

**Order in case of Mr. H. Hatim Dayala, Nominee Director (ICP) of
Custodian Management
Services Limited.**

Feb 27, 2001

**COMMISSIONER,
(SECP)
IN THE MATTER OF**

**APPEAL UNDER SECTION 32(2) OF THE MODARABA COMPANIES
AND MODARABA (FLOATATION AND CONTROL) ORDINANCE, 1980**

BY

**Mr. H. Hatim Dayala, NOMINEE DIRECTOR (ICP) OF
CUSTODIAN MANAGEMENT SERVICES LIMITED,
THE COMPANY THAT MANAGES 'FIRST CUSTODIAN MODARABA'**

Date of hearing 16 January, 2001

Present:

1. Mr. H. Hatim Dayala, Nominee Director ICP) of custodian management services limited, the company that manages 'first custodian modaraba,Appellant
2. Mr. Muhammad Ishaq MallalRegistrar of Modaraba Companies & Modarabas

ORDER

1. This Appeal dated 4th December, 2000 received on 6 December, 2000 has been preferred by Mr. H. Hatim Dayala, Director, nominated by Investment Corporation of Pakistan (ICP) on the Board of Directors of M/s. Custodian Management Services Limited, the Company that manages 'First Custodian Modaraba' against the order dated 11 October, 2000 of Mr. M. Ishaq Mallal, Registrar, Modaraba Companies and Modarabas.
2. The Appeal has been filed within the specified period of sixty days from the date of the impugned order. The Registrar, Modaraba Companies and Modarabas imposed a penalty of Rs. 50,000/= on the Appellant "being responsible for mis-management and mis-appropriation of funds of the Modaraba" as stated in para 21 of the impugned order.

3. No Specific prayer has been made in the Appeal. However, the last paragraph states that “the penalty imposed on ICP’s nominee director may kindly be disposed with”.
4. The Appellant was called for a personal hearing in the matter on 16 January, 2001.
5. On the date of hearing, the Appellant attended and contended that he was not nominated by the ICP on the Board of Directors of the Modaraba Company since its inception but was appointed in October 1998. After assuming his responsibilities as Director, he tried his level best to obtain relevant information about the affairs of ‘First Custodian Modaraba’ but the sponsoring directors never cooperated with him and therefore, he was helpless and unable to do anything to arrest the deteriorating financial condition of the Modaraba. He also attended only a single board meeting of the Modaraba Company during his tenure that was held in December 1999. He continuously wrote to the sponsoring directors for supply of information relating to the affairs of the Modaraba, but they never supplied any information nor called him to any Board of Directors’ meeting. He was distanced from happenings and activity in Modaraba and other directors who were managing the affairs of the Modaraba. He maintained he had not been intimidated about the appointment of M/s. Khalid Majid Hussain Rehman, Chartered Accountants to act as inspector and the Directors who were managing the affairs of the Modaraba did not even bother to provide him with a copy of the inspectors’ report.
6. He further stated that Mr. M. Yousuf Adil, Consultant appeared before the Registrar, Modaraba Companies and Modarabas on the date of hearing which resulted in the imposition of penalty; perhaps Mr. M. Yousuf Adil could not explain the exact role and status of the Appellant in respect of his innocence and non participation in the day-to-day and routine management of the Modaraba.
7. Registrar, Modaraba Companies and Modarabas confirmed that the Appellant was appointed as nominee Director in October, 1998 when the deterioration and rot in the business and working of the modaraba had already surfaced but that does not absolve him from his responsibility and diligence. However, he conceded that if Mr. Dayala had appeared on the date of hearing, the decision of imposing penalty on the Appellant might not have been made.
8. In light of above, I, therefore, in exercise of powers conferred under section 32 (2) of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 and having heard this Appeal in my capacity as Commissioner for Specialised Companies Division of the Securities and Exchange Commission of Pakistan accept the appeal and hereby set aside the order in so far as it relates to the Appellant including deletion of the penalty imposed on him by the Registrar, Modaraba Companies and Modarabas.
9. Issued under my signature and seal on this 27th day of February, 2001.

N. K. SHAHANI
Commissioner