



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before  
Mahboob Ahmad – Additional Director/  
Head of Listed Companies Wing

*In the Matter of*

**Tri-Star Power Limited**

Number and Date of SCN: CSD/ARN/160/2015-185 dated May 7, 2024  
Hearing Dates: June 4, 2024, July 5, 2024 and July 22, 2024  
Present: Mr. Jawed Husain Advocate as Authorized Representative

**ORDER**

**Under Section 237 of the Companies Act, 2017 and Section 479 thereof**

This Order shall dispose of the proceedings initiated through Show Cause Notice dated May 7, 2024 (**the SCN**) issued under Section 237 of the Companies Act, 2017 (**the Act**) read with Section 479 thereof, to the Board of Directors (**BOD**) and Chief Financial Officer (**CFO**) (collectively referred to as the **Respondents**) of Tri-Star Power Limited (**the Company**).

2. Brief facts of the case are that the Company failed to prepare and file/transmit through e-Services with the Registrar/Commission, its Quarterly Financial Statements (**QFS**) for the following periods within the stipulated time:

S. No.	Period ended	Due date	Filed/Transmitted through e-Services with Registrar/Commission
1	December 31, 2022	March 1, 2023	March 7, 2023 (5-days delay)
2	March 31, 2023	April 30, 2023	May 8, 2023 (7-days delay)
3	September 30, 2023	October 30, 2023	November 11, 2023 (11-days delay)

3. The **QFS** for the aforesaid period were also not posted on the website of the Company. The Respondents, *prima facie*, contravened the provisions of Section 237 of the Act read with the Commission's Circular Number 11 dated August 11, 2023 by failing to prepare and file/transmit through e-Services with the Registrar/Commission, the above mentioned **QFS** within the stipulated time, however, transmitted through e-Services for periods ended December 31, 2022 and March 31, 2023 with a delay of 5 days and 7 days respectively and filed with the Registrar for period ended September 30, 2023 with a delay of 11 days, and by not posting the aforesaid **QFS** on the website of the Company. Consequently, the SCN was issued to the Respondents to show cause in writing



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within fourteen days from the date of the SCN as to why penal action may not be taken against them for non-compliance of Section 237 of the Act.

4. In this regard, through the letter dated June 3, 2024, Mr. Jawed Husain Advocate, the Authorized Representative, *inter alia*, submitted that:

- As admitted in the SCN, the Company is compliant of Section 237 of the Act with respect to filing of QFS. However, there was slight delay of few days in the filing of said QFS.
- It is mandatory requirement that there should be a mens rea or a guilty mind before one can be convicted for an offence. There was no intention or mens rea of the board to violate any law, which is evident from the compliance status. Hence, no penal action can be taken against the SCN issued to the BOD of the Company. In legal terms, there is no mens rea on the part of the Company or its BOD.
- The main purpose of the preparation of QFS is the disclosure and dissemination. The said purpose has been achieved and there is no concealment.
- The practice of the Commission for a long time is that when an entity is compliant, a lenient view is taken and the matter is closed with a warning without imposing any fine or penalty.
- In a number of cases, the penalty imposed on a Company is converted into a warning by the Appellate Bench of the Commission. Reliance is placed on the reported cases of 2006 CLD 810 (Sasta Phone (Private) Limited vs SECP), 2017 CLD 1704 (Aziz I. Jamal vs. SECP), 2017 CLD 1728 (Aziz I. Jamal vs. SECP), 2018 CLD 44 (Muhammad Tariq Masood vs. SECP), 2009 CLD 541 (Babri Cotton Mills Limited vs. SECP), 2007 CLD 1735 (Hajji Dossa Limited vs. SECP), 2016 CLD 204 (Pak Kuwait Takaful Company Limited vs. SECP), 2016 CLD 204 (Pak Kuwait Takaful Company Limited vs. SECP), 2016 CLD 17 (Jubilee Life Insurance Limited vs. SECP), 2015 CLD 621 (Shaheen Insurance Company Limited vs. SECP), 2007 CLD 1674 (Atlas Battery Limited vs. SECP), 2017 CLD 169 (Ashfaq Ahmed vs. SECP), 2016 CLD 17 (Jubilee Life Insurance Company Limited vs. SECP), 2007 CLD 1667 (Arif Habib Limited vs. SECP), 2008 CLD 731 (United Brands Limited vs. SECP), 2013 CLD 1710 (Pak Kuwait Takaful Company Limited vs. SECP), 2016 CLD 2077 (Faisal Malik Imran Hussain vs. SECP), 2013 CLD 1710 (Pak Kuwait Takaful Company Limited vs. SECP), 2005 PTD 2354 (Commissioner Income Tax vs. Asim Khurshid), 2017 CLD 1715 (Aziz I. Jamal vs. SECP), 2018 CLD 1031 (TRG Pakistan Limited vs. SECP), 2008 CLD 796 (JSCL vs. SECP), 2018 CLD 197 (NTDC vs SECP), PLD 1982 Lah. 810 (United Commercial Finance Ltd. vs. Government of Pakistan), 2007 CLD 1667 (Arif Habib Limited), 2007 CLD 1735 (Haji Dossa Limited), 2007 CLD 1038 (Dadabhoy Construction Technology Limited), 2007 CLD 1251 (Hamid Textile Mills Limited), 2007 CLD 1491 (Kohinoor Power Company Limited), 2010 CLD 1035 (Shaffi Chemicals Industries Limited), 2016 CLD 2077 (SECP), 2017 CLD 1715 (Aziz I. Jamal vs. SECP), 2018 CLD 44 (Muhammad Tariq Masood vs. SECP), 2018 CLD 1031 (TRG Pakistan Limited vs. SECP), 2009 CLD 1584 (Asia Insurance Company Limited), 2010 CLD 116 (S.G Power Limited), 2015 CLD 621 (Shaheen Insurance Company Limited), 2018 CLD 197 (NTDC vs. SECP), 2019 CLD 1372 (PTDCL vs. SECP), 2019 CLD 1281 (Lahore Parking Company Limited vs. SECP), 2014 CLD 708 (Ernst and



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Young Ford Rhodes Sidat Hyder, Chartered Accountants), 2014 CLD 570 (Asian Stock Fund Limited, 2011 CLD 1181, 2012 CLD 79 (Diamond Industries Limited), 2013 CLD 729 (Indus Dying and Manufacturing Company Limited), 2013 CLD 729 (National Foods Limited), 2014 CLD 122 (Dewan Farooque Motors Limited), 2015 CLD 634 (Mahmood Textile Mills Limited).

- The website of the Commission does not have any notification for the purpose of provision of Section 237(2) of the Act namely: "Provided further that the Commission may specify the time period for which the quarterly financial statements shall be made available on the website of the company."
- In view of the aforesaid, the SCN is liable to be withdrawn.

5. To provide opportunity of personal representation, hearing in the matter was fixed for June 4, 2024 and July 5, 2024, however, sought adjournment. Thereafter, the matter was fixed for hearing to be held on July 22, 2024. On the date of the hearing, Mr. Jawed Husain Advocate, appeared as Authorized Representative of the Respondents. He informed that one of the Respondent namely Ms. Shamima Begum has already died. He informed that the mentioned QFS were timely uploaded on PUCAR through the Pakistan Stock Exchange and were also timely uploaded on the website of the Company. The minor delays in transmission/filing of the said QFS with the Registrar/Commission were owing to the technical glitches faced by the Company. He submitted that the Company has complied with the provisions of Section 237 of the Act, therefore, the minor delays highlighted in the SCN may be condoned and no penalty in this regard be imposed. He assured that in future, compliance of the given provisions of the Act would be strictly ensured.

6. Subsequent to the hearing, the Authorized Representative through an email dated July 22, 2024, *inter alia*, submitted that:

- The QFS were transmitted to PSX through its online portal PUCAR within the given time as per the details as hereunder:

S. No.	Period ended	Transmitted to PSX on
1	December 31, 2022	28.2.2023 - On-time
2	March 31, 2023	2.5.2023 - On-time [30 <sup>th</sup> April was Sunday 1 <sup>st</sup> May was Labour day]
3	September 30, 2023	31.10.2023 - On-time

- The QFS were placed on the website of the Company on the same day as stated above.
- The QFS were made available on time, not only to stakeholders but to the whole world.
- Slight delay may be due to the non-availability of the online filing system of SECP.
- The present economic situation of the country and the problems of the business man also warrants consideration.



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7. I have analyzed the facts of the case, relevant legal provisions, and the arguments put forth during the course of the hearing as well as the written correspondence made. In this regard, it is observed that:

(i) **Whether it is statutory obligation to timely file/transmit quarterly financial statements:**

The provisions of Section 237 are unambiguous and explicit. The timing of the QFS is of essence and the disclosure requirements of these QFS have been kept to a bare minimum. The QFS prepared in a timely manner not only provide to its users a reliable source of information regarding the Company's financial position and performance but also shows the results of the management's stewardship of resources entrusted on to it. In order to ensure compliance, the Respondents have fiduciary duty to ensure that the Company meticulously adheres to the law for preparation and filing/transmission of the QFS through the e-Services in a timely manner. Moreover, the Respondents are required to upload the QFS on the website of the Company. In this context, the Respondents cannot absolve themselves from their statutory duties pertaining to preparation and filing/transmission of the QFS in a timely manner as stipulated under the Act read with the Circular No. 11.

In this regard, I have observed that the QFS for the periods ended December 31, 2022, March 31, 2023 and September 30, 2023 were uploaded within the stipulated time on the PUCAR through the PSX, however, the Respondents are of the view that the delays observed in transmission/filing through e-Services with the Commission/Registrar were minor in nature and were due to the technical glitches faced by the Company in online filing. The Respondents in this regard submitted relevant correspondence exchanged with the PSX for transmission of its aforesaid QFS. It is observed that the Respondents did not contend that the QFS for the periods ended December 31, 2022, March 31, 2023 and September 30, 2023 were transmitted/filed with the Commission/Registrar with delays of 5 days, 7 days and 11 days respectively.

Contrary to the claim of the Respondents, I have also observed that the aforesaid QFS of the Company are not available on the website of the Company (<https://www.tristar.com.pk/financial-statements.php>). I am, therefore, of the view that it is the fiduciary responsibility of the Respondents to transmit/file its QFS with the Commission/Registrar within the stipulated time as provided in Section 237 of the Act.

(ii) **Whether QFS is a key source of information for the stakeholders:**

The preparation and transmission of QFS within the stipulated timeframe rests with the Respondents. In this regard, the Respondents are of the view that the QFS for the periods ended December 31, 2022, March 31, 2023 and September 30, 2023 were uploaded on the PUCAR portal of the PSX within the stipulated time of Section 237 of the Act, hence, the shareholders were not deprived of the key financial information. The Respondents also submitted that the information was not concealed from the shareholders.



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(iii) **Whether the Commission has specified the time period for uploading QFS on website:**  
The Respondents are of the view that the Commission does not have any notification for the purpose of proviso of Section 237(2) of the Act requiring uploading of the QFS on website of the company. In this regard, I am of the view that in terms of clause 3(b) of the SRO 1196(I)/2019 dated October 3, 2019 it has been specified that: "Quarterly financial statements and reports shall be placed on website of a listed company within seven days from the date of approval by the board." Therefore, the argument of the Respondents is not cogent. Furthermore, it is relevant to highlight that the instant proceedings were initiated against the Respondents under Section 237 of the Act read with the Circular.

(iv) **Whether subsequent compliance with a delay absolves of the Company from THE default of Section 237 of the Act:**  
The Respondents' stance is that in terms of cited cases, the fine could only be imposed on substantial finding of guilt. Moreover, the Respondents have placed reliance that in precedent cases, the Commission condoned the minor delays in statutory compliances. In the instant matter, the Company has transmitted/filed its QFS with the Commission/Registrar, which is a substantial mitigating factor but not absolve of the Company from the default of Section 237 of the Act read with the Circular.

8. Keeping in view of the factors that the QFS for the periods ended December 31, 2022, March 31, 2023 and September 30, 2023 were transmitted/filed with the Commission/Registrar with delays of 5 days, 7 days and 11 days respectively, however, the same were uploaded on PUCAR through the PSX in a timely manner i.e. within the time provided in Section 237 of the Act. Therefore, taking a lenient view in the matter, I close the instant proceedings with a warning to the Respondents. They are advised to ensure compliance of the applicable provisions of the Act in letter and spirit.

9. Nothing in this Order may be deemed to prejudice the operation of any provisions of the Act providing for imposition of penalties on the Respondent in respect of any default, omission or violation thereof.

**Mahboob Ahmad**  
Additional Director/ Head of Wing  
Listed Companies Wing,  
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**Announced:**  
July 23, 2024  
Islamabad

