

**Order in case of Mr. Humayun Zia, Chairman/Director 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. Humayun Zia, Chairman/Director of
Custodian Management Services Limited,
The Managers of First Custodian Modaraba**

Date of hearing 17 January, 2001

Present:

1. Mr. Humayun Zia, Chairman/
**Director, 'Custodian Management Services Limited,' the managers of
'First Custodian Modaraba.'Appellant**
2. Mr. Iqbal L. Bawaney, Advocate
of the Appellant
3. Mr. Muhammad Ishaq Mallal.....Registrar, Modaraba Companies and
Modarabas

ORDER

1. This appeal dated 7 December, 2000 received on 11 December, 2000 has been preferred by Mr. Iqbal L. Bawaney, Advocate on behalf of Mr. Humayun Zia, Chairman/Director, '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 as stated in para 20 of the impugned order: -
"I also impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on Mr. Humayun Zia, Chairman/Director of the Modaraba Company who misused the

- Modaraba Fund by extending facilities to the associated companies in which he either had directorship or his relatives had stake. He is also directed to recover the amount of the facilities from the associated undertakings as mentioned in the inspection report within a period of 60-days from the date of this order, failing which he shall be personally liable to the extent of amount of facilities provided to associated undertakings.”
4. The Appellant has prayed that the impugned order is set aside insofar as it relates to the Appellant.
 5. The Appellant was called for a personal hearing in the matter on 17 January, 2001.
 6. On the date of hearing, the Appellant and his Advocate appeared and made detailed submissions. It was emphasized that there was no evidence of misuse of Modaraba's funds by the Appellant and that the allegations have cast a stigma on the exemplary and long standing career of the Appellant being a responsible and respectable banker having served various banks and financial institutions in senior capacities including Chairman of Pakistan Insurance Corporation. They also argued that the Appellant never actively participated in the day-to-day and routine management of the Modaraba. The Appellant was not instrumental or in any way facilitated the grant of any financial facility to any of the associated companies or undertakings. It was maintained that the former Chief Executive, Mr. Qamar Z. Hussain and the former Executive Director, Mr. Tehsin Ahmed, conducted these activities. They also contended that the Appellant was a mere figurehead by lending his name to the modaraba; he was neither the direct or indirect beneficiary nor had accorded approval to the alleged financing. He is, therefore, personally not liable and the impugned order merits being set aside in so far as he is concerned and the penalty imposed be deleted.
 7. It was pleaded that Mr. Humayun Zia has remained a respectable senior banker having served various banks and financial institutions in senior positions and has also remained a past Chairman of Pakistan Insurance Corporation. Mr. Zia's main concern is the imposition of the penalty and the directive to recover the advances from the associated companies on the ground that he had misused the Modaraba funds.
 8. It was reiterated that there is not a single document or any other evidence on record to substantiate Mr. Humayun Zia's misuse of funds of the Modaraba, that the Inspection Report also does not contain any reflection on Mr. Zia in his personal capacity, the Show Cause Notice also did not allege that Mr. Zia had misused the funds. Hence, the imposition of the penalty on the basis that Mr. Humayun Zia had misused the Modaraba's funds by extending the financial facilities to associated undertaking is misconceived.
 9. The authorized representative pleaded that since no allegation of misuse of funds by Mr. Humayun Zia was made in the Inspection Report or in the Show Cause Notice, Registrar, Modaraba Companies and Modarabas has gone beyond the scope of his show cause notice and his jurisdiction.
 10. The Advocate of the Appellant raised the objection that under Section 21 of the Modaraba Companies & Modarabas (Floatation & Control) Ordinance, 1980, a partnership firm cannot be appointed as Inspector. The Inspector is supposed to

- have the powers of a Court and can summon witnesses and call for documents and hence has to be an individual. A firm is even not an entity or a juristic person and therefore cannot be regarded as a person. He further raised that perhaps it is for this reason that under Section 237 of the Indian Companies Act, 1956 there is a clear bar to the appointment of the partnership firm or a corporate as Inspector.
11. The Registrar, Modaraba Companies and Modarabas argued that Mr. Humayun Zia was one of the sponsors of the Modaraba and remained its Chairman since its inception. He is one of the signatories to the prospectus and was responsible in that there is an implied commitment by virtue of inclusion of his name in the prospectus. He is responsible for mis-use of funds of the Modaraba. He must have been aware if one or two directors indulged in mismanagement and/or misappropriation of the Modaraba funds. His silence and inaction in the affairs of the Modaraba is an offence and penalty imposed is justifiable. Besides loan disbursed to the company in which his relative was director is a clear favour and loss to Modaraba. Therefore, he should not be exonerated.
 12. The Registrar, Modaraba Companies and Modarabas failed to make any convincing argument with respect to the executive and operating function or powers exercisable by the Appellant in his capacity as Chairman. No concrete evidence to substantiate the personal liability of the Appellant in respect of loans or advances granted to associated companies or associated undertakings has been furnished. The investigation report has not held the Appellant responsible in his personal capacity in respect of such loans advanced or funds misused. I fail to be convinced as to how the Appellant has been made personally liable for the loan facility granted as alleged.
 13. 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 and in pursuance of the decision announced at the time of hearing, accept the appeal and hereby set aside the order insofar as it relates to the Appellant and the penalty imposed on the Appellant by the Registrar, Modaraba Companies and Modaraba subject to his taking necessary steps and making concerted efforts to help recover any loan or advances made to any associated companies or associated undertakings without holding him personally liable in respect thereof.
 14. Issued under my signature and seal on this 27th day of February, 2001.

N. K. SHAHANI
Commissioner