

Order in case of Mr. Abdul Razak H. Adam, Nominee Director (MCB) of Custodian Management Services Limited.

Feb 27, 2001

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

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

BY

**Mr. Abdul Razak H. Adam
Nominee Director (MCB) of
'CUSTODIAN MANAGEMENT SERVICES LIMITED, '
the modaraba company that manages
'FIRST CUSTODIAN MODARABA'**

Dates of hearing: 16 January, 2001 and 31 January, 2001

Present:

1. Mr. M. Yousuf Adil Saleem and Mr. Mushtaq Hirani, Chartered Accountants of M/s. M. Yousuf Adil Saleem & Company..... Attorney and Authorized Representative of the Appellant (on both dates)
2. Mr. Abdul Razak H. Adam, Nominee Director of Muslim Commercial Bank Limited (MCB) on the Board of Directors of 'Custodian Management Services Limited,' the modaraba company that manages 'First Custodian Modaraba'Appellant (on 31 January, 2001)
3. Mr. Muhammad Ishaq MallalRegistrar of Modaraba Companies and Modarabas (on both dates)

ORDER

1. This appeal dated 8 December, 2000 received on 11 December, 2000 has been preferred by M/s. M. Yousuf Adil Saleem & Company, Chartered Accountants, on behalf of Mr. Abdul Razak H. Adam, a Director nominated by Muslim Commercial Bank Limited (MCB) on the Board of Directors of 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.
3. 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.
4. The Appellant has prayed that the impugned order is set aside and that the penalty imposed be deleted.
5. The Appellant was called for personal hearing in the matter on 16 January, 2001.
6. On the date of hearing, the Appellant did not attend in person; Mr. M. Yousuf Adil, as attorney and authorized representative of the Appellant, attended. Mr. M. Ishaq Mallal, Registrar, Modaraba Companies and Modarabas was also present.
7. Mr. M. Yousuf Adil portrayed that the Appellant had no access to the record of the Modaraba, that he did not participate in the day-to-day and routine business of the Modaraba, that the role of a nominee director is distinguishable from that of the sponsoring directors and that the Appellant has been unjustifiably penalized. He further took exception to the fact that the impugned order has unduly stated that he was responsible for 'misappropriation' without reference to any concrete evidence or finding. He stressed that the question of mismanagement does not arise in view of the fact that the role of nominee directors has been confined to review of the overall business and policy framework. He was astonished that the penalty of Rs. 20,000/= imposed on each of the two whole time, executive Directors was far less than the amount of Rs. 50,000/= imposed on the two nominee Directors in the impugned order.
8. On a query as to how many meetings of the Board of Directors was attended by the Appellant and whether he lodged or conveyed any concern about the deteriorating financial condition and mismanagement of the Modaraba, the authorized representative could not effectively substantiate the same.
9. With a view to affording due opportunity to the Appellant to come forward, explain and elaborate his conduct as nominee director vis-à-vis the modaraba in personam and in order to meet the ends of justice, the hearing was adjourned to a further date.
10. At the next date of hearing i.e. on 31st January, 2001, Mr. Abdul Razak H. Adam alongwith his Authorized Representative attended. The Registrar, Modaraba Companies and Modarabas was also present.
11. The Appellant was asked whether he had taken any initiative or steps in respect of the poor performance of the Modaraba to the Chief Executive, the Board of Directors of the modaraba company, the concerned officers of MCB and/or the regulators but he could not produce any documentary evidence to support his verbal assertion. He referred to a letter dated 15 December, 1996 addressed to Mr. M. Ishaq Mallal, Registrar, Modaraba Companies and Modarabas. The latter interjected and emphasized that the letter being referred to was in fact a response to his letter of 28 November, 1996 which fact is evident from an acknowledgement in its opening paragraph; moreover, he emphasized that the letter was written by one Mr. Ayub A. Patel, Senior Vice President of MCB and not the Appellant.

12. The Appellant elaborated and dilated on his role and performance by highlighting that he had been an inactive and silent director of the modaraba company. He had remained busy and engaged in the investment division of MCB. He also stressed that he was never found or prosecuted in any illegal activity, misappropriation or mismanagement of funds of any financial institution during his entire career that spanned about forty-two years. He is presently serving MCB as a consultant equivalent to the status of Senior Vice President (SVP) and throughout his career he has never been faced with such a situation wherein adverse or an irresponsible conduct has ever been attributed to him. During his entire service that he worked for MCB, he was posted in investment division and has never been appointed a nominee director in any other Modaraba or any other limited company or financial institution, this being his first and sole nomination by MCB. The penalty imposed by the impugned order, if not set aside, would leave an unjust black spot to his name and service record.
13. His submissions have since been reiterated by his letter dated 31 January, 2001 received on 6 February, 2001 which, inter alia, states as follows: -

“I am a commerce graduate; I joined MCB in 1958 as an Assistant and was promoted upto highest cadre as Senior Vice President in 1988 and retired in 1994. Due to my exemplary services, I was retained on contract basis and am still in MCB on contract basis as an Advisor to the President of MCB. My age is 66 years.

My field of specialization is treasury operations, finance and central accounts. I am not representing MCB in any listed or unlisted private company as director except as Nominee Director of Custodian Management Services Limited. MCB is holding only 13.3% shares in the Custodian Management Company and 6.6% certificates in the First Custodian Modaraba.

During my whole career of 42 years, I am not convicted for any wrong doing nor any penalty has ever been imposed on me. I have a clean track record.

The non-cooperation by the management (working directors) of Custodian Modaraba was the reason that I could not contribute positively in the affairs of the Modaraba.”
14. Registrar, Modaraba Companies and Modarabas urged that the Appellant was the nominee Director of the modaraba since its inception and as Director did not perform his duty nor informed MCB or the Registrar, Modaraba Companies and Modarabas about the deteriorating state of affairs of the modaraba. His silence and inaction tantamount to negligence and an offence under modaraba law and, therefore, the penalty imposed is justified. He conceded that the Appellant was not called or required to appear in person before framing the impugned order and imposing penalty. However Mr. M. Yousuf Adil who appeared on his behalf could not produce any relevant record to support his contentions.
15. Registrar, Modaraba Companies and Modarabas has failed to pin the responsibility of ‘mismanagement’ or ‘misappropriation’ of the funds of the modaraba nor could he make any convincing arguments with regard to the limited role and participation expected of a nominee Director or otherwise refute the contentions of the Appellant.

16. 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 set aside the order in so far as it relates to the Appellant and the penalty imposed on him by the Registrar, Modaraba Companies and Modarabas.
17. Issued under my signature and seal on this 27th day of February, 2001.

N. K. SHAHANI
Commissioner