



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Telecard Limited

Number and date of notice: No. EMD/233/477/2002-56-62 dated July 8, 2013
Date of hearing: May 19, 2016, November 9, 2016 and February 8, 2018
Present: Mr. Zaheer Minhas - Legal Counsel and Mr. Fawad N. Bhatti
Manager Corporate and Regulatory Affairs (Authorized
Representatives)

ORDER

UNDER SECTION 208 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This Order shall dispose of the proceedings initiated against the Directors (the "Respondents") of Telecard Limited (the "Company") through Show Cause Notice (the "SCN") dated July 8, 2013 issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (the "Ordinance").

2. Brief facts of the case are that examination of the annual audited accounts of the Company for the year ended June 30, 2012 (the "Accounts") revealed that the Company made investment in its subsidiary company namely Telegateway Limited ("TGL") by acquiring 100% shareholding i.e. 50,000 shares. Financial statements of TGL provided by the Company vide its letter dated May 22, 2013 revealed the following disclosures:

Description	Share Capital issued subscribed and paid up capital
Balance at June 30, 2011	15,000
48,500 ordinary shares of Rs 10 each issued in cash	485,000
Balance as at June 30, 2012	500,000

3. It was observed that TGL was an associated company of the Company on the basis of common directorship. The directors of TGL held 500 shares each (total 1500 shares) before the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

investment of the Company out of the authorize capital of the subsidiary company, distributed in 50,000 shares.

4. In view of the aforesaid, it appeared that the Company violated the provisions of Section 208 of the Ordinance, as the Company had not provided the evidence of compliance in that regard. Therefore, a SCN dated July 8, 2013 was issued to the Respondents to show cause within fourteen days of the date of the SCN as to why penal action may not be taken against them for contravening the provision of Section 208 of the Ordinance.

5. In response to the SCN, Mr. Zaheer H. Minhas Advocate of M/s Zaheer & Zaheer, Advocates and Legal Consultants submitted the reply, which was received at this office on July 22, 2013. Brief of his reply is as follows:

- a. Content of the Notice are contrary to the record.
- b. SCN has been issued without any legal justification thus Notice is liable to be recalled.
- c. TGL was formed by Mr. Javaid Firoz, Mr. Shahid Firoz and Mr. Sultan ul Arfeen. These persons were also shareholders/director of the Company. So TGL was an associated company.
- d. Mr. Javaid Firoz, Mr. Shahid Firoz and Mr. Sultan ul Arfeen sold out their entire shareholding to Mr. Syed Manzar Ali Kazmee, Ms. Zakia Rasheed and Mr. Syed Viqar Hussain, respectively on 30-12-2011. Thus TGL ceased to be an associated company of the Company.
- e. Thereafter, Mr. Syed Manzar Ali Kazmee, Ms. Zakia Rasheed and Mr. Syed Viqar Hussain sold their respective shares to Syed Amir Hussain (Telecard), Shams ul Arfeen then Tipu Saeed Khan (Telecard) and Shams ul Arfeen (Telecard) on 28-01-2012. Thus, purchase of shares by later the TGL became a subsidiary of Telecard Limited.
- f. Investment in question made by the Company for purchase of shares from Mr. Syed Manzaar Ali Kazmee, Ms. Zakia Rasheed and Mr. Syed Viqar Hussain was made on 28-01-2012.
- g. TGL was neither associated company nor a subsidiary company. Therefore, provisions of Section 208 of the Ordinance are not attracted.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

6. Thereafter, in reply to the Commission's letter No. EMD/233/477/2002-252 dated July 29, 2013, the Authorized Representative vide his letter dated August 23, 2013 clarified that on January 28, 2012, Mr. Syed Manzar Ali Kazmee, Ms. Zakia Rasheed and Mr. Syed Viqar Hussain sold their respective shares to Telecard Limited in the name of Syed Amir Hussain (Telecard), Shams ul Arfeen then Tipu Saeed Khan (Telecard) and Shams ul Arfeen (Telecard), as nominee of the Company.

7. Considering the reply of the Authorized Representative, hearing in the matter was fixed on May 19, 2016. Mr. Zaheer Minhas attended the hearing on behalf of the Respondents. During the hearing proceedings, Authorized Representative was allowed to submit the reply regarding the purchase of 48,500 shares within seven days of the hearing. The Authorized Representative vide his letter which was received in this office on June 13, 2016, submitted the detail of transfer of shares of TGL in chronological order, which is as follows:

Mr. Sultan ul Arfeen 500 shares 2 June 2004 till 30 December 2011	Mr. Shahid Firoz 500 shares 2 June 2004 till 30 December 2011	Mr. Javaid Firoz 500 shares 2 June 2004 till 31 October 2011
Syed Viqar Hussain 500 shares 30 December 2011 till 28 January 2012	Ms. Zakia Rasheed 500 shares 30 December 2011 till 28 January 2012	Mr. Manzar Ali Kazmi 500 shares 31 October 2011 till 28 January 2012
Mr. Shams Ul Arfeen 500 shares 28 January 2012 till 12 March 2012	Mr. Shams Ul Arfeen 500 shares 28 January 2012 till 30 May 2014	Mr. Syed Aamir Hussain 500 shares 28 January 2012 till date
Mr. Tipu Saeed Khan 500 shares 12 March 2012 till date	Mr. Arif Rasool 500 shares May 30, 2014 till date	

8. In this regard, it was observed that the Company had not provided the information regarding the date of investment on which investment of 48,500 shares of TGL was made along with the supporting documentary evidence. The Commission vide its letter dated June 14, 2016 and June 22, 2016 reminded the Authorized Representative to submit the requisite information. However, it was observed that no such information was provided to the Commission. Hearing opportunities were therefore provided to the Respondents on November 9, 2016 and then on February 8, 2018. The hearings were attended by Authorized Representatives and conceded that



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

the investment was made without special resolution as required under the provisions of Section 208 of the Ordinance. He requested for the lenient view in this regard.

9. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance, which states as under:

- Provisions of Sub-section (1) of Section 208 of the Ordinance provides that a company shall not make any investment in any of its associated companies or undertakings except under the authority of special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto provided that the return on investment in the form of loan shall not be less than the borrowing cost of the investing company;

Explanation: The expression "investment" shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.

- Provisions of Sub-section (3) of Section 208 of the Ordinance provides that if default is made in complying with the requirements of this Section, every director of a company who is knowingly and willfully in default shall be liable to fine which may extend to ten million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this Section;

10. In terms of the Commission's notification SRO 751 (I)/2015 dated August 2, 2017 the power to adjudicate cases under Section 208 of the Ordinance has been delegated to Executive Director (Corporate Supervision Department).

11. I have gone through the fact of the case, reply to the SCN submitted and arguments put forth during the hearing. In this regard, I am of the view that the Company has failed to comply with the provisions of Section 208 of the Ordinance and the Authorized Representatives has admitted the default. I have observed that TGL at the time of acquisition by the Company was a shelf company which had not taken the certificate of commencement of business and had insignificant assets and liabilities. Therefore, it is construed that there was no financial benefit

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SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

attached while making equity investment in the associated company. Keeping in view the foregoing, the admission of default and assurance of compliance of applicable laws in future, I instead of imposing a penalty, hereby warn the Respondents to be careful and ensure meticulous compliance of the law in future.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
April 4, 2018
Islamabad

