

Before Tariq Naseem, Registrar Modaraba

In the matter of Show Cause Notice issued to First Tri-Star Modaraba managed by the A.R.T. Modaraba Management (Private) Limited.

Date of Hearing	April 12, 2022
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Order-Redacted Version

Order dated May 16, 2022 was passed by Registrar Modaraba in the matter of First Tri-Star Modaraba managed by the A.R.T. Modaraba Management (Private) Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show Cause notice dated February 21, 2022.
2. Name of Company	First Tri-Star Modaraba.
3. Name of Individual	The proceedings were initiated against First Tri-Star Modaraba managed by the A.R.T. Modaraba Management (Private) Limited through its Chief Executive Officer.
4. Nature of Offence	Proceedings under section 32 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980.
5. Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <ul style="list-style-type: none">✓ I have assessed, considered and analyzed all the relevant facts of the case, the arguments submitted by the Authorized Representative in the written reply and relevant provisions of the law. As for as contention of the Modaraba Company is concerned that Registrar Modaraba cannot take cognizance of the violations of the Modaraba Regulations under section 32 of Modaraba Ordinance, it may be noted that clause (b) of sub-section of section 32 clearly provide for action where any person refuses or fails to comply with any directions made or given under the Modaraba Ordinance. Since, the Modaraba Company failed to comply with directions of the Registrar Modaraba and appellate forum issued under the Modaraba Ordinance, therefore the Notice has been issued rightly under legal authority.✓ Although the Modaraba Regulations made under sub-section (1) of section 41A of the Modaraba Ordinance, presently do not provide

	<p>for imposition of penalty, sub-section (2) of the said section 41A stipulate penalty amount that regulations made under sub-section (1) may provide. Nonetheless, non-provision of penalty provision does not mean that the violation of provisions of the Modaraba Regulations is not an offence.</p> <ul style="list-style-type: none">✓ It is denied that the Notice gives an impression that the said investments was made in the financial year ended June 30, 2021. It is clearly mentioned in the Notice that this investment was made long ago but the Modaraba Company failed to comply with the direction of the Registrar Modaraba vide order dated September 16, 2008.✓ I would like to clarify that the Authorized Representative stance relating to the appellate forum’s order dated August 7, 2009 is not correct. He only quoted paragraph 1 (iv) (a) of the order, whereas in para 7 (i) of appellate forum’s order dated august 7, 2009, it is provided that: <i>“After having heard the arguments of both the Attorney and the Registrar, I am persuaded to give due credence to the fact that the investment made by the Modaraba Company were prior to the introduction of the PRs. Therefore, the Registrar had rightly conceded to the argument of the Attorney and did not impose a fine. In addition, the Attorney has requested this forum to consider the fact that to comply with the direction of the Registrar, to withdraw its investment at such a stage when the country is going through a stressful financial situation, it would be detrimental to the certificate holders of the Modaraba. In view of this request, I am of the opinion that the foremost responsibility of the Commission is to protect the rights and interests of the certificate holders of the Modaraba. However, at the same time it is also the duty of this office to ensure compliance of the relevant laws. Accordingly, keeping the interests of the certificate holders of the Modaraba primary and to ensure compliance to the Law, <u>the Modaraba Company is hereby directed to submit a time bound plan to the office of the Registrar for withdrawing the subject matter investments in compliance to the PRs.</u>”</i> <ul style="list-style-type: none">✓ It is clear that both the Registrar Modaraba and the appellate forum directed the Modaraba Company to ensure that the investments
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	<p>were brought in compliance to the provisions of the regulations. Further, the appellate forum also directed to submit the time bound plan to the Registrar Modaraba. However, the aforesaid directions have not been complied with and the Modaraba Company has neither ensured compliance with the stated provisions of the regulations no submitted the required action plan to the office of the Registrar.</p> <ul style="list-style-type: none">✓ The argument of the Authorized Representative that the investment was made prior to the promulgation the Prudential Regulations was already accepted in the order dated September 16, 2008 and now it is closed transaction is not true. The reason to include this matter in the Notice is that the Modaraba Company has still not complied the direction of the Registrar Modaraba and the appellate forum. Further, the Modaraba Company had never applied to this office for relaxation from the provisions of Modaraba Regulations, under regulation 35, if it feels that it was difficult to comply with any of the provisions of the Modaraba Regulations.✓ Further, the Modaraba Company's stance that TSEL has not yet become operational and therefore it is not possible to take exit and that in the instance case that Modaraba Regulations does not provide any timeframe to reduce the investment to the limits specified in the said Regulations is not accepted. The Modaraba Company was obliged to comply with provisions of the Modaraba Regulations in light of directions of the Registrar Modaraba and appellate forum or otherwise applied for the relaxation. In absence of both, I am of the considered view that failure to comply with directions of the Registrar Modaraba and appellate forum was willful and therefore hereby impose a penalty of an amount of Rs.50,000/- on the Modaraba Company under section 32 of the Modaraba Ordinance.✓ As regard advance of Rs.31.4 million to Habib Jamal & Co., upon reviewing the office record, it is revealed that necessary disclosure with regard to related party transaction in terms of section 208 of the Companies Act, 2017 has been made in Note 25 of the Financial Statements for the year ended on 30.6.2021. Further, the stance of the Modaraba Company with regard to section 17 (2) of the Modaraba Ordinance and regulation 9(viii) of the Modaraba Regulations is also accepted. The proceedings for alleged violation of section 17 (2) of the Modaraba Ordinance, rule 31 of the
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	<p>Modaraba Rules and regulation 9(viii) of the Modaraba Regulations are hereby dropped.</p> <ul style="list-style-type: none"> ✓ The arguments submitted with respect to rule 9 and 10 of the Modaraba Rules, considering the inability of the external auditor to determine arms' length price of the shares of TSEL and disclosure made in the financial statements, clause B5.2.3 of IFRS-9 and justification provide by the Modaraba Company to measure the investment at cost instead of fair value, the proceedings under rule 9 and 10 of the Modaraba Rules are hereby dropped. ✓ Furthermore, in view of the foregoing, I hereby direct the Modaraba Company, in exercise of powers under section 18A of the Modaraba Ordinance, to submit time bound plan for withdrawing the access investments in TSEL in compliance of the Modaraba Regulations by June 30, 2022. In case of continuing default after that date, the Modaraba Company shall pay a further sum calculated at a rate of Rs.1,000/- for every day during which failure continues. ✓ Noting in this order may be deemed to prejudice operation of any other provision of the Modaraba Ordinance providing for the prosecution or imposition of further penalties on the CEO, Directors of the Modaraba Company in respect of any default, omission, violation of the Modaraba Ordinance, Modaraba Rules and Modaraba Regulations by them. ✓ Penalty Order dated May 16, 2022 was passed by Registrar Modaraba.
6. Penalty Imposed	A Penalty of Rs. 50,000/- (Rupees fifty thousand) was imposed on the Modaraba Company.
7. Current Status of the Order	The penalty has been deposited by the Modaraba Company.

Redacted version issued for placement on the website of the Commission.