

By Courier



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

No. SC/M/PRDD-ADJ/FTSM/2016- 217

June 30, 2016

1. Mr. Rashid Ahmed,
Director,
A.R.T Modaraba Management (Pvt.) Limited
Managers of First Tri-Star Modaraba
F/498, SITE, Karachi – 75700.
2. Mr. Tahir Ahmed,
Director,
A.R.T Modaraba Management (Pvt.) Limited
Managers of First Tri-Star Modaraba
F/498, SITE, Karachi – 75700.
3. Mr. Asad Ahmed.
Director,
A.R.T Modaraba Management (Pvt.) Limited
Managers of First Tri-Star Modaraba
F/498, SITE, Karachi – 75700.
4. A.R.T Modaraba Management (Pvt.) Limited
Managers of First Tri-Star Modaraba
F/498, SITE, Karachi – 75700.

ORDER

IN RESPECT OF THE SHOW CAUSE NOTICE DATED MARCH 30, 2016 BEARING NUMBER
SC/M/PRDD-ADJ/FTSM/2016-112

Dear Sir,

Please find enclosed herewith a copy of the order in the title matter for your record and necessary action.

Regards,

Muhammad Jahangir
Joint Director



No. SC/M/PRDD-ADJ/FTSM/2016-
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
MODARABA WING

Order
In the matter of

First Tri-Star Modaraba
Managed by A.R.T. Modaraba Management (Pvt.) Limited

Show Cause Notice No.

SC/M/PRDD-ADJ/FTSM/2016-112

Dated:

March 30, 2016

Submissions by:

Mr. Asad Ahmed, Director

On behalf of the following:

- | | |
|---|----------------------|
| 1. Mr. Rashid Ahmed | Director |
| 2. Mr. Tahir Ahmed | Director |
| 3. A. R. T. Modaraba Management (Pvt.) Ltd. | The Modaraba Company |

ORDER UNDER SECTION 32 OF THE MODARABA COMPANIES AND MODARABA (FLOTATION AND CONTROL) ORDINANCE, 1980

This Order shall dispose of the proceedings against A. R. T. Modaraba Management (Pvt.) Limited ("ART"), the managers of First Tri-Star Modaraba ("the Modaraba") and its Directors, initiated vide show-cause notice dated March 30, 2016 ("the Notice") under section 32 of the Modaraba Companies and Modaraba (Flotation & Control) Ordinance 1980 ("the Modaraba Ordinance").

2. The facts of the matter leading up to the aforesaid Notice are that in contravention of condition No. (v) of the Registration Certificate dated December 30, 1989, ART did not submit its annual audited accounts along with the directors' report to the Registrar Modaraba since 2012. ART also failed to deposit annual fee for renewal of its registration in contravention of clause 1(ii) to the Second Schedule, read with rule 3(18) of the Modaraba Companies and Modaraba Rules, 1981 ("the Modaraba Rules") since 2013. In terms of clause 2(b) to the Second Schedule, read with rule 3(18) of the Modaraba Rules, ART also failed to deposit annual fee for renewal of authorization to float the Modaraba since 2014. In contravention of rule 10 of the Modaraba Rules, ART did not transmit the



quarterly and half yearly accounts of the Modaraba to the Registrar Modaraba and to the certificate holders since September 2011. Besides, ART, in contravention of rule 19(2) of the Modaraba Rules, failed to obtain approval of the Registrar Modaraba for appointment of auditors of the Modaraba since 2013.

3. ART also failed to meet the requirements of regulation 5(2)(3) of Part-IV of the Prudential Regulations for Modarabas ("the Regulations") to obtain approval of the Registrar Modaraba for appointment of Chief Executive. Moreover, ART did not file monthly returns/monthly statements of ART and the Modaraba through Specialized Companies Returns System (SCRS) since May 2013 as per the requirements of the Regulations.

4. A show cause notice dated March 30, 2016 ("the Notice") was issued to ART and its Directors under section 32 of the Modaraba Ordinance for violating the aforesaid provisions of the Modaraba Rules and Regulations. ART was required to submit written response to the notice within 10 days from the date of receipt of the notice. They were also required to appear before the undersigned on April 18, 2016 for a personal hearing in the matter. ART failed to meet the said timeline. On its request dated April 14, 2016, vide this office letter dated April 15, 2016, an extension of 2 weeks was granted for submission of the reply. ART vide letter dated April 25, 2016, submitted the requisite response to the notice, signed by Mr. Asad Ahmed, Director.

5. An opportunity of personal hearing in the matter was provided to ART and its Directors on May 16, 2016. However, on the request of ART dated May 13, 2016, it was re-fixed for May 27, 2016. Mr. Asad Ahmed, Director, appeared on the said date in person and on behalf of ART and its other directors. However, Mr. Asad Ahmed could not produce any power of attorney/ authorization signed by the other directors, allowing him to represent them. Mr. Asad Ahmed was advised to provide the requisite power of attorney which he promised to furnish within a week's time. To date, the said power of attorney has not been received.

6. During the hearing, Mr. Asad Ahmed also made commitment to provide the following information/documents to comply with the regulatory requirements:

- a. All outstanding registration and renewal fees of ART and the Modaraba;
- b. All outstanding periodic financial statements of ART and the Modaraba;
- c. Applications seeking approvals for appointment of CEO/auditors from the Registrar Modaraba; and
- d. Restoration of CDC eligibility.

7. This office vide letter dated May 31, 2016 followed by reminder E-mail dated June 23, 2016 advised Mr. Asad Ahmed to provide the above mentioned information/documents. However, no reply has been received so far.



8. The written response to the notice dated April 25, 2016, and submissions made in the hearing have been examined and my findings on the same are given below:

- (a) With regard to non-submission of annual audited accounts of ART to the Registrar Modaraba since 2012, ART has contended that the Notice under reference is malafide and arbitrary and in excess of jurisdiction. ART is being subjected to criminal proceedings. This is violation of their rights to fair trial. They are being subjected to multiple proceedings on/for the same alleged violations before different forums. This is arbitrary, illegal and in violation of principles and rules of natural justice. ART has further contended that vide letter dated May 30, 2013, it had submitted documents in compliance of the office of Registrar Modaraba's letter dated May 24, 2013.

The contentions of the ART have been examined in light of the record and found incorrect. It is a matter of record that separate criminal proceedings have been initiated on non-filing/circulation of annual audited of the Modaraba under section 14 read with section 31 of the Modaraba Ordinance. It has nothing to do with the proceeding initiated in terms of the Notice dated March 30, 2016 and hence, the contention of ART that it is being subjected to multiple proceedings does not hold ground. Furthermore, the perusal of the letter dated May 24, 2013 reveals that no mention of annual audited accounts of ART was made in the said letter, hence the stance of ART in this regard is not correct. Therefore, the contravention of condition No. (v) of the Registration Certificate dated 30.12.1989 is established.

I, therefore, impose a penalty of Rs. 10,000/- on ART and each of its directors for the said contravention of the law. ART is also directed to submit the outstanding accounts along with requisite filing fee challan within 10 days from the date of this order.

- (b) It has been stated that ART deposited the annual fee for renewal of registration since the year 2013 which was acknowledged by the office of the Registrar Modaraba vide letters dated May 28, 2013 and January 29, 2014.

The perusal of the office record shows that ART deposited the requisite fee for the year 2013 and 2014. However, annual fee for renewal of registration of ART for the year 2015 is still overdue. Hence, ART contravened the clause 1(ii) to the Second Schedule, read with rule 3(18) of the Modaraba Rules. ART is directed to deposit the outstanding renewal fee and submit original challan evidencing the deposit of fee, within 10 days from the date of this order failing which ART and each of its directors shall be liable to a penalty of Rs. 10,000/- each for the said contravention of the law.

- (c) Neither ART in its written reply nor Mr. Asad Ahmed in the hearing produced any documentary evidence regarding deposit of annual fee for renewal of authorization certificate of the Modaraba since 2014. Hence, the contravention of clause 2(b) to the Second Schedule,



read with rule 3(18) of the Modaraba Rules is established. ART is directed to deposit the outstanding renewal fee and submit original challan evidencing the deposit of fee, within 10 days from the date of this order failing which ART and each of its directors shall be liable to a penalty of Rs. 10,000/- each for the said contravention of the law.

- (d) As regards non-transmission of the quarterly and half yearly accounts to the Registrar Modaraba and other stakeholders, ART has taken the plea that the accounts have been submitted regularly to the certificate holders. However, the documents submitted by ART were returned by the office of Registrar Modaraba. It has also been stated that the same objection has been raised by Registrar Modaraba in criminal complaint No. 2 of 2015 before the chairman of the modaraba tribunal at Karachi. ART and its directors are being exposed to double jeopardy and their rights under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 are being violated.

The perusal of the relevant record reveals that the quarterly accounts of the Modaraba for the quarter ended on September 30, 2011, March 31, 2012, September 30, 2012 and March 31, 2013 were submitted by ART vide letter dated May 30, 2013. These quarterly accounts were not authenticated in the manner as provided under rule 12 of the Modaraba Rules. Moreover, the accounts were submitted without filing fee challan. Sub-rule (4) of Rule 3 of the Modaraba Rules, 1981 provides that:

"The Registrar shall not register, file or record any document in respect of which a fee is payable until such fee has been deposited in the correct head of account and receipt furnished to him and shall, pending the payment of such fee, act in the same way as if no such document had been tendered for registration, filing or record."

In light of the aforesaid provisions of the Modaraba Rules, the accounts were returned back to the ART. As claimed, ART failed to submit any evidence for circulation of the accounts to the certificate holders.

Further, it has been noticed that the criminal complaint No. 2 of 2015 was filed by the Registrar Modaraba on account of non-filing/circulation of annual audited accounts of the Modaraba for the period ended June 30, 2012 & June 30, 2013 and not on the ground as mentioned by ART. Hence, the question of "double jeopardy" or violation of any constitutional rights does not arise as contended.

In view of the foregoing, contravention of rule 10 of the Modaraba Rules is established. ART is directed to submit the outstanding periodic accounts along with the requisite filing fee challan, within 10 days from the date of this order failing which ART and each of its directors shall be liable to a penalty of Rs. 10,000/- each for the said contravention of the law.



- (e) With regard to the violation of rule 19 (2) of the Modaraba Rules pertaining to approval of Registrar Modaraba for appointment of auditors of the Modaraba since 2013, nothing has been mentioned in the written reply of ART. During the hearing Mr. Asad Ahmed conceded the violation also. Hence, the contravention of rule 19 (2) of the Modaraba Rules is established. Since, a criminal complaint bearing No. 2 of 2015 has already been filed by the Registrar, Modaraba on account of non-filing/circulation of annual audited accounts of the Modaraba for the period ended June 30, 2012 & June 30, 2013 which is a matter subjudice before the Modaraba Tribunal, Karachi, therefore no penalty is being imposed. ART is, however, directed to comply with the requirements of the law in letter and spirit.
- (f) As regards appointment of chief executive of ART without obtaining the approval of the Registrar Modaraba in terms of regulation 5(2)(3) of Part-IV of the Prudential Regulations for Modarabas, ART has contended that the matter of approval of appointment as Chief Executive was discussed on November 16, 2011 with the then Registrar Modaraba and an email dated December 16, 2011 was also sent by ART in this regard. Further, the application for appointment of Chief Executive was submitted by ART vide letter dated May 14, 2012 and then again on May 30, 2013. However, the office of Registrar Modaraba returned the documents submitted by ART.

The relevant record has been reviewed in this regard and it has been observed that the documents regarding appointment of Chief Executive were not returned rather, ART vide this office letter dated June 6, 2013 was asked to submit complete application for appointment of Chief Executive prepared in light of the requirements of the fit and proper criteria circulated by this office along with the requisite application fee challan.

The record shows that no application for appointment of Chief Executive was submitted by ART through its letters as mentioned above. In fact ART's letter dated May 14, 2012 was submitted to this office to inform about the death of then Chief Executive whereas ART in its letter dated May 30, 2013 stated that Mr. Asad Ahmed was appointed as Chief Executive whose appointment does not need a separate approval as he was already a director on the Board since long.

Further, this office vide letter dated June 6, 2013, communicated to ART that obtaining the approval of Chief Executive is mandatory as per the requirements of fit and proper criteria of the Prudential Regulations. However, ART never replied to the said letter. Despite the fact ART never obtained the approval for appointment of CEO, Mr. Asad Ahmed continuously mentioned him as Chief Executive in all the correspondence exchanged with this office in blatant violation of the relevant provisions of regulation 5(2)(3) of Part-IV of the Prudential Regulations for Modarabas.



I, therefore, impose a penalty of Rs. 50,000/- on ART and Mr. Asad Ahmed, Director, for the contravention as mentioned above. ART is also directed to submit a complete application for appointment of Chief Executive of ART, within 15 days of the date of this order.

- (g) ART has not mentioned in its written reply to the Notice anything about the alleged violations of rule 3(2)(e) of the Modaraba Rules vide circular No. 2 of 2010 dated 15.01.2010, read with circular No. 10 of 2000 dated 10.08.2000 and circular No. 5 of 2000 dated 20.04.2000 wherein it was required to file periodic online returns of the Modaraba and ART. During the hearing, Mr. Asad Ahmed could not provide any plausible justification for the said violation. Hence, the contravention stands established.

ART is directed to regularly file all online returns and show compliance by the end of July 2016 failing which ART and each of its directors shall be liable to a penalty of Rs. 10,000/- each for the said contravention of the law.

9. The amount of penalty imposed vide this order is as under:

| S. No. | Name | Penalty Imposed |
|--------|--|-----------------|
| 1. | Mr. Asad Ahmed | 100,000 |
| 2. | Mr. Tahir Ahmed | 50,000 |
| 3. | Mr. Rashid Ahmed | 50,000 |
| 4. | A.R.T. Modaraba Management (Pvt.) Limited. | 100,000 |

10. ART and all the above named directors are required to deposit the penalty amount in the bank account of Securities and Exchange Commission of Pakistan maintained with Muslim Commercial Bank Limited and furnish the original paid bank challan to this office as an evidence of having made the payment. The amount of penalty shall not be charged to the Modaraba Fund.

11. Nothing in this Order may be deemed to prejudice operation of any other provision of the Modaraba Ordinance providing for the prosecution or imposition of further penalties on the Directors and ART in respect of any default, omission, violation of the Modaraba Ordinance, 1980 and Modaraba Rules, 1981 committed by them.

12. Issued under my hand and seal this 30th day of June, 2016.



(Shahid Mahmood)
Registrar
Modaraba Companies and Modarabas