

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Monitoring & Enforcement Division)
State Life Building, 7-Blue Area,
Islamabad

No.19(742)CF/ISS/93- Islamabad, dated 11th August, 1999

IN THE MATTER OF DADABHOY LEASING COMPANY LIMITED

Present: Mr. Abdul Rahim Dadabhoy,
Chief Executive.

Date of hearing:- August 3, 1999

ORDER

M/s. Dadabhoy Leasing Company Limited is a public limited company. The company and its Chief Executive committed various defaults under the Companies Ordinance, 1984 and Leasing Companies (Establishment & Regulation) Rules, 1996 for which show-cause notices, under section 251, 158, 156, 230(7) of the Companies Ordinance, 1984 and rule 14 of the Leasing Companies (Establishment & Regulation) Rules, 1996 were issued to the company and its chief executive on 4-1-1999 and 27-03-1999. Mr. Shamim Iqbal, ex-chief executive of the company submitted his reply to the show-cause notice issued to him under section 251 of the Companies Ordinance, 1984 vide his letter dated 27-01-1999. The company secretary replied to the show-cause notice issued under section 251,158,156 and 230(7) and rule 14 of the Leasing Companies (Establishment and Regulation) Rules 1996 through his letter dated 12-05-1999. The replies given by the ex-chief executive and company secretary were not found satisfactory and as such a hearing in the matter was fixed on 3rd August, 1999 to provide the chief executive an opportunity to explain his view point further.

Mr. Abdul Rahim Dadabhoy, The present chief executive of the company appeared before me and made submission in continuation of the explanation offered by the company secretary through his letter dated 12-05-1999. Written explanation and argument advanced at the time of hearing held on 3rd August, 1999 have been duly considered and the following orders are passed:

(i) **NON-PAYMENT OF DIVIDEND IN VIOLATION OF SECTION 251(2) OF THE COMPANIES ORDINANCE 1984.**

The company declared cash dividend for the year ended on 30-06-1997 @ 7.5% on 31-12-1998, which in terms of section 251(1) of the Companies Ordinance, 1984 was to be paid to the shareholders up to 16-2-1999 i.e. within 45 days from the date of declaration of dividend. As the company had not paid dividend in time, a show-cause notice, under section 251 of the Companies Ordinance, 1984, was issued on January 4, 1999 in the name of Mr. Shamim Iqbal chief executive of the company. The said Mr. Shamim Iqbal vide his letter dated January 27, 1999 informed the Commission that he had resigned from the office of the chief executive of the company w.e.f 29th December, 1997 and the erstwhile Corporate Law Authority was also informed about his resignation from the office of the chief executive.

In view of this explanation made by Mr. Shamim Iqbal, a consolidated notice for various defaults under the Companies Ordinance, 1984 including the default under section 251 was addressed to the Company and its chief executive on 27-03-1999 which has been replied/contested by the present

chief executive of the company Mr. Abdul Rahim Dadabhoy. Mr. Abdul Rahim Dadabhoy while defending his position has stated that he took over the office of chief executive of the company on 27-2-1998. He explained that the statement made by Mr. Shamim Iqbal that he resigned on 29-12-1997 is not correct and infact Mr. Shamim Iqbal continued as Chief Executive of the company till 27-2-1998 and therefore Mr. Shamim Iqbal is responsible for the default. In support of his contentions, he produced copies of Form 27, 28 and 29 filed by the company in the Companies Registration Office, Karachi which shows that change in the office of the Chief Executive had taken place on 27-2-1998 and not on December 29, 1997 as was claimed by Mr. Shamim Iqbal. To prove his contention that Mr. Shamim Iqbal had been acting as chief executive of the company even after 29-12-1997. He produced copy of the letter dated 8-9-1998 written by Mr. Shamim Iqbal to M/s. Pak Libya holding Company Limited in the capacity of chief executive of the company and also produced copies of Some vouchers prepared on 01-01-1998 which were signed by Mr. Shamim Iqbal as director/chief executive. Mr. Abdul Rahim Dadabhoy pleaded that he is not responsible for nonpayment of dividend for the said period (from 1st January, 1998 to 27th February, 1998), as he was appointed the chief executive of the company even after the expiry of 45 days from the date of declaration of dividend. He also explained that immediately after taking over as Chief Executive of the Company, he took all possible measures to arrange payment of dividend and in this connection he opened a bank

account on 29-4-1997 with Allied Bank of Pakistan Limited and transferred an amount of Rs. 1,045,000 in that account. He also submitted a photocopy of the bank statement of this bank account claiming that major portion of dividend amount has been paid so far. Regarding rest of the amount he pleaded that there was a dispute with M/s. C & K Management (Pvt.) Limited who were the Registrar of the company at that time and were supposed to assist the company in distribution of dividend, he explained that the said company did not provide him the complete record with regard to the members of the company entitled for dividend, He pleaded that the default took place for the first time due to the conduct of the ex-chief executive of the company Mr. Shamim Iqbal and secondly due to non-cooperation of M/s. C&K Management(Pvt.) Ltd. and therefore, he should not be held responsible for this default.

2. I have analyzed the information available with the Commission and the statements made by both Ex and present Chief Executive of the company and I am of the opinion that both of the persons are responsible for this default. Prima facie, Mr. Shamim Iqbal, ex-chief executive of the company continued to act as chief executive of the company till 27-2-1998 and his plea that he had resigned on 29-12-1997 is not supported by evidence on record. He in his reply dated 27-1-1999 has explained that he informed SECP about his resignation but no evidence about this is available in record of the Commission. As separate show-cause proceedings have been initiated against him, this order has been confined to the conduct of the present chief executive of the company i.e. Mr. Abdul Rahim Dadabhoy.

3. The present Chief Executive of the company Mr. Abdul

Rahim Dadabhoy had pleaded that he took over as Chief Executive of the company on 27-2-1998, when default had already been made. He further pleaded that he took all necessary steps to pay dividend immediately after his taking over as chief executive of the company but the evidence on record did not support this claim. He himself has stated that for payment of dividend the bank accounts was opened in the Allied Bank of Pakistan on 29.4.1998. This means that Mr. Abdul Rahim Dadabhoy had failed to arrange the payment of dividend within 45 days from the date of assuming the office of the Chief Executive w.e.f 27-2-1998. An appraisal of the statement of Bank accounts provided by Mr. Abdul Rahim Dadabhoy indicates that an amount of Rs. 1,045,000 was deposited in the said account on 29-4-1998 and a further sum of Rs. 5,70,000 was transferred to this account on 30-4-1998. The amounts from the account were almost fully drawn on 30-4-1998 and Mr. Abdul Rahim Dadabhoy had admitted the fact at the time of hearing that payments from this account on account of dividend were mainly made to the sponsors, directors and themselves. Regarding rest of the shareholders he pleaded that non-availability of record from the Registrar i.e. M/s. C&K Management (Pvt.) Limited had hindered the payment of dividend to then

4. In my view the present Chief Executive of the company Mr. Abdul Rahim Dadabhoy has knowingly and willfully committed the default in payment of dividend, a big portion of which has not even yet been paid. The excuse that particulars of shareholder of the company were not available due to non cooperation of Registrar can not be accepted as it was the duty of the chief executive to make all necessary arrangements to ensure payment of dividend in time. This is a fit case for prosecution of chief executive under section 251 of the Companies Ordinance, 1984. A notice in this regard be also served at the residential address of Mr. Shamim Iqbal as notified under section 142 and 205 of the Companies Ordinance,

1984 as he is also a party to this default.

(ii) **DEFAULT IN HOLDING OF ANNUAL GENERAL MEETING**

The Annual General Meeting of the company for the year ended 1998 was due by 31-12-1998 which was not held and Mr. Abdul Rahim Dadabhoy, chief executive of the company has explained that the AGM could not be held due to the circumstances beyond his control. He has explained that he filed an application for extension of time which was turned down by Commission. Even the revision petition was turned down by the Securities & Exchange Commission of Pakistan. He has explained that the default took place due to un-timely resignation of the ex-chief executive and Manager Finance of the company. This plea of the chief executive of the company is not acceptable as he had already taken over, as chief executive of the company w.e.f 27-2-1998 and was duty bound to make arrangement for holding of AGM in time. Infact he got sufficient time to arrange affairs of the company in such a manner that AGM of the company could be held in time, but he failed to do so.

5. Taking into consideration all relevant facts and circumstances of the case, I hold Mr. Abdul Rahim Dadabhoy responsible for delay in holding of AGM. He committed this default willfully and knowingly and hereby impose a fine of Rs. 20,000/- (Rupees twenty thousand only) for the first default on the part of chief executive of the company under section 158(4)(a) of the Companies Ordinance, 1984. A further fine of Rs. 85,000-(Rupees eighty-five thousand only) at the rate of Rs. 500(Rupees five hundred only), for every day after the first during which the default continued is also imposed on him under section 158 (4)(a)ibid., for the period from

1-1-1999 to 19-6-1999 i.e. the date at which the AGM was held (total 170 days).

(iii) **HALF YEARLY ACCOUNTS**

The half yearly accounts of the company for the period ended 31-12-1998 were required to be filed with the Commission on or before 28-2-1999 under section 245 of the Companies Ordinance, 1984 but the company failed to do so. The said accounts were filed on 19-5-1999 with a delay of 80 days. This delay has been admitted by the Chief Executive of the company for which he has failed to give any satisfactory explanation. Therefore, I hold the Chief Executive Mr. Abdul Rahim Dadabhoy responsible for delayed filing of half yearly accounts who committed this default willingly and knowingly and consider the case fit for filing of prosecution proceedings against chief executive under section 230(7)(a) of the Companies Ordinance, 1984.

(iv) **LATE SUBMISSION OF FORM-A**

(Annual list of members) made up to 31.12.1997 of the company was required to be filed under section 156(3) of the Companies Ordinance, 1984 within 45 days from the date of Annual General Meeting of the company. The company failed to do so and filed Form-A with the Commission with a delay of 6 months and 10 days in violation of the said section. The Chief Executive of the company has not denied this fact and admitted that Form-A was filed late due to an inadvertence. Therefore, I hold the company responsible for the default and impose under section 156(5)(a) of the Companies Ordinance, 1984, lump sum fine of Rs. 10,000/- (Rupees ten thousand only) for the first default and further fine at the rate of Rs. 100 (Rupees

one hundred only) for every day after the first during which the default continued is also imposed on the company which calculated to Rs. 19,000/- (Rupees Nineteen thousand only) (i.e. 190 days @ Rs. 100/- per day).

v. **DEALING IN REAL ESTATE**

The company purchased Real Estate worth Rs. 25 million during the period, from 1991 to 1995 in violation of rule 7(2)(vi) of the Leasing Companies (Establishment & Regulation) Rules, 1996 and Rule 13(iii) of the State Bank of Pakistan Prudential Regulation. The Chief Executive of the company pleaded that the property was purchased during the time when there were no such regulations. He stated that the company has subsequently disposed of all the Real Estate acquired by the company. He has stated that the company, thus; has not committed any default under the leasing rules, 1996. The contentions of the Chief Executive with regard to dealing the company in real estate business is accepted and proceedings are dropped since the said business was conducted before the promulgation of Leasing Rules, 1996.

(vi) **DEFAULT UNDER LEASING RULES, 1996.**

Mr. Abdul Rahim Dadabhoy as per Form-29, filed with the Company's Registration Office, Karachi was appointed as Chief Executive/Director of the company on 27-2-1998 but prior approval of the Securities and Exchange Commission of Pakistan under rule 6(2)(b) of the Leasing Companies (Establishment & Regulation) Rules, 1996, was not obtained. The Chief Executive of the company has admitted that approval from the Commission was not obtained. Therefore, I hold him (the chief executive) responsible from the default and impose

lump sum penalty of Rs. 2,000/ and Rs. 27,500/- for continued default (550 days x Rs. 50/- per day) under Rule 14 of the said Leasing Rules, 1996.

6. The amount of the penalty total Rs. 1,63,500/- i.e. (Rs.134,500 by the chief executive and Rs.29,000 by the company) shall be paid by the chief executive of the company in the following head of account, within 30 days of the date of issue of this Order.

"Account No.10464-6,
Central Branch,
Habib Bank Plaza,
I.I.Chundrigar Road,
Karachi.

(M. Zafar - ul - Haq Hijazi)
Commissioner (Enforcement)

Place: Islamabad
Dated: 11-8-1999