



BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 6 of 2005

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| 1. InterAsia Leasing Company Limited
Suite No. B-601-602
6 th Floor, Lakson Square
Building No.3, Sarwar Shaheed Road
Karachi | 2. M. Younas Khan
Chairman
InterAsia Leasing Company Limited |
| 3. Abdul Ghafoor
Chief Executive Officer
InterAsia Leasing Company Limited | 4. M.A Jhumra
Director
InterAsia Leasing Company Limited |
| 5. M. Azam Khan
Director
InterAsia Leasing Company Limited | 6. Abdul Naseer
Director
InterAsia Leasing Company Limited |
| 7. Farooq Farooqui
Director
InterAsia Leasing Company Limited | |

.....Appellants

Versus

Commissioner (Specialised Companies Division), SECRespondent

Date of Impugned Order March 09, 2005

Date of hearing of appeal May 17, 2005

Present:

Omar Sial, Advocate & M. Younas Khan for the Appellants

Shoaib Qureshi, Director (SCD) & Rubab Mehdi AD (SCD) for the Respondent



ORDER

1. This appeal No.6 of 2005 has been filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 by Inter Asia Leasing Company Ltd ('Company'), its chairman, chief executive officer and 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 Company which was incorporated in year 1992 was granted a licence to commence leasing business on April 26, 1993 in terms of SRO 520(1)/92 dated May 27, 1992. After the promulgation of Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 ('NBFC Rules'), every company which was engaged in any one or more of the businesses specified in section 282A of the Companies Ordinance, 1984 ('Ordinance'), was required to apply to the Commission for grant of a licence in terms of Rule 5(6) of the NBFC Rules. Accordingly, the Company submitted an application for grant of licence, however it has not been granted a licence by the Commission so far as its equity was deficient in terms of Rule 5(2) of the NBFC Rules. Meanwhile, the Commission examined the audited accounts of the Company for the year ended June 2004, which revealed that the auditors had placed certain qualifications in their report. A show cause notice dated 26-02-2005 under section 282J(1) read with section 282M of the 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 chairman, chief executive officer and 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 17-05-05, Mr. Omar Sial Advocate appeared along with Mr. M Younas Khan Chairman of the Company on behalf of all the Appellants. Before presenting his arguments in detail on the merits, Mr. Sial raised two preliminary objections. He stated that in the Impugned Order, the Commissioner has stated that the application filed by the Company for grant of new licence under the NBFC Rules, was rejected by the Commission. He contended that if that was the case, the Company was no longer an NBFC and therefore could not be penalized for violation of the NBFC Rules. He further argued that the order was not a speaking order and no reasons had been provided for the Impugned Order. He produced before us, the detailed response 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 insisted that the Impugned Order deserved to be set aside on this count alone.

4. On the first preliminary objection, Mr. Shoaib Qureshi, Director NBFC appearing on behalf of the Commissioner stated that the application of the Company for grant of licence was still pending with the Commission, and had not been rejected. He informed the Bench that the Company did not have the minimum equity required for grant of licence under the NBFC Rules and has been advised time and again to raise its equity to the required level. He referred to the proviso to sub-rule (6) of Rule 5 of NBFC Rules which state that till the time new licence is issued to the company or its application is rejected by the Commission, the existing licence would be deemed to be valid for the purpose of NBFC Rules. On the second objection raised by the Appellants' counsel, Mr. Qureshi stated that the objections and arguments raised by the Appellants before the Commissioner were extraneous to the issue at hand and were therefore rejected.

5. We have heard the arguments. The law on the applicability of NBFC Rules to the Appellants is clear. Till the time the application for fresh licence is rejected by



the Commission, the Company would continue to be regulated under the NBFC Rules as provided in Rule 5(6) of the NBFC Rules. However there seems to be some confusion as to whether the application has actually been rejected or not. The Appellants have only relied on the observation in the Impugned Order and have not produced any evidence that their application was rejected. On the other hand the Department has also not produced any evidence, however they insist that the observation in the Impugned Order is a misquoted fact. In our view the appropriate means to clear this confusion is by letting Commissioner (SCD) re-adjudicate this issue.

6. On the other issue also we are constrained to agree with the argument of the counsel for Appellants. The bare reading of the Impugned Order reveals that it is not a speaking order. The Appellants' counsel had filed a detailed response dated 08-02-2005 to the show cause notice issued to them. The Impugned Order does not even mention that a response was filed by the Appellants, let alone discuss the issues raised therein. The Commissioner has also not provided any reasons for his findings.

7. For reasons stated above, and without going into the merits, we remand this case back to Commissioner (SCD). The matter should be decided after taking into consideration the arguments of the Appellants. Furthermore, the Department may decide the best course of action, in light of current financial situation of the Company, and also the Appellants' willingness to wind it up.

(Shahid Ghaffar)
Commissioner

(Rashid I. Malik)
Commissioner

Announced in Islamabad on July 01, 2005