

No.11(47)R.M./97  
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
OFFICE OF THE REGISTRAR  
MODARABA COMPANIES AND MODARABA  
STATE LIFE BUILDING 7-BLUE AREA  
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**IN THE MATTER OF FIRST AL-NOOR MODARABA**  
**MANAGED BY M/S. AL-NOOR MODARABA**  
**MANAGEMENT (PVT) LTD.**

Present 1. Mr. S.M. Aminullah  
Chief Executive

2. Mr. Yakoob Admaney  
Company Secretary

Date of hearing 15-11-99

**ORDER TO ISSUE NOTICE UNDER SECTION 36 OF MODARABA**  
**COMPANIES AND MODARABA (FLOATATION AND CONTROL)**  
**ORDINANCE, 1980**

The Chief Executive and all directors of M/s. Al-Noor Modaraba Management (Pvt) Ltd., the managers of First Al-Noor Modaraba were issued show cause notice dated 07-10-99 under section 19, 20, 21, 32 and 36 of the Modaraba Companies and Modaraba (Floatation & Control) Ordinance, 1980, on the basis of information received from Karachi Stock Exchange that First Al-Noor Modaraba purchased 600,500 shares of Shahmurad Sugar Mills Ltd. at the average price of Rs.18.43 on 22-01-98 and the price of this share, a few days back, was Rs.13.00 only. It was contended by the informer that the price of share of M/s Shahmuard Sugar Mills Ltd. on Stock Exchange was manipulated and raised from Rs. 13.00 on January 8, 1998 to Rs.17.50 on January 19, 1998 and then on 22-01-98 shares at the said price were purchased by First Al-Noor Modaraba. The trading on the Karachi Stock Exchange during the relevant period was reported as under :-

Date	Closing Rates	Shares Traded
03-07-97	13.75	0
17-07-97	13.70	0
31-07-97	13.65	0
02-09-97	13.50	0

05-09-97	13.40	0
29-10-97	14.00	0
24-12-97	13.25	1000
29-12-97	13.25	1000
30-12-97	13.25	500
31-12-97	13.25	1000
08-01-98	13.00	500
13-01-98	14.25	500
14-01-98	15.25	500
15-01-98	16.75	500
17-01-98	16.00	500
19-01-98	17.50	500
<b>22-01-98</b>	<b>19.25</b>	<b>600500</b>
03-02-98	21.00	500
11-03-98	18.50	500
25-03-98	18.50	0
13-04-98	17.75	0
01-06-98	17.75	0
02-06-98	17.75	0
09-06-98	17.75	0

2. The information provided in this regard was analyzed and contention of the KSE appeared to be correct. The transaction in the pretext of abnormal rise in price of shares gave rise to apprehension that transaction has been done with motives to benefit some parties against the interest of the Modaraba. It appeared that someone succeeded to sell a very large number of shares of Shahmuard Sugar Mills Ltd. to the Modaraba at a price which had abnormally risen only in a few days i.e. 5-days. KSE was requested to point out the names of seller of the shares. The KSE informed that shares were purchased by First Al-Noor Modaraba from following :-

<b>Name of Client</b>	<b>No. of shares</b>	<b>Date</b>
Ghulam Mohiuddin	51000	22-01-98
Amina Bai	41000	22-01-98
Ghulam A. Qadir	22000	22-01-98
Ghulam A. Qadir	19000	22-01-98
Ghulam A. Qadir	17000	22-01-98
Moona Ismail	63000	22-01-98
Farah Ismail	56000	22-01-98
Maria Ismail	31000	22-01-98
Shaheen Zakaria	36000	22-01-98
Shaheen Zakaria	5000	22-01-98
Yasmeen Zakaria	21000	22-01-98
Yasmeen Zakaria	21000	22-01-98
Nafisa Zakaria	16000	22-01-98
Nafisa Zakaria	17000	22-01-98

Moin Noor Muhd	20000	22-01-98
Moin Noor Muhd	14000	22-01-98
Ebrahim Suleman	10000	22-01-98
Ebrahim Suleman	10000	22-01-98
Ebrahim Suleman	10000	22-01-98
Ebrahim Suleman	1000	22-01-98
Mehrunissa Aziz	10000	22-01-98
Zeshan Aziz	16000	22-01-98
Zeshan Aziz	18000	22-01-98
Zeshan Aziz	10000	22-01-98
Sadia Suleman	12000	22-01-98
Sadia Suleman	13000	22-01-98
Suriya Suleman	14000	22-01-98
Suriya Suleman	12000	22-01-98
Suriya Suleman	14000	22-01-98

3. It was shocking to learn from KSE that the said shares appear to have been purchased from persons related to sponsors/directors of First Al-Noor Modaraba. KSE also apprehended that transaction was not an arm's length transaction and requested SECP to take necessary action in the matter. Accordingly, show cause notice was issued on October 7, 1999, asking the chief executive and all the directors of First Al-Noor Modaraba to show cause that why penal action as provided under section 32 ibid and action under section 19, 20 and 21 ibid should not be initiated including action for violation of clauses 12.4.1 & 12.4.3 of the prospectus of First Al-Noor Modaraba. Chief Executive and Directors were further directed to explain as to why directions may not be given in terms of section 36 ibid to disinvest these share at the purchase price.

4. The chief executive of the company responded the show cause notice through his letter dated 27th October 1999 and also hearing was held on 15-11-99. The arguments advanced by the chief executive are recorded and analyzed as follows :-

The chief executive has contended that proposed action is un-warranted and the said shares were purchased legitimately and there is no bar either in the Companies Ordinance, 1984 or Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 and Modaraba Companies and Modaraba Rules, 1981 or the prospectus of First Al-Noor Modaraba for the acquisition of shares of associated undertaking. It was stated that the said shares were purchased from the open market through an authorized Member of Karachi Stock Exchange without any intention to specifically purchase the

shares from any relatives of the sponsors. It was further stated that during the month of January 1998, the prices of virtually all stocks quoted on the KSE were rising. Moreover only 12 days after the said shares were purchased, the price shares of Shahmurad Sugar Mills Ltd. went up even to Rs.21.00. It was contended that shares price are driven by the market forces and rise in the price of said shares was genuine. It was further stated that M/s Shahmuard Sugar Mills Ltd. had good dividend pay out track record and that company also declared a cash divided of 7.5% for the year 1997 which benefited the certificate holders of First Al-Noor Modaraba. It was further contended that even after Nuclear explosion on 28th May 1998 when KSE index fell below 800 points the price of M/s. Shahmuard Sugar Mills Ltd. did not fall. It was argued that the investment was made for the interest of certificate holders and not for family member. It was also contended that the decision to purchase said shares was made on the basis of sound business principles, proper analysis of the published accounts and studies of future prospects. The chief executive expressed high hopes that the investment in Shahmurad Sugar Mills Ltd. will ultimately prove to be in the benefit of certificate holders in the long run. It was contended that Modaraba Fund was not mis-used and there was no breach of trust and there was no controversion of law.

5. In the reply given by the chief executive, he has not denied that shares were purchased from the relatives and family members. His contention that price of stocks quoted on KSE was increasing during the month of January in the same trend in which price of Shahmuard Sugar Mills Ltd. increased is not correct. The share Index on 8-1-1998 when price of subject shares was Rs.13/- was 1660 and on 22-1-1998 when the price of said shares was Rs. 19.25 it was 1596. He has failed to answer this question that how the trading of only 2500 shares over a period of 5-days increasing the price from Rs.13.00 to Rs.19.25 could be considered to be reflective of genuine demand of said scrip and consequently rise in the price. It may be clarified here that on each of said 5-days only 500 shares were sold and purchased on stock market and then on 22-01-98 another lot of 500 shares was transacted at the price of Rs. 19.50. The rise in price could not be justified. There was no substantial trading which would have demonstrated high demand for said scrip which

lured the management of Modaraba Company to place the order for six lacs shares hurriedly on 22-01-99.

6. The arguments advanced by the chief executive are of general nature and do not have much relevance with the issue. The question is not this that whether Modaraba could make the investment or not and what are the provisions of the Companies Ordinance, 1984 and Modaraba Ordinance, 1980 in this regard. The question precisely is that what made the management of the Modaraba to make such huge investment hurriedly without analyzing the price movement of said scrip on the stock exchange. It is not believable that the management of modaraba did not know while making the investment that they were purchasing the shares from their own relatives and the price of those shares was only Rs.13.00 a few days back and in the meantime there has been no trading, also that the Shahmurad Sugar Mills Ltd. did not have a good track record of dividend pay out due to which reasonable yield could be expected for ultimate benefit of certificate holders of the Modaraba. It will not be out of place to mention here that last year Shahmurad Sugar Mills Ltd. declared cash dividend @7.5% only. Accordingly the rate of return on shares purchased at price of Rs.18.43 per share works out to 4.06% only. In earlier years Shahmurad Sugar Mills Ltd. declared bonus dividend @ 10% which gives returns at the rate of 5.42% only.

7. In view of the fact that five directors of Shahmurad Sugar Mills Ltd. i.e. Mr. Ismail H.Zakaria, Mr. Yusuf Ayoob, Mr. Suleman Ayoob, Mr. A. Aziz Ayoob and Mr. Zohair Zakaria are also on the Board of M/s. Al-Noor Modaraba Management (Pvt) Ltd. and Mr. Ismail H. Zakaria who is chairman of Shahmuard Sugar Mills Ltd. is also chairman of First Al-Noor Modaraba, it could not be claimed that these directors were not in proper knowledge of the performance of Shahmuard Sugar Mills Ltd. and sugar industry as a whole. A reference to the published annual financial statement of Shahmuard Sugar Mills Ltd. for the year ended September 30, 1998 reveals that in that year company suffered losses of Rs.14.337 Million against profit of Rs.10.051 Million in preceding year. It is known to everyone that the sugar season completes in March which means that till 22-01-98 (when the shares of Shahmuard Sugar Mills Ltd. were purchased), 70% sugar season was already over, Shahmuard Sugar Mills Ltd. was running in losses. It cannot be presumed that directors of First Al-Noor Modaraba did not have the information about the bad performance of the company during the year. It will be

useful to make a reference to the directors' report of Shahmurad Sugar Mills Ltd. which attributed the bad performance of the company to the followings:-

"During the year, the Government increased the support price of sugarcane from Rs.24.50 to Rs.36/- per 40 kg. Quality premium was also raised from 27 paise to 32 paise for 0.1% recovery over and above the 8.7% recovery benchmark set by the Government. The increase in support price, and due to the shortage of sugarcane in the vicinity of your Mill, SMS was forced to obtain sugarcane from distant areas. This was essential to meet capacity requirements. However, transport cost sky rocketed and increased the cost of raw material which had a negative impact on profitability. The surplus production of sugar in the country and the late announcement by the Government allowing the export of sugar, resulted in heavy inventory and financial costs. Both the factors mentioned above effected the profitability of the company adversely and your Company incurred a loss."

8. None of the events/matters mentioned in the directors' report can be claimed to have happened after the purchase of shares on 22-01-1998. The chief executive who appeared before me has failed to establish bona-fide of the transaction. At the time of hearing on 15-11-99, the chief executive was given another opportunity to offer detailed justification for selecting shares of Shahmurad Sugar Mills Ltd. only for investment and justification for not reviewing the decision when the investee company skipped the dividend last year. No justification has been received upto the date of this order. It is not believable that when Shahmurad Sugar Mills Ltd. was suffering losses on current operations, its share's price could genuinely jump up by about 50%. The arguments advanced by the chief executive that the price of shares subsequently jumped even upto Rs.21.00 on 03-02-99 is not convincing as on that date again only 500 shares were traded.

9. I am convinced this all was manipulation on the part of the management of Modaraba and other players in the game. They arranged few transactions during five days from 31-1-1998 to 22-1-1998 on the stock exchange only to establish new price of shares. I find no substance in this argument that even after this transaction, the price of said share has not fallen below Rs. 17.50. I have thoroughly examined the stock

exchange quotations and found that there is nearly no trading in the said scrip. I doubt that 600,500 shares of Shahmuard Sugar Mills Ltd. can be sold at stock exchange at the price at which these were purchased. The claim of chief executive that the said share can be sold at some price even today requires a test on stock exchange.

10. I am convinced that the investment in shares of M/s. Shahmurad Sugar Mills Limited was not an arm's length transactions, it has not given regular/good returns, it is not a scrip which is commonly traded on the stock exchange. The safeguards built in the prospectus of M/s. Al-Noor Modaraba Limited vide its clause 12.4.1 (which says that the Modaraba Management Company shall exercise strict vigilance over the business of the Modaraba and all decisions shall be made on sound business principles, based on the best available advise), clause 12.4.3 (which says that investment decisions shall be based upon analysis of published accounts, comparable studies and scope of future prospectus in the light of expansion programmes and market trends) and clause 12.4.10 (which says that the element of interest shall not be involved, directly or indirectly, in the business of the Modaraba) appear to have been defeated in this case. Prima facie, it is a fit case to proceed against the modaraba company under section 19 and 20 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 which will be considered after an independent enquiry report is received. In interest of the certificate holders and to avoid the risk factor, at this stage the directors of M/s. Al-Noor Modaraba Management (Pvt) Ltd. are hereby given notice under section 36 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 to take personally the obligations arising out of transaction involving purchase of shares of M/s. Shahmurad Sugar Mills Ltd. and manage to get the money involved back into Modaraba for more prudent investment. Moreover, I appoint M/s. Sidat Hyder Qamar Maqbool & Co., Chartered Accountants, Progressive Plaza, 6th Floor, Room No.601-606, Beaumont Road, Karachi-75530, under section 21 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 to conduct an enquiry into the affairs of First Al-Noor Modaraba for which terms of reference will be as follows:-

- (1) To report the correct relationship of the seller of the shares of M/s. Shahmurad Sugar

Mills Limited with the directors of M/s. Al-Noor Modaraba Management (Pvt) Limited.

- (2) To find out the details of trading from 24-12-1997 to 11-3-1998 in the shares of M/s. Shahmurad Sugar Mills Limited and the names of the parties to these transactions.
- (3) Without in any way limiting the scope of inquiry, M/s. Sidat Hyder Qamar Maqbool & Co., Chartered Accountants, will report particularly with reference to the records pertaining to transactions of shares of Shahmurad Sugar Mills Ltd. whether safeguards built in the prospectus are actually working or not.

11. M/s. Sidat Hyder Qamar Maqbool & Co., Chartered Accountants, will be paid fee of Rs. 20,000/- and will submit their report within 15 days.

12. Issued under my hand and seal of this office this Ist day of December, 1999.

(MUHAMMAD ISHAQ  
MALLAL)  
REGISTRAR MODARABA

**NOTICE UNDER SECTION 36 OF THE**  
**MODARABA COMPANIES AND MODARABA (FLOATATION & CONTROL)**  
**ORDINANCE, 1980**

For the reasons recorded in detail in the annexed Order dated 01-12-99, the above named directors of M/s. Al-Noor Modaraba Management (Pvt) Ltd., the manager of First Al-Noor Modaraba are directed to take personally the obligations arising out of transaction involving purchase of 600,500 shares of M/s. Shahmurad Sugar Mills Ltd. and manage to get money involved back into Modaraba within 30-days of the date of this notice.

2. In the case of none compliance of this notice chief executive and all the above named directors would be held responsible and further action as provided in the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 shall be taken without any further notice.

3. Issued under my hand and seal of this office this Ist day of December, 1999.

(MUHAMMAD ISHAQ  
REGISTRAR MODARABA)

MALLAL)

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OFFICE OF THE REGISTRAR  
MODARABA COMPANIES AND MODARABA  
STATE LIFE BUILDING 7-BLUE AREA  
ISLAMABAD

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|----|------------------------|-----------------|
| 1. | Mr. Ismail H. Zakaria  | Chairman        |
| 2. | Mr. S.M. Aminullah,    | Chief Executive |
| 3. | Mr. Ellias H. Zakaria, | Director        |
| 4. | Mr. Yusuf Ayooob,      | Director        |
| 5. | Mr. Suleman Ayooob,    | Director        |
| 6. | Mr. A. Aziz Ayooob,    | Director        |
| 7. | Mr. Zohair Zakaria,    | Director        |
| 8. | Qaisar P Mufti,        | Director        |

M/s Al-Noor Modaraba Management (Pvt) Ltd.,  
the managers of First Al-Noor Modaraba 96-A,  
Sindhi Muslim Cooperative Housing Society,  
Karachi.