



**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
SPECIALISED COMPANIES DIVISION**

No. SC/LES-ED/ /2002

March 5, 2002

IN THE MATTER OF M/S. ENGLISH LEASING LIMITED

IN RESPECT OF

***SHOW CAUSE NOTICE UNDER SECTION 158 (1) AND SECTION 233(1) READ WITH
SECTION 476 OF THE COMPANIES ORDINANCE, 1984***

Date of Hearing: January 29, 2002

Present: Mr. Javed Mahmood, Chairman
Mr. Sheikh Manzoor Elahi, Chief Executive
Mr. Sheikh Irshad Ahmad, Director
Mr. Anas Wahab Zubairi, Nominee Director of National
Investment Trust (NIT)
Mr. Saad Maniar, Director

**ORDER UNDER SECTION 158 (1) AND SECTION 233(1) READ WITH SECTION 476
OF THE COMPANIES ORDINANCE, 1984**

1. The facts of this case are that M/s. English Leasing Limited (the "Company") was required to hold its Annual General Meeting (AGM) for the year ended June 30, 2001 latest by December 31, 2001 in terms of Section 158 of the Companies Ordinance, 1984 (the "Ordinance"), which requires that every company should hold an AGM at least once in every calendar year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding AGM.

2. Further, the directors of the Company were required to lay before the Company in AGM a balance-sheet and profit and loss account for the year ended June 30, 2001 as per the provisions of Section 233 of the Ordinance, which require that the directors of every company should at least once in every calendar year lay before the company in AGM a balance-sheet and profit and

loss account for the period since the preceding account, made upto a date not earlier than the date of the meeting by more than six months.

3. The Company vide letter No. ELL/CE/2001-5429 dated November 30, 2001 applied to this office for ninety days extension i.e. upto 31st March, 2002 for holding of AGM and laying balance-sheet and profit and loss account in the AGM for the year ended June 30, 2001. The following reasons were put-forward by the Chief Executive of ELL in support of his request for extension in time frame: -

- a) Former Finance Manager and Company Secretary left abruptly without any notice in April, 2001.
- b) The incumbent Chief Accountant was appointed in July 2001.
- c) The Securities & Exchange Commission of Pakistan appointed Special Auditors M/s. Muniff Ziauddin & Co., Chartered Accountants in July 2001 for Special Audit for the year ended June 30, 2000.
- d) The management was busy complying with the requirements of Special Audit that was being conducted by Special Auditors.
- e) The Company received certain claims leading to misappropriation of funds by the former Finance Manager, which are being investigated.
- f) The process of reconciliation of accounts with the financial institutions took a considerable time.
- g) Due to aforementioned reasons the books of accounts for the year ended June 30, 2001 could not be completed in time and the audit of the accounts could not commence.

4. The above mentioned reasons were duly considered by this office and following observations were made: -

- i) The grounds mentioned by the Chief Executive at point (a) & (b), could not be considered as a justification for extension in time frame to hold AGM as abrupt departure of an employee from the Company does not absolve Directors / Chief Executive of the Company from their responsibility to conduct the affairs of the Company in accordance with the requirements of prevailing laws. Rather, it is an internal issue pertaining to the management of the Company and should not cause any major hindrance in complying with the regulatory framework. Further, even after the departure of Finance Manager in April 2001, the Chief Executive and other Directors had sufficient time of around nine months to finalize the books of accounts and to hold AGM in accordance with the stipulation of Section 158 of the Ordinance. It was also observed that Directors/ Chief Executive of the Company appointed the new Chief Accountant after a delay of three months since the former Finance Manager left the Company.
- ii) The reason stated by the management at point (c) was found baseless as the Special Auditors completed their assignment within 45 days i.e. from 1st September to 15th October, 2001. Moreover, the special audit is a routine matter that is carried out every year and this office appointed special auditors for all the leasing companies for the year ended 30th June, 2000. However, no other leasing company has mentioned the appointment of special auditors as a reason for delay in holding of AGM in time.
- iii) The claim of Chief Executive of the Company at (d) was factually incorrect, as this office had received the Special Audit Report in respect of the Company for the year ended 30th June 2000, furnished by M/s. Muniff Ziauddin & Co., Chartered Accountants vide their letter dated 1st December 2001. M/s. Muniff Ziauddin & Co., Chartered Accountants had stated at different sections of their report about the behaviour of the management which is summarized as under;

- that despite their best efforts they could not change the non-cooperative attitude of the management of the Company, therefore, they were not able to review certain transactions.
- that the management of the Company has not provided to them any details relating to rescheduling / restructuring of lease facilities.
- that during the course of audit, certain queries and findings were noted by their audit staff but no explanation was provided to them by the management of the Company.
- that the Company did not provide any bank reconciliation statement for the whole of the accounting year ended June 30, 2000 for their examination.

They concluded as under:-

Quote

"In the light of the above listed findings and observations when proper records have not been kept by the company and on many points the required information and explanations have not been received, the possibilities of defalcations, misappropriation and even deep-rooted frauds cannot be ruled out. Under the circumstances an investigation with extended scope is recommended".

Unquote

The special auditors did not furnish their opinion on the financial statements of the Company stating that due to the criminal silence of the management over the issues raised by them, they are unable to furnish any opinion.

- iv) The reasons stated by the Chief Executive at point (e) and (f) were not tenable as it is the responsibility of Directors/ Chief Executive of the Company to safeguard the assets of the Company against any misappropriation by the employees. Chief Executive being functional head of the company cannot absolve himself from the responsibility by putting the entire blame on Manager Finance for misappropriation of public money. It is also pertinent to mention here that an on site inspection was carried out by this office on 11th September, 2001 and it was observed that it is the normal practice of the Company not to record certain transactions relating to short terms placements in its books of accounts. However, payments were made from the Company's account without the existence of any matching liability against such payments in its books of accounts. There was evidence indicating that the management was raising funds on behalf of the Company and utilizing those funds for their personal interest.

On the whole, Chief Executive and other Directors were responsible for the non-completion of books of accounts and for non-holding of AGM within the stipulated time frame. As the reasons were not found satisfactory due to the observations made by this office, therefore, this office vide its letter No. SC/LES-D/646/2001 dated December 10, 2001 turned down the request made by the Company and advised the Chief Executive to hold AGM for the year ended 30th June, 2001 in accordance with the stipulation of Section 158 of the Ordinance.

5. As the Company, its Chief Executive and Directors, failed to hold the AGM and to lay before the Company in AGM a balance sheet and profit & loss accounts for the year ended 30th June 2001 within the stipulated time frame, therefore, a Show Cause Notice dated January 7, 2002 was served upon the Chief Executive and all other directors of the Company as to why the penalties as provided in clause (a) of sub-section (4) of Section 158 of the Ordinance, may not be imposed besides initiating prosecution proceedings under the provision of sub-section (6) of Section 233 read with sub-section (7) of Section 230 of the Ordinance.

6. Subsequent to the issuance of show cause notice, a revision petition dated January 5, 2002 was furnished by the Company for extension of 3 months in time frame to hold AGM for

the year ended 30th June 2001. It is interesting to mention here that the revision petition filed by the Chief Executive was dated 5th January, 2002, whereas one of the enclosures i.e. Certificate from the Statutory Auditors of the company, M/s. Rahim Iqbal Rafiq & Co., Chartered Accountants was dated 7th January, 2002. This led to the impression that after receiving the show cause notice, instead of responding to the same, the management of the company decided to file a back dated revision petition. However, the aforesaid show cause notice was responded by the Company vide its letter dated January 14, 2002 wherein all the above-mentioned reasons were once again reproduced and the Chief Executive of the company also made a request for personal hearing. Further, the Chief Executive assured that the said AGM will be held on or before March 31, 2002.

7. The Company's response was found unsatisfactory due to the repetition of the same reasons which were initially put-forward by the Chief Executive vide letter No. ELL/CE/2001-5429 dated November 30, 2001 (at para 3 above). Therefore, a hearing was fixed on January 29, 2002.

The following Directors appeared before me for the personal hearing in respect of the said show cause notice: -

1. Mr. Javed Mahmood, Chairman
2. Mr. Sheikh Manzoor Elahi, Chief Executive
3. Mr. Sheikh Irshad Ahmad, Director
4. Mr. Anas Wahab Zabairi (Nominee Director of NIT)
5. Mr. Saad Maniar, Director

8. The reasons put-forward by the directors vide their initial request and review petition were discussed one by one and were concluded as under: -

- i) The Chairman and Chief Executive admitted that an amount of more than Rs. 55 million was misappropriated by an employee, Mr. Azhar Hussain of the Company in coalition with Mr. Sheikh Irshad Ahmed, Director of the Company. Further,

they claimed that the said employee abruptly left the Company. Therefore, the books of accounts for the year ended 30th June 2001 could not be completed in time and the audit of accounts could not commence.

In response, it was categorically communicated by this office that all the directors are deemed to be responsible for managing the affairs of the company. Further, it was also observed that no concrete measures had been taken by the management of the Company against the concerned culprits. However, these matters pertain to a separate issue and are being duly processed by this office. It was also communicated that these reasons cannot be considered as a justification for non-holding of AGM in accordance with the provisions of Section 158 of the Ordinance.

- ii) The Chief Executive submitted that as the Chief Accountant was appointed in July 2001, therefore, Chief Accountant was not able to update the books of accounts of the Company in such a short time span.

In response, this office affirmed that it is not the responsibility of Chief Accountant to ensure that books of accounts of the Company are properly maintained and that the AGM of the Company is held as per provisions of law. Whether the Chief Accountant was appointed or not, the Chief Executive/Directors are responsible for ensuring that books of accounts are maintained as per the provisions of the Ordinance and that the affairs of the Company are managed properly.

- iii) The Chief Executive submitted that due to the special audit, the Company was busy with the requirements of special auditors, therefore, the statutory auditors could not commence their audit.

In this connection, this office invited the attention of all the Directors to the fact that on the one hand they were saying that books of accounts of the Company had not been finalized while on the other hand they were pleading that special audit of the Company was being conducted and they were busy with the special auditors. If due to non-completion of books of accounts, the statutory auditors had not commenced the audit for the year ended 30th June, 2001 then how was it possible for special auditors to carry out the audit assignment for the financial year ended 30th

June, 2000. In addition to the matters mentioned at para 4(iii), the special auditors vide their letter dated November 26, 2001, submitted a summary of findings and queries and have stated as under:

Quote

“You will be surprised to note that the balances brought forward from the previous year in respect of the financial statements prepared for the year under review are not in agreement with the books of account and the management is criminally silent on the issue.”

Unquote

In view of the above observation made by the Special Auditors, it is evident that management's plea that they were unable to finalize the books of accounts and to hold AGM because they were busy with the requirements of special auditors is not tenable. It also leads to the conclusion that default under section 158 and 233 was committed by the Chief Executive and the Directors of the Company knowingly and willfully.

9. With regard to the plea taken by the management that the process of reconciliation of accounts with the financial institutions took considerable time, I am of the view that all the requisite information was provided by the concerned financial institutions well in time and in light of that information the management of the Company was able to assess the amount of embezzlement/misappropriation.

10. All the reasons put forward by the management were found unsatisfactory as none of the above mentioned reasons restrained the directors to hold the AGM and present the annual audited accounts of the Company in accordance with provisions of the Ordinance. It appears to me that Directors of the Company are trying to prolong the matter on one pretext or other, as they do not want to present a true and fair picture of the Company's affairs to the shareholders within the prescribed time.

11. In view of the above, the default is established and is considered willful. The Chief Executive and Directors have, therefore, made themselves liable under Clause (a) of Sub-section (4) of Section 158 of the Ordinance. However, taking a lenient view, I under Clause (a) of Sub-section (4) of Section 158 read with section 476 of the Ordinance hereby impose a fine of Rs 15,000/- (Rupees fifteen thousand only) on each of the following Directors/Chief Executive of the Company:

	<u>Name of Director/Chief Executive</u>	<u>Amount of Penalty</u>
1.	Mr. Sheikh Javed Mahmood,	Rs. 15,000/-
2.	Mr. Sheikh Manzoor Elahi	Rs. 15,000/-
3.	Mr. Sheikh Irshad Ahmed,	Rs. 15,000/-
4.	Mrs. Taskeen Javaid,	Rs. 15,000/-
5.	Mr. Saad Maniar	Rs. 15,000/-

12. The Chief Executive and the directors of the Company are directed to deposit the fine in the designated bank account of Securities and Exchange Commission of Pakistan, maintained with Habib Bank Limited within 30 days of the date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan.

13. Further, I hereby direct the Nominee Directors of Investment Corporation of Pakistan (ICP) and NIT on the Board of the Company that they must take active part in managing the affairs of the Company to safeguard the interest of ICP/NIT as sponsoring financial institutions. Moreover, the directors nominated by ICP/NIT must be fully aware of their responsibilities as Director on the Board and should have adequate knowledge of all the prevailing corporate laws in Pakistan and compliance status of their respective companies in this regard.

14. Further, I hereby direct the Company to hold the AGM and lay before the Company in the AGM a balance sheet and profit and loss account for the year ended June 30, 2001 in accordance with the directions of Additional Registrar, Company Registration Office, Karachi, which will be issued by him in terms of section 170 of the Ordinance.

(SADIA KHAN)
Executive Director