



**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 06 of 2008**

Iftikhar Ahmed Bashir, Chairman/Director, Natover Lease and  
Refinance Limited and others ..... Appellants

Versus

1. Commissioner Specialized Companies Divisions (SCD)  
Securities and Exchange Commission of Pakistan  
NIC Building Jinnah Avenue, Islamabad.
2. Nasier A Sheikh, Administrator, NLRL, Second Floor  
Eagle Plaza, Fazl-e- Haq Road,  
Blue Area, Islamabad ..... Respondents

**ORDER**

Date of Hearing: April 9, 2008

**Present:**

Mr. Yousaf Anjum  
Mr. Iftikhar Ahmed  
Mr. Sabir Khan  
Mr. Taimur Shah

**For the Appellant:**

Mr. Naeem Bokhari  
Advocate

**For the Respondent No 1:**

Mr. Umar Hayat Khan  
Mr. Imran Hussain Minhas

**For the Respondent No 2:**

Mr. Nasier A. Sheikh (In person)



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1. This order shall dispose of the appeal No. 06 of 2008 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Iftikhar Ahmed Bashir and others ("the Appellants") against the order dated February 15, 2007, ("Impugned Order") passed by Commissioner, Specialized Companies Division ("Commissioner SCD").
2. The facts leading to the case are: that the Securities and Exchange Commission of Pakistan ("SECP") in exercise of its powers under Section 282 I of the Companies Ordinance, 1984 (the "Ordinance") ordered an on-site inspection on July 11, 2007 of Natover Lease and Refinance Limited ("NLRL"), a non banking Finance Company ("NBFC"), carrying on business of leasing pursuant to license issued under the Ordinance read with the Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 ("NBFC Rules").
3. During the course of the inspection, the inspectors who submitted their findings in the form of an inspection report, discovered *inter alia*:
  - a) That NLRL was involved in various dubious transactions in violation of the prevailing regulatory framework.
  - b) That the Chief Executive Officer ("CEO") and Board of Directors ("BoD") of NLRL have failed to manage the affairs of NLRL in a professional manner.
  - c) That BoD of NLRL entirely failed to exercise the requisite vigilance and supervision as required from them by law and the CEO and BoD failed to exercise good corporate governance.
  - d) That the CEO with the connivance of the BoD and other officers had misapplied/misappropriated public funds amounting to Rupees 949 million through various deceptive means.
  - e) The CEO through an undertaking given to the BoD of NLRL dated January 25, 2007 admitted to have caused a financial loss of Rupees 650 million to NLRL and assured that the same shall be



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reimbursed through sale of his personal assets within three to twelve months, which was not done.

- f) The inspection team requested for information/record pertaining to the utilization of the funds remitted by NLRL. However, despite repeated written requests by the Inspection team, no information, financial statements or other record was provided by the NLRL to evaluate and reach a conclusion about the use of funds by it.
- g) Further details of the findings of the inspection team are recorded in the Impugned Order

4. On September 4, 2007, the CEO and Chief Financial Officer (“CFO”) were called to the Commission and informed of the findings of the inspection team and advised to come up with a concrete, viable and time bound revival plan to pay back the losses caused to NLRL. However since the CEO failed to come up with any such plan, the entire BoD was invited for discussing the inspection findings on September 19, 2007. The Commissioner (SCD) advised them of the collective responsibility of the BoD. They were also informed of the directors’ involvement in the irregularities and also advised to come up with a concrete and time bound revival plan. The directors pledged to come up with a revival plan, but failed to do so until date of passing of the Impugned Order.

5. The Commissioner (SCD) based on the facts highlighted in the inspection report and his meetings with the CEO and the BoD was prima facie satisfied that:

- a) NLRL had committed contraventions of the Rules and Regulations.
- b) NLRL is carrying on unlawful activities.
- c) The business of NLRL is being conducted in a manner oppressive to its members and depositors.
- d) That the management of NLRL is guilty of fraud, misfeasance and misconduct towards NLRL and its depositors.



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6. For the reasons stated in the inspection report and in particular, the misapplication and misappropriation of the funds and assets of NLRL by the CEO with connivance of the BoD, and the inability of NLRL to meet its obligations towards its depositors, the Commissioner (SCD) observed that any delay in superseding the management of NLRL would be detrimental to the public interest and the interest of the shareholders and depositors of NLRL. The Commissioner (SCD) therefore pending consideration of any representation by the BoD of NLRL issued show cause notice to NLRL and its BoD. The Commissioner (SCD) also ordered that pending any response to the show cause notice, the BoD shall be superseded with effect from February 19, 2008 for a period of six months which can be extended by the Commission from time to time.
7. Counsel for the Appellants, Mr. Naeem Bokhari, stated that the Commissioner (SCD) could not have simultaneously issued a show cause notice and pass an order under section 282F of the Ordinance. Mr. Bokhari referred to subsection (4) of section 282F and asserted that section 282E should be read together, while interpreting section 282F. The counsel referred to subsection (2) of section 282E and argued that the Commissioner (SCD) ought to have given an opportunity of hearing before passing the order. He further stated that the proviso to the aforesaid subsection also stipulates that an opportunity of hearing should be given before passing the order of supersession of the BoD.
8. The Appellant counsel argued that the Commission should have allowed the BoD to find an investor and relied on two Memorandum of Understandings ("MoUs") which had been entered into with potential investors. He contended that, with the appointment of Administrator the deal for rehabilitation of NLRL will not go through.



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9. On observation from the Bench that we do not find the factual position put forward by the Respondent no.1's department having been challenged, also that the BoD as far back as 2003 were not only aware but were also involved in illegal activities in NLRL. Mr. Bokhari informed us that he did not have anything to say on the factual aspects.
10. Mr. Umar Hayat Khan responded to the allegations by stating that NLRL was running into huge losses and the appointment of the Administrator was to ensure that, whatever remains in NLRL is not withered away by the present management.
11. Mr. Iftikhar Ahmed Bashir, the Appellant no. 1, who is also a lawyer by profession, submitted that NLRL could not come up with a revival plan as Respondent No. 1's department had taken away the documents in July 2007. This was denied by the Respondent no. 1's representative. When the Bench pointed out that the record shows that only photocopies of a few documents had been taken, while all the documents continue to be in NLRL's possession. Mr. Bashir did not press his point further.
12. We have heard both the parties in detail and have gone through the records and the relevant law. The basic issue which needs to be addressed is the application of section 282F. However, in order to fully appreciate the provisions of section 282F, the provisions of section 282E need also to be examined. For the present purposes, we do not believe that section 282E (3) (4) and (5) are relevant. Section 282F and 282E (1) (2) are therefore reproduced for ease of reference.



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### **282 F. Power to supersede Board of Directors.**

*Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that the association of the Board of Directors of any NBFC or a notified entity is or is likely to be detrimental to the interest of the NBFC or a notified entity or its shareholders or is otherwise undesirable; or for all or any of the reasons specified in section 282 E; it is necessary so to do, the Commission may, for reason to be recorded in writing, by order, supersede the Board of Directors of a NBFC or a notified entity with effect from such date and for such period as may be specified in the order.*

- (2) The period of supersession specified in an order under sub-section (1) may from time to time be extended by the Commission so, however, that the total period of supersession does not exceed three years.*
- (3) All powers and duties of the Board of Directors; shall, during the period of supersession, be exercised and performed by such person as the Commission may from time to time appoint in this behalf.*
- (4) The provisions of sub-sections (2), (3), (4) and (5) of section 282 E shall, with necessary modifications apply to an order made under sub-section (1) or (3) of this section.*

### **282 E. Power to remove.**

- (1) Notwithstanding anything contained in any other provision of this Ordinance, where the Commission is satisfied that –*



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- (a) *continued association of any chairman or director or chief executive by whatever name called or any other officer or person responsible for the affairs of a NBFC, is or is likely to be detrimental to the interests of NBFC or a notified entity or its shareholders the notified entity or persons whose interest is likely to be affected; or*
- (b) *the public interest so demands; or*
- (c) *to prevent the affairs of NBFC or a notified entity being conducted in a manner detrimental to the interest of its shareholders or unit or certificate holders, as the case may be, or the participants or in a manner prejudicial to the interests of NBFC; or a notified entity; or*
- (d) *to secure a proper management of the NBFC or a notified entity,*

*it is necessary so to do, the Commission may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman or director or chief executive by whatever name called or other officer or person responsible for the affairs of the NBFC or notified entity.*

- (2) *No order under sub-section (1) shall be made unless the chairman or director or chief executive or other officer or person responsible for the affairs has been given a reasonable opportunity of making a representation and of making a presentation and of being heard:*

*Provided that if, in the opinion of the Commission, any delay would be detrimental to the public interest or the interest of its*



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*shareholders, or the unit holders as the case may be, the Commission may, at the time of giving the opportunity aforesaid or as [should have been 'at'] any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that —*

(i) *the chairman or, director or chief executive by whatever name called or other officer or person responsible for the affairs shall not, with effect from the date of the order.-*

(a) *act as such chairman or director or chief executive or other officer or person responsible for the affairs of the NBFC or a notified entity;*

(b) *in any way, whether directly, or indirectly, be concerned with, or take part in the management of the NBFC or a notified entity;*

(ii) *any person authorized by the Commission in this behalf shall act as such chairman or director or chief executive of the NBFC or a notified entity till another person is elected in a general meeting or a board meeting, as may be directed by the Commission, to fill in the vacancy.*

*Emphasis added is our*

- (3) .....
- (4) .....
- (5) .....

13. After careful analysis of the above sections, we do not agree with interpretation of proviso to section 282E as advanced by the counsel for Appellants. The purpose of the proviso is to avoid any delay in appointment of an administrator, where in the opinion of the Commission the delay could be detrimental to the public interest or





the interest of the shareholders, the appointment of administrator can be done simultaneously while giving an opportunity of hearing. This will ensure that during the pendency of the show cause proceedings, no action detrimental to the interest of the shareholders is taken by the NBFC. Any other meaning would make the proviso meaningless and redundant.

14. The contention of the Appellant counsel that Commission should have allowed the BoD to find an investor, does not have any merit either. The Respondent no.1's department sought the revival plan, which could have carried proposal to find an investor. However, the Respondent no 1's department contends that after lapse of considerable time, no such plan was submitted. The Appellant has placed reliance on two MoUs signed with the potential investors in support of their contention that they were trying to revive NLRL. The perusal of both the MoUs entered between the parties and the facts narrated in the appeal lead us to the conclusion that there is no concrete plan for revival. The signing of MoUs without any plan for revival was meaningless. In any case the executors of neither of the MoUs have come forward. These MoUs therefore are for all purposes worthless. Finally, the Appellant has failed to show, how the appointment of an administrator at this stage will jeopardize the revival of NLRL. Any potential investor can work with the Administrator for revival, or takeover the task of reviving the NLRL if he is able to satisfy the Commission that he will be able to run it on his own without an Administrator, and meets the fit and proper criteria.

15. Considering that Rupees. 942 million of the funds belonging to the investors have alleged to have been pilfered and is not denied by Appellants, some of whom were in fact a party to the fraud, as well as



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for the facts disclosed above; we cannot find any justification for reversing the orders of the Commissioner (SCD)

16. We, therefore do not find any merit in the appeal and uphold the Impugned Order. The appeal stands dismissed. The parties to bear their own costs.

**(MR. RAZI-UR-REHMAN KHAN)**  
Chairman

**(S. TARIQ ASAF HUSAIN)**  
Commissioner (L.D)

Announced on: \_\_\_\_\_