



**BEFORE APPELLATE BENCH NO. II**

**In the matter of**

**Appeal No. 7 of 2005**

1. English Leasing Limited  
Suite No. B-601-602, 6<sup>th</sup> Floor  
Lakson Square, Building No.3  
Sarwar Shaheed Road, Karachi

5. M. Younas Khan  
Director  
English Leasing Limited

2. Naz Afreen  
Director  
English Leasing Limited

6. K.M Aminullah  
Director  
English Leasing Limited

3. Fazal Ahmed  
Director  
English Leasing Limited

7. Rashid Ahmed  
Director  
English Leasing Limited

4. Gul Nawaz  
Director  
English Leasing Limited

.....Appellants

Versus

Commissioner (Specialised Companies Division), SEC .....Respondent

Date of Impugned Order

March 09, 2005

Date of hearing of appeal

May 24, 2005

Present:

1. Arshad Tayebaly, Advocate & M. Younas Khan for Appellants No. 1 & 3 to 6
2. Firasat Ali for Appellants No. 2 & 7
3. Shoaib Qureshi, Director (SCD) for the Respondent



## **ORDER**

1. This order will dispose off appeal No.7 of 2005 which has been filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 by English Leasing Ltd ('Company') and its directors (together referred to as the 'Appellants'), against the order dated 09-03-2005 ('Impugned Order') passed by the Commissioner (Specialised Companies Division).

2. Brief facts of the case are that the Commission examined the audited accounts of the Company for the year ended June 2004, which revealed that the auditors had given an adverse opinion and also indicated various qualifications. Rule 7 of the Non-Banking Finance Companies (Establishment & Regulations) Rules, 2003 ('NBFC Rules') requires that a NBFC shall maintain such books of accounts and other records which depict a true and fair picture of its state of affairs. A show cause notice dated 26-01-2005 ('Show Cause Notice') under section 282J(1) read with section 282M of the Companies Ordinance, 1984 ('Ordinance') and rule 7 of the NBFC Rules, was issued by the Commission to the Appellants. After providing an opportunity of hearing to them, Commissioner (SCD) vide the Impugned Order, held that the annual accounts of the Company for the year ended June 30, 2004 do not depict true and fair picture of the Company's affairs and therefore imposed a fine of Rs.400,000/- on each of the directors of the Company under sub-section (1) of section 282J. The Appellants have preferred the present appeal against the Impugned Order.

3. On the date of hearing on 24-05-05, Mr. Arshad Tayebaly Advocate appeared along with Mr. M Younas Khan on behalf of all the Appellants. Mr. Tayebaly raised two preliminary objections before presenting his arguments in detail on the merits.



He argued that section 282A of the Ordinance as well as the NBFC Rules define a NBFC as a company which is licenced by the Commission to carry on any of the businesses specified therein, which includes the business of leasing. He informed the Bench that the Company's leasing licence was cancelled on 24-12-2001 by the Commission much before the notification of the NBFC Rules. Consequently, the Company can no longer said to be a NBFC and therefore could not be penalized for violation of the NBFC Rules. He further argued that the Impugned Order was not a speaking order and no reasons or justification has been provided for the finding by the Commissioner (SCD). He produced before us, the detailed response dated 14-02-2005 filed by the Appellants to the Show Cause Notice. He stated that none of the objections raised by the Appellants had been recorded or discussed by the Commissioner. He contended that the Commissioner has passed the Impugned Order on basis of admission of default by the Appellants, which is factually incorrect. He stated that no admission was ever made by the Appellants and the allegations contained in the Show Cause Notice were refuted by the Appellants as is clear from the reply to the Show Cause Notice.

4. Mr. Shoaib Qureshi, Director NBFC appearing on behalf of the Commissioner stated that the objections and arguments raised by the Appellants before the Commissioner were about the revival of the Company rather than defending the Show Cause Notice and were therefore rejected.

5. We have heard the arguments presented by the parties and intend to dispose off this appeal on the basis of the preliminary objections. In our view, Mr. Tayebaly's argument about the non-applicability of the NBFC Rules on the Company and its directors needs consideration in light of the fact that the Company's leasing licence was cancelled by the Commission back in 2001. However it seems that this issue was not raised before the Commissioner and therefore no finding has been given on it. Also, the bare reading of the Impugned Order reveals that it is not a speaking order.



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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The Appellants had filed a detailed reply to the Show Cause Notice, which does not find any mention in the Impugned Order. The Commissioner has also not provided any reasons for his findings, and has in fact passed the order on the basis of admission of default by the Appellants. Whereas the reply to the Show Cause Notice proves that the Appellants have not admitted their default but have resisted it. In view thereof, and without going into the merits, we remand this case back to Commissioner (SCD). He may pass the order after taking into consideration the arguments presented by the Appellants in defense to the Show Cause Notice. The NBFC Department should also give its findings whether the NBFC Rules apply to the Company and the directors when the Company's only licence has been cancelled by the Commission. This appeal is disposed off.

**(Shahid Ghaffar)**  
Commissioner

**(Rashid I. Malik)**  
Commissioner

Announced in Islamabad on June \_\_\_\_\_, 2005