

## Appellate Bench Orders

### Order

#### In the Matter of

#### M/S ASIAN LEASING CORPORATION LTD.

1. M/s Asian Leasing Corp. Ltd. through its Chief Executive, Mr. Arif Ahmed Happy Homes # 10, 38-A Main Gulberg Lahore
2. Mr. Humayun Raza, Director
3. Mr. Mohammad Aslam Khan, Director
4. Mr. Mohammad Zafrullah Khan, Director
5. Mr. Iftikhar Ali Khan, Director
6. Mr. Mohammad Gibran Khan, Director
7. Mr. Humayun Sadiq, Director
8. Mr. Taslim Haider Zaidi, Director
9. Mr. Manzoor Ahmed, Director
10. Mr. S. Haroon Rashid,  
Director.....Appellants

#### *Versus*

Executive Director (Specialized Companies Division)  
Securities and Exchange Commission of  
Pakistan..... Respondent

**Date of Hearing**                      January 08, 2002

#### **Present**

1. Syed Najaf Hussain Shah Barrister..... On Behalf of  
Appellants
2. Ms. Sadia Khan Executive Director (SC)
3. Ms. Iram Wahid Butt Director (Leasing).....On Behalf  
of Respondent

#### Order

1. This is an appeal against the order (impugned order) dated December 12, 2001 passed by the Executive Director, Specialized Companies Division (SC) of the Securities and Exchange Commission of Pakistan whereby the Executive Director imposed a fine of Rs. 8,700/- on each of ten directors of M/s Asian Leasing Corporation Ltd. (the "Company") for their failure to enhance paid-up capital of the Company to Rs.200 million in compliance with the regulatory requirement of Rule 7(3) of the Leasing Companies (Establishment & Regulation) Rules, 2000 and cancelled the license of the Company to operate as leasing company.

2. The appeal came up for hearing today when Syed Najaf Hussain Shah, Advocate, appeared on behalf of the appellants. Ms. Sadia Khan, Executive Director (SC) respondent, also appeared along with Ms. Iram Wahid Butt, Director (Leasing).

3. Brief facts of the case are that the Company was required to raise its paid-up capital to Rs.200 million as provided under Rule 7(3) of Leasing Companies (Establishment & Regulation) Rules, 2000 by June 30, 2001 in which directors/Company failed. The directors of the Company also failed to satisfy the Executive Director (SC) about the steps being taken to comply with the said rule. The leasing companies were originally required through an amendment in 1997 in the Leasing Companies (Establishment & Regulation) Rules, 1996, to raise their capital to the said extent within a period of two years. On promulgation of Leasing Companies (Establishment & Regulation) Rules, 2000, such companies were given further time to comply with this rule i.e. upto 30.6.2001.

4. Despite many reminders, paid-up capital of the Company remained below the requisite level even after the lapse of four years. The Company was then advised to submit a sound and viable plan to increase the capital to the required level by September 30, 2001. However, the same was not furnished by the Company and a Show Cause Notice dated October 23, 2001 was issued under Rule 20 (1) & (2) *ibid*. The Company replied vide their letter dated November 6, 2001 that the major shareholder of the Company, namely National Development Finance Corporation (NDFC) could not agree to raising of the paid-up capital of the Company as it was being amalgamated with National Bank of Pakistan. The Chief Executive of the Company further informed through this letter that the management is trying merger of the Company with another leasing Company and the scheme thereof would be provided within 30 days.

5. However, no scheme of merger was furnished. A representation was made by the Chief Executive of the Company, who appeared before the Executive Director (SC) on December 6, 2001 and explained efforts being made to meet the requirements regarding paid up capital. The Executive Director(SC) being unsatisfied with this explanation concluded that neither management is serious in the matter nor it is in a position to raise its paid up capital to Rs. 200 million and cancelled the license of the Company. A penalty of Rs. 8,700/- was also imposed upon each one of the directors of the Company.

6. The counsel for the Appellant appearing before the Bench prayed that operation of the impugned order be suspended as the Company is undergoing the process of merger with International Multi Leasing Corporation Limited (IMLC) and cancellation of license is affecting its position to negotiate the terms of merger. The counsel stated that the ongoing merger is being undertaken with a view to raise the paid up capital of the company in compliance with the requirement of Rs. 200 million. Pleading that default of Rule 7(3) was not intentional, the counsel for the Appellant stated that the Company initiated the exercise of various options as back as in the year 1998 and made substantial progress in respect of merger with First Leasing Corporation Limited (FLCL) and even the petition for approval of the merger was filed in the Lahore High Court, Lahore. However, the proposed merger could not be concluded inter-alia on account of failure of FLCL to get the approval of its shareholders in their EOGM dated 23.06.1999. The counsel further stated that the option of injection of further capital into the Company was also explored, however, due to precarious economic conditions of the country especially after the incident of September 11, 2001, merger of NDFC with NBP and restructuring of NIT, all such efforts of the Company have become futile. He explained that now management was working on a merger and reasonably believed that this merger attempt will succeed.

7. The respondent defended her order and stated that the management of the Company has always acted in a non-serious manner and has never taken any concrete step to comply with Rule 7(3) *ibid*. The Respondent argued that the order for cancellation of license did not restrain the management/sponsors of the Company from pursuing the said merger with IMLC and that they could finalize the details even without the suspension of the impugned order.

8. The arguments of the appellant's counsel were considered and it appears that the Company has adopted dillying-dallying tactics and made no serious attempt to raise its paid-up capital to the requisite level. It would be pertinent to mention here that earlier venture of the Company for amalgamation with

First Capital Leasing Company Limited (FLCL) failed on 23.06.1999, after the latter failed to get the approval for merger from its shareholders. Thereafter neither any proposal for enhancement of the paid-up capital of the Company was forwarded nor any serious proposal for merger was made. Even the instant merger with IMLC has also been initiated as late as on 14.12.2001, the date of signing of a memorandum of understanding with the Company. As such, the facts delineated above, negate the assertions put forth by the Appellant's counsel and manifest their non-seriousness and inability to achieve the required level of paid-up capital.

9. After considering the arguments of both the parties, we feel that non-compliance with the requirements of law cannot be ignored for an indefinite time, since a time period of two years was originally notified for the enhancement of paid-up capital of insurance companies i.e. October 31, 1999 and extended further to June 30, 2001. The management of the Company failed to comply with the statutory requirement and was unable to explore and execute successful means to achieve the required limit of paid-up capital. Accordingly, we uphold the order of the Executive Director (SC). The Company, however, can apply for the license once its paid-up capital is enhanced in compliance of Rule 7(3) ibid which SC Division will speedily dispose of.

10. The appeal is dismissed in the terms mentioned hereinabove.

**Announced : January 08, 2002**

**(M. ZAFAR-UL-HAQ HIJAZI)**  
Commissioner (CL)

**(SHAHID GHAFAR)**  
Commissioner (SM)