixty thousand only) 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 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 (Company Law)