



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I Adjudication Division

Before
Shahzad Afzal Khan
Director/Head of Department
Adjudication Department-I

In the matter of
Telecard Limited

Show Cause Notice No. & Date: No. CSD/ARN/146/2015/209 dated April 15, 2024
Date of hearing June 5, 2024
Hearing attended by: Mr. Muhammad Farhan Saeed Advocate &
Mr. Ghufraan Shaheer Afaq, Manager

ORDER

Under Section 218 & 219 of the Companies Act, 2017 read with Section 479 thereof

This order shall dispose of the proceedings initiated through Show Cause Notice No. CSD/ARN/146/2015/209 dated April 15, 2024 (the SCN) issued under Section 218 of the Companies Act, 2017 (the Act) and Sections 219 and 479 thereof to Telecard Limited (the Company) through the Chief Executive, hereinafter referred to as the Respondent.

2. The brief facts of the case are that annual audited financial statements of the Company for the year ended June 30, 2023 (the Accounts) transpired that the Company maintained the employees provident fund Trust as per Note 4.12 to the Accounts.

3. The concerned department of the Securities and Exchange Commission of Pakistan (the Commission) vide letter dated February 28, 2024 sought explanation from the Company regarding monthly payment schedule for the said provident fund for the year ended June 30, 2023. The Company submitted its reply dated March 11, 2024 provided details in this regard. The concerned department noted following delays with regard to payment of contributions of employee's provident fund:

| S. No. | Month | Employee PF Contribution deduction Date | Payment date to PF | Delay in Days (Deposited after 15 days of the deduction) |
|--------|------------|---|--------------------|--|
| 1 | July 2022 | 3.8.2022 | 27.9.2022 | 40 |
| 2 | Aug 2022 | 2.9.2022 | 17.11.2022 | 61 |
| 3 | Sep 2022 | 4.10.2022 | 21.10.2022 | 2 |
| 4 | Oct 2022 | 1.11.2022 | 30.12.2022 | 44 |
| 5 | Nov 2022 | 2.12.2022 | 12.1.2023 | 26 |
| 6 | Dec 2022 | 30.12.2022 | 23.2.2023 | 40 |
| 7 | Jan 2023 | 1.2.2023 | 24.2.2023 | 8 |
| 8 | Feb 2023 | 2.3.2023 | 3.3.2023 | Nil |
| 9 | Mar 2023 | 31.3.2023 | 4.5.2023 | 19 |
| 10 | April 2023 | 19.4.2023 | 23.5.2023 | 19 |
| 11 | May 2023 | 13.6.2023 | 16.6.2023 | 1 |
| 12 | June 2023 | 26.7.2023 | 26.7.2023 | 18 |



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4. It was observed that, except for the month of February 2023, the Company had delayed payments of monthly provident fund contributions beyond 15 days as required under Section 218 of the Companies Act, 2017 (the Act). The aforesaid delays showed that the Company failed to deposit/pay within the stipulated time, the provident fund contributions, into the separate bank account maintained for the purpose, *prima facie*, contrary to the provisions of Section 218 of the Act. Hence, the proceedings were initiated against the Respondent through the SCN and the Respondent was called upon to show cause in writing, within fourteen (14) days of the date of the SCN, as to why penalty may not be imposed in term of the requirements of the Act for the aforesaid violations.

5. In this regard, the Company through its reply dated April 26, 2024, *inter alia*, submitted that:

- At the outset, the Commission issued a SCN 2(398)CSD/ARN/146/2015-1037 dated April 10, 2023 issued under Section 218 read with Section 219 and 479 thereof regarding the non-compliance of the aforesaid during the preceding financial year i.e. June 30, 2022 and subsequently held a hearing on May 29, 2023, whereby the Commission was assured for the future compliance by the Company.
- The Commission has again issued a SCN dated April 15, 2024 regarding the non-compliance of the captioned and the major part of the period under review in the aforesaid SCN falls within the period concluded immediately before the hearing date.
- The Company to the best of its efforts improved and ensured the compliance of the aforesaid provisions after the above mentioned hearing.
- The Commission again issued a SCN dated April 15, 2024 regarding the non-compliance of the captioned and unfortunately the major part of the period under review in the aforesaid SCN falls within the period concluded immediately before the hearing referred above.
- The Company reiterates its stance as mentioned in letter CSD/ARN/146/2015/1037 dated May 4, 2023 that the delay in payment of the contributions amount to the trustee was due to the delay in collection of the contribution amount from its subsidiaries as the trust of the Company also operates as the trust of its subsidiaries.
- The compliance of the Section 218 of the Act has already been achieved in the period commencing after the conclusion of the above referred hearing and in light of the instructions issued by the Commission.
- The Company requests to take lenient view of the submissions. The delay and inconvenience is deeply regretted with a request to condone the same.

6. In order to provide opportunity of personal representation, hearing in the matter was fixed for June 5, 2024, which was attended by Mr. Muhammad Farhan Saeed, Advocate, and Mr. Ghufuran Shaheer Afaq, Manager Corporate & Legal along with Mr. Zohaib Bin Mujahid, Manager Human Resource, on behalf of the Company. They reiterated their stance as was given through written reply dated April 26, 2024. It was, *inter alia*, submitted that the delays were regularized after last order issued by the Commission.

7. Subsequent to the hearing, Mr. Farhan Saeed through email dated June 7, 2024, *inter alia*, submitted the detail of payment of provident fund contributions to the trust account for the period commencing from July 2023 till May 2024, as given below, and stated that the delay is attributable to bank account operational issues faced by the Company:



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| Telecard Limited | | | | | | | |
|--|---------|-------------|--------------|-----------------------------|--------------------|--------------------------|--------|
| Provident Fund Contribution From July 2023 till May 2024 | | | | | | | |
| S. No. | Month | Payment Due | Payment made | PF Deduction from employees | Payment date to PF | Amount payable month end | Delays |
| 1 | Jul-23 | 1,680,587 | 1,680,587 | 01/08/2023 | 28/08/2023 | 1,680,587 | 12 * |
| 2 | Aug-23 | 1,601,199 | 1,601,199 | 01/09/2023 | 15/09/2023 | 1,601,199 | |
| 3 | Sep-23 | 1,603,319 | 1,603,319 | 03/10/2023 | 11/10/2023 | 1,603,319 | |
| 4 | Oct-23 | 1,580,159 | 1,580,159 | 01/11/2023 | 06/11/2023 | 1,580,159 | |
| 5 | Nov-23 | 1,643,099 | 1,643,099 | 04/12/2023 | 07/12/2023 | 1,643,099 | |
| 6 | Dec-23 | 1,514,191 | 1,514,191 | 05/01/2024 | 21/02/2024 | 1,514,191 | 32 * |
| 7 | Jan-24 | 1,591,741 | 1,591,741 | 07/02/2024 | 13/02/2024 | 1,591,741 | |
| 8 | Feb -24 | 1,612,521 | 1,612,521 | 04/03/2024 | 06/03/2024 | 1,612,521 | |
| 9 | Mar-24 | 1,522,079 | 1,522,079 | 01/04/2024 | 07/04/2024 | 1,522,079 | |
| 10 | Apr-24 | 1,500,145 | 1,500,145 | 02/05/2024 | 07/05/2024 | 1,500,145 | |
| 11 | May-24 | 1,486,373 | 1,486,373 | 03/06/2024 | 05/06/2024 | 1,486,373 | |

*the delay is attributable to bank account operational issues faced by the Company

8. The following questions are relevant to be addressed in the instant proceedings:

- Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?
- Whether the instant proceedings are distinct due to the default periods mentioned?
- Whether the Company made delays in payment of contributions amounts into a separate bank account?
- Whether the defaults of the provisions of Section 218 of the Act are admitted?

9. I have reviewed the submissions made in writing and during the hearing as well as issues highlighted in the SCN. In this connection, it is stated that:

- (i) **Whether the payment of contributions of provident fund within the stipulated time of fifteen days are obligatory?**

At the outset, I am of the view that the requirements of Section 218 of the Act mandatorily require that the company is bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, within fifteen days into the separate bank account maintained for the purpose. The reasons cited by the Respondent that the delays were attributable to collection of the contributions from its subsidiaries and operational issues of the bank account; are not tenable.



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(ii) **Whether the instant proceedings are distinct due to the default periods mentioned?**

The Respondent has contended that through the instant SCN major part of the period under review falls within the period concluded through order dated June 1, 2023. In this regard, I am of the view that the instant proceedings are distinct and cover the period from July 2022 to June 2023, whereas the mentioned order covers the period July 2021 to June 2022.

(iii) **Whether the Company made delays in payment of contributions amounts into a separate bank account?**

Yes. It is relevant to highlight that the Respondent has informed that it ensured compliance during the period i.e. July 2023 to May 2024. However, during the period July 2022 to June 2023, as alleged in the SCN, the Company made delays in payment of the contributions of the provident fund amounts into a separate bank account. I have noticed that in the instant matter, the delays range upto 61 days, as stated in para 3 above, which is violation of Section 218 of the Act and the default persisted in financial year 2023.

(iv) **Whether the defaults of the provisions of Section 218 of the Act are admitted:**

Yes. The Respondent has admitted the cited defaults in the SCN. However, assured to comply with the given provisions and also submitted evidence of compliance during the period subsequent to the issuance of the SCN as part of the assurance to comply with the provisions of the law. These are, however, the mitigating factors in the matter of the instant proceedings.

10. Keeping in view the aforesaid I, therefore, in exercise of powers conferred on me in terms of Section 219 of the Act, hereby, impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand only)** on the **Company i.e. Telecard Limited**. The Respondent is advised to ensure the compliance of the legal provisions of the Act in letter and spirit.

11. The aforesaid Respondent is, hereby, directed to deposit the amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty (30) days from the date of this Order and to furnish a receipted bank challan to the Commission forthwith. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue.

12. Nothing in this Order may be deemed to prejudice the operation of any provision of the Act providing for imposition of penalties in respect of any default, omission or violation of the Act.

Shahzad Afzal Khan
Head of Department
Adjudication Department-I

Announced: Dated: June 28, 2024
Islamabad