

Order

In the matter of Asset Investment Bank Limited

Asset Investment Bank Limited (AIBL) was incorporated on June 09, 1992 under the Companies Ordinance, 1984. It is maintaining its registered office at 301 & 302, 3^d Floor, Muhammad Gulistan Khan House, 82-East Fazal-ul-Haq Road, Islamabad. State Bank of Pakistan ("SBP") being primary regulatory authority of the Banks, Financial Institutions and NBFIs informed this Commission vide its letter No. BSD (RU-6) 138/3605/2001 dated March 19, 2001 about precarious financial health of AIBL as revealed by an investigation conducted by their inspection team. The following defaults/irregularities were particularly highlighted: -

- a) Non-submission of time bound action plan to address the various problems pointed out in SBP's inspection report despite several reminders.
- b) Non-submission of plan for capital injection to meet the shortfall in the provisions.
- c) Non-compliance with State Bank of Pakistan's directive and instructions.
- d) Failure to pay the deposit of Rs.1.0 million to M/s. Telecom Foundation despite several reminders from SBP.
- e) Complaints from other depositors for non-encashment of their deposits and failure to timely redeem all deposits despite several reminders from SBP.
- f) Failure to maintain statutory liquidity requirements under Banking Companies Ordinance, 1962, reflecting severe liquidity crunch.
- g) Failure to pay penalties imposed by SBP due to shortfall in the statutory liquidity requirements.
- h) Violating the SBP's directives, the majority of the directors/sponsors of AIBL have accepted the directorship of other financial institutions.
- i) Failure to submit affidavit of two directors and submission of in-complete affidavits of remaining directors in contravention of the SBP's regulations.
- j) Unsatisfactory conditions of AIBL due to continuing poor lending and management practices.
- k) Negative adjusted capital of Rs.235.988 million with a negative capital adequacy ratio of 81.63 % and more than 89% of the total assets amounting to Rs.270.272 million are classified.

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- l) Omission from the balance sheet the amount of Rs.22.21 million being balance amount of Muslim Commercial Bank Limited.
- m) Minimal directors' stack in AIBL which raises question as to their interest in the successful operations.
- n) Highly unsatisfactory earning position with adjusted return on assets at negative 92.78%.
- o) Heavy reliance on borrowings to meet its liquidity requirements and failure to pay off the accrued return on deposits.

2. The above said report of the SBP clearly indicated that AIBL is no longer a going concern and is at the brink of financial collapse with no recovery in sight and, therefore, it is heading toward insolvency. In order to safeguard the interest of the depositors and to plug further drain of resources, SBP strongly recommended for winding of AIBL under the Companies Ordinance, 1984.

3. In view of the above, a show cause notice dated March 26, 2001 was served upon the Chief Executive of the company under Clause (c) of proviso to Section 309 read with Sub-Clause (iii) of Clause (f) of Section 305 of the Companies Ordinance, 1984 (the "Ordinance") calling upon him to show cause as to why a petition may not be filed before honourable Lahore High Court for winding up of the company in terms of the aforesaid provisions of the Ordinance. In order to provide an opportunity of making representation and of being heard, a date was fixed on March 29, 2001 at 10:00 A.M., which was adjourned to April 02, 2001 at the request of AIBL.

4. On the date of hearing, Mr. Syed Naveed Zaidi, Chief Executive and Dr. Khalid Iqbal, Director of AIBL appeared on behalf of ABIL. They submitted a written reply to the aforesaid show cause notice and stated :-

- a) As it is not possible to get the right shares subscribed under the prevailing conditions, therefore, the management was left with no option except to attract foreign investment, which was a time consuming job and that is why they could not present time bound action plan to SBP.
- b) The Bank has signed an MOU with Hamdard Group for joint venture. However, the deal could not materialize due to untimely death of (Late) Hakeem Mohammad Saeed.
- c) AIBL expects to earn handsome non-fund income from the funds to be placed by CNG refueling station being constructed by NCCL in association with Ajami (Pvt) Ltd. for Pakistan Railway.
- d) Pakistani Group Zrash Mortgage Corporation, USA has committed to inject adequate funds in the equity of AIBL as well as to arrange credit lines for AIBL. AIBL has arranged various projects in Pakistan for it and is expecting to earn good amount as commission.

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- e) Regarding apprehension about on-going concern, the representatives of AIBL pointed out that income generated through above said non-fund based activities was their prime objective. In case management succeeds in achieving the target, AIBL is going to be on-going concern through regular annual non-fund based income combined with injection in equity and earnings through investment created by credit lines.
- f) The management of AIBL had been able to convert several classified assets into recoveries or into good assets with partial recoveries without compromising on principal amounts.
- g) Regarding common directorship, it was informed that the management was working on a prospective merger of National Asset Leasing Corporation Limited with AIBL and later on to merge Industrial Capital Modaraba, with AIBL as well. The problem of common directorship would be solved after merger and induction of new directors. It was also informed that one of the Director Mr. Sohail Ali is out of the country and the second Director Mr. Shamim F. Junejo has opined that since new Directors are being inducted, they will sign the affidavit. The anticipated financial figures of the merged entity were also presented during the course of hearing.
- h) Claim of Muslim Commercial Bank Ltd amounting to Rs. 22.521 million is not justified being paid and finally settled.
- i) Shareholding of the Board members in AIBL is 27%.
- j) The management of AIBL has not relied on any additional borrowing nor disbursed any loan.

5. All the arguments of AIBL have been given careful consideration and were found without any force due to the following reasons:-

- a) AIBL is solely relying on foreign investment for capital injection. No valid documents and evidence have been produced except Memorandum of Understanding ("MOU") dated June 01, 2000 with M/s Ajami (Pvt) Ltd. (APL) which stipulates that APL will "arrange" funds "upto" Rs.100 million for increase in the capital of AIBL December 31, 2000. Through another letter dated March 27, 2001 addressed to the Chief Executive of AIBL, it was informed that as per commitment, equity "upto" Rs.100 million will be contributed before December 2001. This letter is signed by Mr. Fazal Qadeer Ajami whose position is not disclosed in the said letter and even in the MOU. Moreover, the said letter is not even on the letterhead of APL. MOU, which was signed on June 1, 2000, could not materialize even after a lapse of considerable time. A careful perusal of the MOU and the aforesaid letter indicates that both these documents lacks legal

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binding on APL as there are no provisions in these documents regarding consequences in case of default due to non-compliance. There is substantial doubt and ambiguity about these document. The Chief Executive and director have not placed on record any profile of APL or NCCL wherefrom the worth of both the organizations could be ascertained. Further no formal agreement has been shown on the basis of which it could be established that APL is firmly committed to arrange funds for AIBL. In view of substantial doubt and uncertainty about the documents placed on record, the plea of the management that they will be able to raise funds through APL is misleading and not acceptable.

- b) MOU signed with Hamdard Group was not produced; therefore, it is not considered necessary to discuss this document.
- c) The argument that M/s. Zrash Mortgage Corporation will inject equity in AIBL has also been given careful consideration. The only document placed on record is a copy of fax dated March 27, 2001 signed by someone Mr. Riaz Shakir. The said fax does not indicate any commitment for injection of funds into AIBL. The relevant contents of the said fax are reproduced hereunder:

“ Buying shares in Asset Investment Bank, Mr. Zafar is working on it. We will inform you very soon with positive answer.”

No further document has been placed on record substantiating the claim of the management that M/S Zrash Mortgage Corporation is committed for making investment in AIBL. The claim of the management regarding raising of fund from this source is also deceptive.

- d) Regarding merger of National Asset Leasing Company Limited and Industrial Capital Modaraba with AIBL, the Chief Executive and directors failed to give any rationale for the proposed merger. Moreover, the management has not placed on record any material to prove that financial position of AIBL would improve substantially after the merger. Given the fact that both National Asset Leasing Corporation Limited and Industrial Capital Modaraba are also in extreme financial

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disorder, the proposal of merger may not bring any good news for the shareholders and depositors of AIBL. The projected financials of the merged entities also failed to suggest any improvement in post merger scenario.

- e) There is also no substance in the claim of the management that it has converted the classified assets into recoveries and into good assets. The management has incurred a loss of Rs.10.796 million on settlement with Mina Leathers Limited and the period of recovery of Sihala-Biotec loan is more than two years. Moreover, there is huge amount stuck up with an associate company, M/S Caravan East Fabrics Limited, the recovery of which is extremely doubtful in view of the substantial losses accumulated by the said company. Regarding sale of shares of Nayab Spinning Mills Limited, the Chief Executive and director has placed on record a letter dated March 28, 2001 signed by the General Manager Finance of the company. Under this letter Ch. Naeem Gulzar has agreed to buy the shares of Nayab Spinning Mills Limited from AIBL and the amount will be paid in 40 months from April 2001 to July 2004. The letter further states that " in case of default on the part of buyer or he fails to pay the balance price of the monetary instruments for reasons beyond his control the seller either re-imburse the price having been received by him or shall deliver the number of shares for which the buyer has paid him the sale price." The aforesaid document is an eyewash and has been placed on record to deceive the regulators. The management has miserably failed to place on record any valid document for the sale of shares.

In view of the above the management's assertion regarding conversion of classified assets into recoveries and good assets is not correct.

- f) The Chief Executive and directors have also failed to produce any document/ agreement to substantiate their claim regarding generation of huge non-fund based income. It is, therefore, improbable that AIBL will be able to earn substantial non-fund based income.
- g) The other arguments of AIBL are also not sustainable and do not support the claim of the management to profitably operate AIBL.

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6. AIBL has not responded to the following issues:-
- a. The conduct of business in a manner oppressive to its members, creditors and other persons concerned in the formation of AIBL.
 - b. Non-encashment of deposits of Telecom Foundation.
 - c. Time frame for the redemption of other deposits.
 - d. Maintenance of statutory liquidity requirements.
 - e. Reasons for not signing of affidavits by the two directors and in-complete submission of affidavits of other directors.

7. I have also gone through latest financial report as of June 30, 2000 of AIBL which indicates that some thing wrong has been done to AIBL by the Directors who are at the helm of affairs and who abused their powers to enrich themselves. They have diverted the funds of AIBL towards unproductive assets including heavy lending to their associated companies, the recoveries wherefrom are doubtful. Entire capital of AIBL has been lost due to imprudent lending/investments. The Company has also not paid any dividend to its shareholders since its establishment.

8. In the above stated circumstances, it is clearly established that the business of the company is being managed in a manner oppressive to its members, creditors and persons who are concerned in the formation of the company. Sufficient time was given to the management to arrange funds but no funds have been brought in after lapse of considerable time. The management has been lingering on this issue on flimsy grounds. In the circumstances, it is felt that to wind up the company would be an act of social service by preventing the directors from enriching themselves at the expense of shareholders and depositors.

9. Keeping in view the aforesaid discussion and after careful consideration of the circumstances of the case and the submissions made by the Chief Executive and director, I am of the opinion that AIBL is no longer a going concern and it is heading towards insolvency and is at brink of the financial collapse with no recovery in sight. Moreover, the business of AIBL is being conducted in a manner oppressive to its members, creditors and other persons concerned in the formation of AIBL.

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10. The undersigned, therefore, in public interest and in exercise of the powers conferred by Proviso (c) of Section 309 of the Companies Ordinance, 1984, authorize the Joint Registrar, Company Registration Office, Islamabad, to file a winding up petition against AIBL pursuant to the provisions of Sub-clause (iii) of Clause (f) of Section 305 read with Section 309 of the Companies Ordinance, 1984.

(RASHID SADIQ)
Executive Director

Announced
May 24, 2001
Islamabad.