

No. CO.Inv 263(1)SECP/2000  
**Securities and Exchange Commission of Pakistan**

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Shaheen Foundation PAF,  
13-L, Commercial Area,  
F-7/2,  
Islamabad

.....Applicant

Versus

M/s. Shaheen Pay TV (Pvt) Limited  
3-A, Mezzanine Floor,  
Fayyaz Centre,  
Shahrah-e-Faisal,  
Karachi

..... Respondents

Present:

1. Syed Iqbal Hiader,  
Advocate for Applicants
2. Mr. Kaleem N. Ahmed  
Advocate for Respondents

Date of hearing:

June 13, 2000

APPLICATION UNDER SECTION 263 OF THE COMPANIES ORDINANCE, 1984  
FOR APPOINTMENT OF INSPECTOR TO INVESTIGATE INTO THE AFFAIRS OF  
“SHAHEEN PAY T.V. (PVT) LIMITED”

## **ORDER**

1. The facts of the case, in brief, are that “Shaheen Foundation PAF” (hereinafter referred to as Applicant) had sought remedy under section 263 of the Companies Ordinance, 1984 by filing the present application praying for the appointment of an Inspector to carry out investigation into the affairs of the respondent company i.e., “Shaheen Pay TV (Pvt) Limited” (hereinafter referred to as company). The applicant holds 25% of the total paid up capital of the company and is eligible to make the subject

application. The Joint Registrar, Karachi has confirmed that paid up capital of the company is Rs. 50,000,000/- out of which the applicant has contributed Rs. 12,500,000/-.

2. The allegations made in the application are summarized as under:

- (1) A very promising feasibility was provided to the Applicant and its projections were made to induce the Shaheen Foundation for making substantial investment in the company out of the welfare funds.
- (2) The applicant Foundation was neither allowed to get involved in the day to day management of the company nor the Board meetings were held regularly. Moreover, the Foundation was being kept in dark and no information with regard to financial affairs of the company was conveyed to it.
- (3) The affairs of the company were being managed in a highly unprofessional manner.
- (4) Proper books of accounts as prescribed by the Companies Ordinance, 1984 were not being maintained by the company and despite repeated requests, no information was supplied to the applicant Foundation.
- (5) The company failed to hold any annual general meeting since 1996 in violation of the requirements of the Companies Ordinance, 1984.
- (6) The company's management failed to prepare, get audited and present its annual accounts in violation of the statutory requirements.
- (7) The company failed to convene the required number of Board meetings.
- (8) The company failed to file statutory returns with the Registrar of Companies.
- (9) The Board of Directors of the company was not properly constituted in accordance with the requirements of law.
- (10) The company's affairs were not being managed in accordance with the sound business principles and prudent commercial practices.

3. In order to meet the requirements of law and also with a view to provide an opportunity of highlighting and explaining the points of contention and grievances, the company was asked to file a reply to the application. In its reply, the company admitted the allegations to the extent of violations under the Companies Ordinance, 1984 but denied their existence on the premise of any fraud, *malafide* intention or bad faith. The allegations were defended on the compelling justifications and business expediencies.

The company also challenged the maintainability of the instant application being a consequence that had flown from contractual obligations. According to the company, it precludes the applicant to have recourse to the relief under section 263 of the Companies Ordinance, 1984.

4. Subsequently, the case was fixed for hearing on June 13, 2000 and Syed Iqbal Hiader, Counsel for the Applicant came out with the arguments highlighting the defaults of the management in handling the affairs, outflow of even paid up capital, absence of the Chief Executive from the country for an indefinite period and violations in the observance of the statutory provisions. The Applicant's counsel addressed the following main points:

- (a) The applicant having 25% stake in the equity of the company has a right to invoke jurisdiction of the Commission under section 263 of the Companies Ordinance, 1984 particularly when the shareholders and creditors of the company are suffering due to mismanagement on the part of company's directors.
- (b) No annual general meeting of the company has been held since 1996 in violation of the requirements of section 158 read with section 233 of the Companies Ordinance, 1984.
- (c) The directors have failed to maintain proper books of accounts of the company. They have failed to finalize the annual accounts, get the same audited and present before the shareholders in the annual general meetings. By doing so, they have violated the provisions of sections 230, 233, 236 and 241 of the Companies Ordinance. He further stated that the application is mainly based on the violations of the applicable laws including the Companies Ordinance, 1984.
- (d) The Board of Directors has failed to hold four meetings in a year as required under the Articles of Association of the company.
- (e) Annual returns on Form "A" required to be filed with the Registrar of Companies do not appear to have been filed for the years 1998 and 1999.
- (f) The company has not started commercial production so far.

- (g) Chairman and the Chief Executive have chosen to remain abroad and affairs of the company are lying unattended.
- (h) The Chief Executive has further entrusted his official position to a person in an unlawful manner.

5. The counsel for the respondent company, Mr. Kaleem N. Ahmed challenged the maintainability of the application on the grounds that the applicant being a Trust had been an investor consequent upon a contractual arrangement. This agreement, according to him, puts the parties under legal obligation to seek the resolution of their disputes from the arbitration recourse or through a Civil Court of original jurisdiction. He, otherwise, admitted non-observance of the corporate laws requirements but simultaneously defended the management stating that it was due to peculiar circumstances and compelling reasons, which arose due to political changes in the country in 1997. These circumstances compelled the company's Chief Executive to remain away from the country. He stated that an annual general meeting of the company was held on December 16, 1995. He further pointed out that accounts of the company have been properly maintained. The annual accounts have been got audited and approved by the shareholders. Since the company has not yet commenced commercial production, it was not in a position to provide any return on the investment made by the applicant. The absence of the Chairman and Chief Executive was unavoidable and in their absence, the affairs of the company are being managed properly through a duly appointed Chief Operating Officer who is a retired Air Commodore.

6. Having heard both the parties and after careful consideration of the contents of the pleadings, it has been observed that the applicants have a lawful right to approach the Commission under section 263 of the Companies Ordinance, 1984. It is an admitted fact that directors of the company have failed to hold its over-due annual general meetings and to present therein its annual audited accounts. These violations are further substantiated through the copies of auditors reports produced by the respondents which indicate that annual audited accounts for the years ended 30.6.1997 and 30.6.1998 were got audited on June 28, 1999 whereas under sections 158 and 233 of the Companies Ordinance, these were required to be finalized and presented before the general meetings

on or before December 31, 1997 and December 31, 1998 respectively. The management of the company is not available in the country and the company's whole affairs are being managed by Chief Operating Officer appointed by the Chief Executive. There is no provision in the Companies Ordinance to appoint an alternative Chief Executive. Due to mismanagement, the creditors and investors of the company are suffering and in the absence of any effective system of accountability and audit, there are apprehensions that the funds of the company might have been misappropriated. I therefore, find it appropriate and fit case for appointment of Inspector because admittedly mandatory provisions of the Companies Ordinance, 1984 have been violated. In order to protect the rights of investors and creditors, I, in exercise of the powers conferred under section 263 of the Companies Ordinance, 1984 hereby appoint Mr. Nauman Mahmood, ACA, of M/s. Avais Hyder Zaman Rizwani, Chartered Accountants, Suit No. 408, Level No. 4, Dossal Plaza, 47-W, Jinnah Avenue, Blue Area, Islamabad, to act as Inspector to investigate into the affairs of "M/s. Shaheen Pay TV (Pvt) Limited". A remuneration of Rs. 60,000/- (Rupees sixty thousand only) shall be paid to the inspectors.

7. Without prejudice to the scope of investigation, the Inspector shall conduct investigation on all aspects of the operations of the company and shall, after scrutiny of the entire record and books of accounts, furnish report, *inter alia*, on the following:

- (i) Use of funds;
- (ii) charge over the assets;
- (iii) diversion of funds to unauthorized objects;
- (iv) legitimacy of the regimes, (management);
- (v) genuineness of the record; and
- (vi) compliance with statutory requirements in the operations of the company.

8. The Inspectors may start investigation immediately and send their report to this Commission in quadruplicate within thirty days from the date of this order.

Islamabad,  
July 11, 2000

( Abdul Rehman Qureshi )  
Commissioner

