



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
SPECIALISED COMPANIES DIVISION

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BEFORE THE COMMISSIONER (SCD)



IN THE MATTER OF M/S. PAKISTAN INDUSTRIAL & COMMERCIAL LEASING LIMITED

IN RESPECT OF

SHOW CAUSE NOTICE UNDER SECTION 282 J (1) OF THE COMPANIES ORDINANCE, 1984 (THE ORDINANCE) READ WITH SECTION 282 M (1) OF THE ORDINANCE FOR VIOLATION OF RULE 15 OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATION) RULE, 2003 (THE NBFC RULES)

Date of Hearing: March 2, 2005

Present: Tahir Sohail, Chief Operating Officer, PICL
Arif Raza, Head of Operations, PICL

ORDER

1. This Order shall conclude the show cause proceedings initiated against Pakistan Industrial & Commercial Leasing Limited (hereinafter referred to as the "Company") for violation of Rule 15 of the NBFC Rules. The company was incorporated in Pakistan on June 9, 1997 and is listed on Karachi, Lahore and Islamabad Stock Exchanges. The principal business activities of the company, is to provide lease financing and related services. The Registered Office of the Company is situated in province of Sindh. Brief facts leading to the initiation of the aforesaid proceedings are as under:

2. The Company vide its letter No. PICL/C/2305/2004 dated September 6 2004 requested Securities and Exchange Commission of Pakistan (the "Commission") for consent / NOC for induction of five directors on the Board of M/s. Asian Leasing Corporation Limited (Asian Leasing). It was informed that the names and details of the proposed directors would be furnished shortly. It was also informed that this change in the Board of PICL is due to the

proposed acquisition of 2863600 shares of Asian Leasing @ 11.75 per share from National Bank of Pakistan (NBP) and 2163000 shares of Asian Leasing @ 11.75 per share from National Investment Trust (NIT). Due to this acquisition, three nominee directors of NBP and two nominee directors of NIT will resign from the Board of Asian Leasing.



3. The Commission vide its letter No. SC/NBFC(1)-R/PICL/2004-635 dated September 15, 2004 requested the company to clarify the matter in terms of Rule 15 of NBFC Rules and the requirements of Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002.

4. The Company vide its letter dated September 15, 2004 addressed to SVP & Chief Manager, NBP informed that the payment against the shares of Asian Leasing has been made. Names of the three directors on behalf of PICL were also proposed in place of nominee directors of NBP on the Board of Asian Leasing.

5. The Company vide its letter No. PICL/CE/FIN/234/04 dated September 21, 2004 informed the Commission that the subject acquisition of shares of Asian Leasing is meant for the merger of two companies. It was submitted that this was done with a view to ensure the minimum equity requirement under the NBFC Rules as the Honourable High Court of Sindh at Karachi had given time to the company to fully comply with the relevant provisions of NBFC Rules. The Company also informed that the scheme of amalgamation for merger of the two companies would be prepared and sent to Commission after the said acquisition and that the subject acquisition would not mean "investment in equities" as contemplated under Rule 15 and as such the restriction imposed in Rule 15 may be waived.

6. The Company never made a formal application to the Commission for waiver of Rule 15 either prior to acquisition or after the acquisition of the subject shareholding of Asian Leasing and neither any merger plan or any scheme of arrangement has ever been submitted to the Commission in this regard.

7. Rule 15 of NBFC Rules states that the total investment in equities shall not exceed the liquid net worth of the NBFC. The liquid net worth of the Company is negative as per its audited annual accounts for the year ended June 30, 2004.

8. Keeping in view the aforesaid state of affairs a notice dated January 26, 2005 was served upon the Chief Executive of the Company under sub-section (1) of 282 J of the Companies Ordinance 1984 calling upon him to explain as to why penal proceedings may not be initiated against him for the aforesaid contravention.

9. In order to provide an opportunity of making representation and of being heard the case was fixed for hearing on March 2, 2005. Mr. Tahir Sohail, Chief Operating Officer (COO) of the company represented the Company in the hearing.





10. The COO admitted that they had committed a violation of Rule 15. However, the Company had no intention to violate any laws and the sole purpose of the transaction of acquiring the shares of Asian Leasing Corporation Limited (ALCL) from National Bank of Pakistan (NBP) and National Investment Trust (NIT) was to become equity compliant in terms of Rule 5 of NBFC Rules. He informed that the Company has now withdrawn the deal and the proceeds are being returned to the Company by NBP. However, the Company is in negotiation process with NIT to retrieve the money. The Chief Operating Officer gave assurance that the directors understand their legal obligations and shall ensure compliance in the future. He requested for condonation of the default and for a lenient view.

11. From the above discussion and after careful examination of all facts and circumstances of the case, I am of the view that the default has been admitted and established. The Company management is expected to be proactive rather than reactive while managing risks. The acquisition deal has not yet been finalized and the proceeds have been returned to the Company by NBP. However, the money with NIT is still tied up and the same appears on the six monthly accounts of the Company for the period ended December 31, 2005. It is therefore evident that the stake holders money is still at risk.. The Company has violated the statutory requirements, which attracts the provisions of sub-section (1) of Section 282 (J) of the Ordinance.

12. For the foregoing reasons, the directors of the Company have made themselves liable for the penalties provided under Sub-section (1) of Section 282 (J) of the Ordinance. As the COO has undertaken that the Company would make immediate arrangement for getting the money back from NIT that there will be no violation in future, I take a lenient view of the default and,

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instead of imposing a maximum fine of Rs. 5 million on every director of the Company, hereby impose a fine of Rs. 50,000/- (Rupees fifty thousand only) on each director of the Company under Sub-section (1) of Section 282 (J) of the Ordinance read with Section 282 (M) (1) of the Ordinance.

13. **Mr. Minhaj-ul-Haq Siddiqui, Mr. Zaheerul Haq, Barrister Rashid Munir Ahmed, Mr. Rafiullah Khan, Ms. Tasneem Habib & Mr. Nasir Munir Ahmed & Raja Hameed Akhtar Kidwai** the directors of M/s. Pakistan Industrial & Commercial Leasing Limited are hereby directed to deposit the fine amounting to Rs. 50,000/- (Rupees fifty thousand only) each aggregating Rs. 3,50,000/- (Rupees three lacs and fifty thousand only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the date of this Order and furnish receipted challan to this office.


(Salman Ali Shaikh)
Commissioner (SCD) 

Announced at Islamabad
on March 03, 2005