



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Before Tariq Naseem, Registrar Modaraba

In the matter of

Unicap Modaraba, managed by Map Out Modaraba Company (Pvt.) Limited

Number and Date of Notice:

SC/M/MS/Unicap/46/2021/103 dated October 5, 2021

Date of Hearings:

October 20, 2021 (The Modaraba vide email dated October 18, 2021 requested extension in time to submit written reply to the Notice and also requested to adjourn the hearing to November 1, 2021)

November 2, 2021 (The Modaraba vide email dated November 1, 2021 requested to adjourn the hearing for two or three days.)

November 5, 2021 (The Modaraba approached the Hon'ble Lahore High Court, Lahore for time to submit supplementary reply)

December 17, 2021 (In compliance of the Hon'ble Lahore High Court, Lahore Order, the hearing fixed for December 17, 2021 was adjourned to December 21, 2021 on Modaraba's request.)

December 21, 2021 (Hearing adjourned as Modaraba's representative appeared but without any valid power of attorney)

December 29, 2021 (The Modaraba again vide email dated December 27, 2021 requested to adjourn the hearing due to conducting the half yearly account of the Modaraba till December 31, 2021.)

January 4, 2022 Hearing held in the matter.

Present for Respondent:

1. Mr. Mumtaz H. Chaudhry, Senior Consultant
2. Mirza Abdul Maalik Baig, Advocate High Court

Date of Order

March 28, 2022

ORDER

Under Section 23 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance,
1980



12.



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 1 -

This Order shall dispose of the proceedings initiated against the Chief Executive Officer (CEO), Directors, Company Secretary and CFO of the Unicap Modaraba (the "Modaraba") managed by the Map Out Management Company (Pvt.) Limited (the "Modaraba Company") through show cause notice dated October 5, 2021 (the "Notice") issued under Section 23 of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (the "Modaraba Ordinance").

2. In terms of the Notice, the audited financial statements of the Modaraba showed that the accumulated losses of the Modaraba (with and without considering statutory reserves) as of June 30, 2016 to June 30, 2020 compared with total amount subscribed by the certificate holders are as follows:

Particulars	A	B	A/B	C	D	C/D
	Acc. Loss Without Considering Statutory Reserves	Paid Up Capital	%	Acc. Loss Considering Statutory Reserves	Paid Up Capital	%
	Rs. In million			Rs. In million		
June 30, 2020	165.00	236.4	69.80%	156.26	236.4	66.10%
June 30, 2019	161.73	236.4	68.41%	152.99	236.4	64.40%
June 30, 2018	161.43	236.4	68.29%	152.69	236.4	64.59%
June 30, 2017	156.38	236.4	66.15%	147.64	236.4	62.45%
June 30, 2016	152.20	236.4	64.38%	143.46	236.4	60.68%

It is evident from the above table that as of June 30, 2016 to June 30, 2020, the accumulated losses (with and without considering statutory reserves) of the Modaraba are above fifty percent (50%) of the total amount subscribed by the holders of Modaraba Certificates in all classes.

3. Further, the Modaraba has persistently failed to demonstrate performance and has not been able to generate revenue to meet operating cost as is evident from below mentioned accumulated losses. The situation of the Modaraba will become worse if "Paid Up Capital after Discount" is included in calculation instead of calculation in "Paid Up Capital". Details are given as under:





**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 2 -

Particulars	A	B	A/B	C	D	C/D
	Acc. Loss Without Considering Statutory Reserves	Paid Up Capital After Discount	%	Acc. Loss Considering Statutory Reserves	Paid Up Capital After Discount	%
	Rs. In million			Rs. In million		
June 30, 2020	165.00	186.4	88.52%	156.26	186.4	83.83%
June 30, 2019	161.73	186.4	86.77%	152.99	186.4	82.08%
June 30, 2018	161.43	186.4	86.60%	152.69	186.4	81.91%
June 30, 2017	156.38	186.4	83.89%	147.64	186.4	79.20%
June 30, 2016	152.20	186.4	81.65%	143.46	186.4	76.96%

4. Furthermore, the auditors of the Modaraba (M/s. Ilyas Saeed & Company, Chartered Accountants), had added emphasis in their audit reports to the certificate holders for the years 2018 to 2020 on the Modaraba's ability to continue as a going concern and stated that:

"the Modaraba has suffered accumulated losses amounting to Rs.165.008 million (2019: Rs.161.737 million and 2018: Rs.161.431 million) and have negative operating cash flows of Rs.2.961 million (2019: Rs.2.967 million and 2018: Rs.6.930 million). Furthermore, the Modaraba has not carried out business activities to its' full potential during the years 2018 to 2020."

5. Consequently, the Notice dated October 5, 2021 under Section 23 of the Modaraba Ordinance was served on the Modaraba through its CEO, Directors, Company Secretary and CFO as to why proceedings for winding up of the Modaraba may not be initiated in terms of section 23(1)(ii)(b) of the Modaraba Ordinance. The CEO, Directors, Company Secretary and CFO of the Modaraba Company were required to submit written response(s) to the Notice within fourteen days. They were also required to appear before the Registrar Modaraba on October 20, 2021 for a personal hearing in the matter.

6. The Modaraba vide email dated October 18, 2021 requested extension in time to submit written reply to the Notice and also requested to adjourn the hearing fixed for October 20, 2021 to November 1, 2021. The request of the Modaraba was considered and allowed the Modaraba to submit written reply by November 1, 2021 and appear for hearing on November 2, 2021. The Modaraba vide email dated



B



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 3 -

November 1, 2021 expressed its unavailability to attend the hearing fixed for November 2, 2021 and requested to adjourn the same for two or three days. Accordingly, the hearing rescheduled from November 2, 2021 to November 5, 2021. On November 5, 2021, contrary to attend hearing that was rescheduled on the request of the Modaraba, it was informed by Modaraba that the Hon'ble Lahore High Court, Lahore has granted three weeks' time to submit supplementary reply from November 4, 2021 to its earlier response filed on November 01, 2021.

7. By means of judgment dated November 4, 2021, the Hon'ble Lahore High Court at Lahore was pleased to hold as follows:

"3. In view of above, this petition is disposed of with direction that petitioner may supplement its already filed response to the impugned show-cause notice, raising all its legal and factual objections within a period of three weeks from today and if such supplement response is filed, the respondent No. 4 will consider all said contentions of the petitioner with open and independent mind and decide the same through well reasoned and speaking order after giving hearing to all concerned strictly in accordance with rules, policy and law applicable as well as the previous practice in such like matters. However, the petitioner will be at liberty to challenge the appointment of respondent No. 4 through a separate proceeding before appropriate forum, if need be. It is needless to observe that until the matter is decided by respondent No. 4, no adverse action shall be taken against the petitioner in pursuance to impugned show cause notice."

8. In compliance of the aforesaid Order of the Hon'ble Lahore High Court, Lahore, an opportunity of hearing in the subject matter was provided vide letter dated December 9, 2021 and a hearing was fixed for December 17, 2021. The same was adjourned to December 21, 2021 on Modaraba's request as their authorized representative was not available on December 17, 2021. On December 21, 2021, Mr. Mumtaz Hussain Chaudry appeared before the undersigned but due to non-submission of power of attorney, arguments could not be put forth in the matter. Another opportunity of personal hearing was provided to the Modaraba on December 29, 2021. The Modaraba again vide email dated December 27, 2021 requested to adjourn the hearing due to conducting the half yearly account of the Modaraba till December 31, 2021. Thereafter, a final hearing was fixed for January 4, 2022 and Modaraba was informed that no further hearing opportunity will be granted.

9. Hearing in the matter was held on January 4, 2022 on Zoom. Mr. Mumtaz Hussain Chaudry, Senior Consultant and Mirza Abdul Maalik Baig, Advocate High Court appeared on behalf of CEO, Directors, Company Secretary and CFO of the Modaraba. In the hearing they reiterated the same arguments as were already submitted by the Modaraba through letters dated November 1, 2021 and November 24, 2021.





**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 4 -

10. The written responses of the Modaraba vide letters dated November 1, 2021, November 24, 2021 and the arguments made by its representatives during the hearing are summarized as under:

- I. the Notice is pre-mature and mis-calibrated, as it squarely hinges upon a self-assuming determination by the office of the Registrar Modaraba. Before issuance of the Notice, an opportunity of hearing to Modaraba Company have been afforded to put forth its stance so as to counter the assumptions embraced. However, it has affirmatively been declared that the Modaraba has sustained losses.
- II. the office of the Registrar Modaraba, in terms of its Notice dated September 23, 2021, declared that the Auditors of the Modaraba were not approved, and hence did not constitute as valid auditors thereof. The Registrar Modaraba has derived solace from the reports of the same Auditors, whilst dispensing with the underlying Notice. In terms of settled law, it is submitted that the executive is not permitted to conveniently elect what fact supports its stance, notwithstanding that it has earlier denied the same. This cherry-picking is unconstitutional, unconscionable, unlawful, illegal, and unreasonable, and amounts to harassment wheeled towards the Modaraba and the Modaraba Company.
- III. the Notice pejoratively derides the inalienable and fundamental rights of the Modaraba, particularly those entrenched in terms of Articles 4, 8, 10-A, 18, 23, 24 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973, in that the Modaraba has outrageously been deprived of due process, and has not been treated in accordance with law. The Notice also blatantly scorns the proprietary rights and interests of the Modaraba, in view of the fact that it is and was, at all material times, demonstrably marred with illegality and hinders the constitutional right of the Modaraba to adopt conduct of trade and business – which, in a circuitous manner, ceaselessly affected the regulation of the Modaraba to its utter detriment. Most notably, the Notice squarely denudes the Modaraba from both a reasonable opportunity of hearing and a reasonable opportunity to defend. Needless to state, for observing due process of law, as an irreducible minimum of fairness, a reasonable opportunity to defend must be afforded to the person whose rights ought to be affected [kindly see *Muhammad Nadeem Arif & Others v. Inspector General of Police, Punjab & Others* (2011 SCMR 408); *Euro Duty Free Shop (Pvt.) Limited v. Federation of Pakistan* (2015 PTD 790)]. It may kindly be noted that, much interestingly, the office of the Registrar Modaraba unilaterally and arbitrarily – *of own whim and caprice* – declared that the accumulated losses of the Modaraba are above fifty percent [50%] of the total amount subscribed by the holders of Modaraba Certificates, with the threatened initiation of winding-up proceedings, thereby exposing, and subjecting, not only the Modaraba to irreparable loss and unquantifiable legal injury in terms of the reputational hazards, but also adversely affecting its commercial operations and concerns. It may kindly be noted that no prescient notice or warning of any such adverse declaration or affirmation was ever served upon the Modaraba, and the Modaraba is and was, at all material times, willfully and maliciously being kept in darkness. Put simply, the Notice has disenfranchised the Modaraba from an adequate opportunity to defend





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 5 -

and a fair trial, and virtually stranded the latter at the absolute whim and mercy of the Registrar Modaraba. In the absence of due process, the Notice is and was, at all material times, passed in the irregular exercise of jurisdiction, and utter disregard of the constitutional guarantees and norms afforded to the Modaraba, and accordingly, warrants to be recalled.

- IV. it is imperative to highlight that the Notice is denuded of its validity and legality on account of the fact that it does not disclose any reason whatsoever, nor can one be inferred, in respect of the draconian declaration, and the directions passed by the Registrar Modaraba. It may kindly be noted that a mere affirmation to the effect that "*it is evident from the above table...*" willfully ridicules and negates the mandatory decree of the law. The Notice is corrupt, without being charming, in that it overwhelmingly fails to accord with judicially recognised principles and settled norms of fair and full and frank disclosure, and due process of law, which, it is submitted, are constitutionally engraved. Further, in terms of section 24-A of the General Clauses Act, 1897, it is and was, at all material times, incumbent upon the Registrar Modaraba to act reasonably, fairly, and justly, and give full reasons for issuing the unlawful declaration couched in the Notice. In other words, the Registrar Modaraba was, at all material times, constitutionally obligated to afford or disclose the ratiocination behind the unilateral declaration enveloped in the Notice. Notwithstanding, the Registrar Modaraba has acted without lawful authority by taking it upon herself to radically discount settled law, and unlawfully wheel an outrageous and a preposterous unilateral declaration, without even taking into account its commercial aftermath and financial repercussions, and have made it convenient for herself by not even affording any reason for the act. Accordingly, the Notice, devoid of any reasoning or ratiocination whatsoever, and purely a prejudicial and unilateral act, warrants revisiting, and recalling forthwith.
- V. the unlawful declaration harvested in the Notice, even if taken at its highest – *the plums are taken and the duff is left behind* – yet utterly discounts the idiosyncrasies inherent to the settled canon of approving and reprobing. By imposing an absolute bar on raising public equity, and preventing the injection of private equity into the Modaraba by the Management Company, the Registrar Modaraba has in fact orchestrated and constructed detrimental circumstances for the Modaraba. Interestingly, the Registrar Modaraba has hitherto altogether failed to render or put forth any set formulae, mathematical calculation, or ratiocination on the basis whereof the already accumulated losses of the Modaraba could have been done-away with, particularly in wake of the fact that the injection of private equity was obstructed. As a matter of record, by means of letter [bearing NO. SCD-SED(OSW-II)/Unicap/2019/097] dated 20.02.2019, on the behest of the Registrar Modaraba, an unlawful attempt of harassment, and threatened invocation of winding-up order was engendered, which was adequately countered by the Modaraba in terms of its riposte [bearing No. UCAPM/SECP/SCD-SED/005/2019] dated 28.02.2019. To which, the Registrar Modaraba did not further proceed therewith. By implication, the office of the Registrar Modaraba accepted the response of the Modaraba, and accordingly, they cannot be permitted to re-initiate the same *cause* – having attained finality. In wake of the forgoing, it is contended that





**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

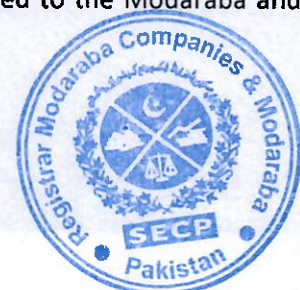
Continuation Sheet - 6 -

the Notice, fundamentally at glitch with the underlying prescribed terms and conditions, as also the judicially approved thresholds, warrants intervention.

- VI. it is apposite to take note of the fact that the Securities & Exchange Commission of Pakistan [“SECP”], whilst dispensing with the Notification dated 30.10.2018, outrageously failed to appreciate the scope, remit, and compass of its authority, competence, and mandated province, and, in equal temper, unlawfully transgressed beyond the powers and jurisdiction statutorily conferred upon it. On a point of terminology, it may kindly be noted that in terms of section 3 of the Modaraba Ordinance, the power to appoint the Registrar Modaraba fell within the exclusive domain of the Federal Government, with the necessary corollary that such power is non-delegable, and any sub-delegation is hit by the doctrine of *delegatus non potest delegare* (no delegated powers can be further delegated). By implication – and *a fortiori*, in the absence of an express conferment of authority by the legislature to a *delegatee* to further sub-delegate its powers, the legislative *delegatee* could not, by any manifestation whatsoever, further delegate its power or duty to an executive *sub-delegatee*, and equally, the *sub-delegatee* could not step into the shoes of the legislative *delegatee* (kindly see *Muhammad Ashraf Tiwana & Others v. Pakistan & Others* [2013 SCMR 1159]; *Mustafa Impex, Karachi & Others v. The Government of Pakistan & Others* [PLD 2016 Supreme Court 808]; *Fareed Ahmed A. Dayo v. Chief Minister Sindh & Others* [PLD 2017 Sindh 214]; *Sahni Silk Mills (Pvt.) Limited & Another v. Employees State Insurance Corporation* [(1994) 5 SCC 36]; *H. Lavender & Son Limited v. Minister of Housing and Local Government* [(1970) 3 All ER 871]; and Halsbury’s Laws of England, 4th Edn. Vol. 1). However, the SECP, in a cavalier disregard of settled law, conveniently and surreptitiously elected to usurp authority of the Federal Government, and illegally and unlawfully proceeded to harvest and engender the appointment of the Registrar Modaraba. Such transgressions of authority and competence have been frowned upon by the courts of law, and have been accordingly invalidated. Even otherwise, it is submitted that due process of law and the judicially prescribed parameters in relation to the appointment of public posts were not adopted (kindly see *Muhammad Ashraf Tiwana & Others v. Pakistan & Others* [2013 SCMR 1159]; and *Fareed Ahmed A. Dayo v. Chief Minister Sindh & Others* [PLD 2017 Sindh 214]). Accordingly, in wake of the fact that the office of the Registrar Modaraba was not validly constituted, any notices issued, or steps taken, thereby are unconstitutional, and without lawful authority.

11. The arguments advanced by the Modaraba vide letters dated November 1, 2021 and November 24, 2021 and arguments put forth at the time of hearing have been analyzed and are discussed hereunder.

- I. as regard the objections of the Modaraba on validity of the Notice and opportunity of being heard, it has been noted that the Notice has been served in accordance with the provision of sub-section 3 of section 23 of the Modaraba Ordinance and multiple opportunities of personal hearing and submission of written and verbal responses have been afforded to the Modaraba and persons



R



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 7 -

named in the notice. As such, the said opportunities have been availed by the Modaraba and the persons named in the Notice.

- II. as regard to the financial figures taken from the audited financial statements of the Modaraba and observation of the Registrar Modaraba in the Notice, it has been noted that the Modaraba is obliged under section 14 of the Modaraba Ordinance read with rule 10 of the Modaraba Companies and Modaraba Rules, 1981 (the "Modaraba Rules") to prepare the books of accounts and get them audited from an auditor appointed with prior approval of the Modaraba under section 15 of the Modaraba Ordinance read with rule 19 of the Modaraba Rules. The authenticity of the referred figures has neither denied by the Modaraba or its auditor nor objected by the Registrar Modaraba so far.
- III. with regard to Modaraba's stance regarding proceedings initiated against the Modaraba through show cause notice dated September 23, 2021, the same has already been concluded vide Order dated November 3, 2021. Registrar Modaraba never questioned validity of the audited accounts for the years 2018 to 2020 rather the aforesaid proceedings were only initiated for non-compliance of Section 15 of the Modaraba Ordinance read with rule 19 of the Modaraba Rules. The Modaraba Company in contraventions of the aforesaid provisions had made the appointment of auditors of the Modaraba for the years 2018 to 2020. For regularization of the appointment of auditors of the Modaraba for the year ended June 30, 2018 to June 30, 2020, the Modaraba had applied for post-facto approval of the Registrar Modaraba on October 6, 2021 and the Registrar Modaraba in terms of Section 15 of the Modaraba Ordinance read with Rule 19 of the Modaraba Rules, has accorded post-facto approvals for appointment of M/s Ilyas Saeed & Co., Chartered Accountants as auditor of the Modaraba for the year ended June 30, 2018 to June 30, 2020 on November 4, 2021.
- IV. it is undeniable fact that there is continuously increase in accumulated losses of the Modaraba from last many years and no fruitful efforts have been made by the Modaraba Company to revive the Modaraba and to even generate revenues to meet operating expense /cost. The Modaraba Company, through its proposed business plan, committed for capital and resource mobilization for reactivation of the business operations of the Modaraba, as summarized below:

Period (from the date of takeover)	Equity Investment	Musharakah Financing	Total
Year 1			
Within 2 months (up to Feb12, 2015)	50 million	50 million	100 million
By the end of 2 nd half (up to Jun 12, 2015)	50 million	100 million	150 million
Year 2			





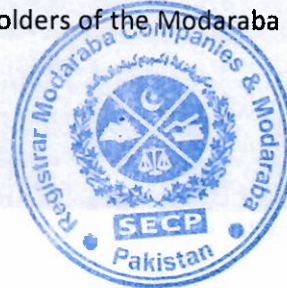
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)

Continuation Sheet - 8 -

By the end of 1 st half (up to Jan 12, 2016)	50 million	50 million	100 million
By the end of 2 nd half (up to Jun 12, 2016)	50 million	50 million	100 million
Total	200 million	250 million	450 million

Accordingly, in light of the said business plan and specific actions aimed at the revival and activation of the Modaraba through fresh investment in the equity and Musharakah finance, as submitted by the Modaraba Company, the management of the Modaraba was transferred to the Modaraba Company vide Order dated November 27, 2014.

- V. However, the Modaraba Company failed to inject first tranche of Rs. 100 million comprising of Rs.50 million as equity investment and Rs.50 million as Musharakah finance up to February 12, 2015 in accordance with the Order dated November 27, 2014. Subsequently, the Modaraba Company vide letters dated March 13, 18, and 19 of 2015 sought relaxation from injection of equity investment and Musharakah financing in the Modaraba up to June 30, 2015 which was acceded to by the Registrar vide letter dated April 14, 2015. Despite the relaxation granted, the Modaraba Company once again failed to inject the requisite funds within the extended time period i.e. up to June 30, 2015. Instead, the Modaraba Company vide letter dated July 7, 2015 proposed to transfer an immoveable property to the Modaraba valuing Rs.65 million and issuance of Modaraba Certificates (other than cash) against this property, treating it as first tranche of investment for the issuance of modaraba certificates of the Modaraba to the Modaraba Company. As, the said proposal was in negation of the commitment made by the Modaraba Company for injection of equity in cash since it could not bring any liquidity into the Modaraba for restoration of its business and investment operations and therefore, declined. The Modaraba Company has injected Rs.50 million only by way of further issue of Modaraba Certificates without right at discount of Rs.5 i.e. 50% of nominal value, in light of decision of board of directors in their meeting held on December 5, 2015. However, the Modaraba Company has failed to honor its commitments to the tune of Rs.400 million and therefore the Modaraba's operations has not been reactivated till date.
- VI. in compliance of the Order dated November 4, 2021 of the Hon'ble Lahore High Court, Lahore, further opportunity of hearing was provided vide letter dated December 9, 2021 and a hearing was fixed for December 17, 2021. Therefore, I am of the considered view that the direction of the Hon'ble Lahore High Court regarding providing the opportunity of the Hearing to the petitioner have been complied with.
- VII. as provided under section 23 (1)(ii)(b) of the Modaraba Ordinance, a modaraba shall be wound up by the Tribunal on an application made by the Registrar if accumulated losses of the Modaraba exceed fifty percent of the total amount subscribed by the holders of the Modaraba certificates.





**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 9 -

However, considering interest of the Modaraba certificate holders and to afford the Modaraba Company to achieve its plans to revive the Modaraba, no proceedings for winding up of the Modaraba were earlier initiated. As mentioned above, the Modaraba Company has been provided ample opportunities to inject the required capital for revival and activation of the Modaraba right from the time it took over the management and control of the Modaraba i.e. December 12, 2014. The Modaraba Company was failed to inject requisite funds even after given relaxation of time i.e. up to June 30, 2015. Consequently, the Registrar Modaraba, vide Order dated April 19, 2016 removed the Modaraba Company from the management of the Modaraba and appointed an administrator to manage its affairs in place of the Modaraba Company. Afterwards, the Commission provided a last opportunity to Modaraba Company to manage and revive the Modaraba and the Registrar Modaraba, vide another Order dated April 19, 2017 withdrew its earlier Order dated April 19, 2016 and re-transferred the management rights of the Modaraba to the Modaraba Company, subject to terms and conditions mentioned therein which were duly accepted and signed by the Modaraba Company. Again, nothing concrete has been achieved for revival of the Modaraba. Further, the Modaraba's stance connecting the Notice with earlier correspondence of February 2019 is misplaced as no show cause notice was issued rather communication was issued in normal course of business for monitoring the performance of Modaraba.

VIII. the contentions of the Modaraba with regard to the power to appoint the Registrar Modaraba is incorrect. Under the Modaraba Ordinance, the power to appoint Registrar Modaraba under sections 3 of the Modaraba Ordinance rest with the Federal Government. However, vide S.R.O 698 (I)/86 dated July 2, 1986, in exercise of powers conferred by sub-section (2) of section 12 of the Companies Ordinance, 1984 and in supersession of its earlier notification S.R.O 535 (I)/85 dated September 30, 1985 subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, the powers of Federal Government were delegated to the Corporate Law Authority (the "Authority") under the following laws, namely;

- (i) The Companies Ordinance, 1984 (XLVII of 1984);
- (ii) The Securities and Exchange Ordinance, 1969 (XVII of 1969);
- (iii) The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970); and
- (iv) The Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980).

It is pertinent to mention here that the Authority was formed under section 11 of the Companies Ordinance, 1984 (reproduced for reference),

"11. Constitution of the Corporate Law Authority.- (1) The Federal Government shall, by notification in the official Gazette, constitute a Corporate Law Authority...."



2



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 10 -

However, after the advent of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"), the aforesaid section was omitted by virtue of sub-section (a) of section 43 (reproduced below).

"43. Dissolution of the Authority.- The Authority is hereby dissolved and at all times thereafter

(a) section 11 and sub-section (3) to (7) (inclusive) of section 12 of the Ordinance shall stand repealed and except as hereinafter provided, all references to the Authority appearing in the Ordinance and any other law for the time being in force shall be deemed to mean and refer to the Commission;

Whereas, by virtue of sub-section (c) of section 43, after dissolution of the Authority all the powers delegated to it were to be exercised by the Securities and Exchange Commission of Pakistan (the "Commission"),

"(c) save as otherwise provided in clause (b), all powers exercisable by the Federal Government under any provisions of the Ordinance or any other law for the time being in force, which immediately before the appointed day had been delegated to the Authority, shall be exercised by the Commission;"

Furthermore, clause "o" of sub-section 4 of section 20 of the Act provides that, -

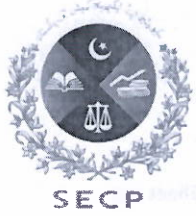
"(4) The Commission shall be responsible for the performance of the following functions:

(o) performing such functions and exercising such powers of Federal Government delegated to the Commission, (other than the power to make any rules or regulations) under the provisions of the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980) and under any other law for the time being in force or any other law which may be made after commencement of this Act, under which any function or power has been conferred on the Commission"

- IX. with regard the argument that the already accumulated losses of the Modaraba could have been done-away with, particularly in wake of the fact that the injection of private equity was obstructed due to appointment of Administrator. I have reviewed the information available on record and observed that the management and control of the Modaraba was transferred to the Modaraba Company by the Registrar Modaraba on November 27, 2014, subject to compliance with the major condition that the Modaraba Company shall arrange equity investment of Rs.200 million and Musharakah financing of Rs.250 million within two years. But the Modaraba Company failed to comply with the aforesaid major condition as a result of which the Registrar Modaraba, vide order dated April 19, 2016 removed the Modaraba Company from the management of the Modaraba and appointed an administrator to manage its affairs in place of the Modaraba Company. The Modaraba Company challenged the order in a writ petition (14237/2016) before



R



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**

Continuation Sheet - 11 -

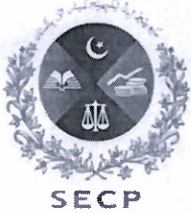
the Hon'ble Lahore High Court, Lahore. In the meantime, the main sponsor of the Modaraba Company (Syed Ammar Hassan) approached the Commission and offered to comply with the requirements of law. The sponsors also submitted a business plan. As a result, an out of court settlement was approved by the Hon'ble Lahore High Court, Lahore in the writ petition No. 14237/2016 vide order dated 13.4.2017 and with the approval of the Commission. The Commission provided a last opportunity to Modaraba Company to manage and revive the Modaraba and the Registrar Modaraba, vide order dated April 19, 2017 withdrew Order dated April 19, 2016 and re-transfer the management rights of the Modaraba to the Modaraba Company, subject to terms and conditions mentioned therein which were duly accepted and signed by the Modaraba Company. The Modaraba Company, specifically, as per condition No.1 annexed with the said order, was required to inject first tranche of funds of Rs.50 million in the equity of the Modaraba within 6 months of the date of next specific approval for issuance of modaraba certificates other than Right at a discount of Rs.5/-. It was categorically mentioned that application for issuance of these modaraba certificates shall be submitted within 7 days of the regularization of authorized modaraba fund of the Modaraba. However, the Modaraba Company failed to inject funds in the Modaraba in accordance with the undertaking provided by the sponsors as mentioned in the order dated April 19, 2017. In this connection, a number of reminders were issued to the Modaraba Company, however, the Modaraba Company has not shown its ability to revive the Modaraba through injection of funds and proper management. In view of the above, I am of the view that the objection of the Modaraba is not factually correct.

12. Before proceeding to decide the case, I deem it necessary to advert to the following relevant provisions of Section 23 of the Modaraba Ordinance, which states as under:

23. Circumstances in which modaraba may be wound up by the Tribunal.

- (1) A modaraba shall be wound up by the Tribunal on an application made by the Registrar if-*
- (i) in the case of a modaraba for a fixed period on the expiry of that period or, in the case of a modaraba for a specific purpose on the accomplishment of its purpose, the declaration referred to in section 22 has not been filed with the Registrar within the period specified in that section;*
 - (ii) in the case of any modaraba, the Registrar has declared that:-*
 - (a) the modaraba is unable to discharge its liabilities;*
 - (b) the accumulated losses of the modaraba exceed fifty per cent of the total amount subscribed by the holders of the Modaraba Certificates; or*
 - (c) the business of the modaraba is being or has been, conducted for a fraudulent purpose or with intent to defraud the holders of the Modaraba Certificates, or its creditors or any other person.*





**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT
(MODARABA WING)**


Continuation Sheet - 12 -

13. I have analyzed the facts of the case, relevant provisions of the law and representations made by the respondent Modaraba in its response to the Notice. The accumulated losses of the Modaraba have wiped out the above 50% paid up fund of the Modaraba and there is no evidence of any success of plan submitted by the Modaraba Company for revival of the Modaraba. Considering the financial performance of the Modaraba, unsuccessful efforts made by the Modaraba Company for revival of the Modaraba, the overall economic conditions in the country and the withdrawn tax exemptions for the Modarabas, there is nothing tangible available that indicate possibility of revival of the Modaraba and resultantly any return accruing to the modaraba certificate holders. I am, therefore, of the considered view that in order to safeguard the interest of the certificate holders and to stop further accumulation of losses, it is just and equitable to initiate winding up proceedings of the Modaraba through Modaraba Tribunal, in the public interest.

14. Based on the above facts, I, therefore, in exercise of powers conferred under section 23 (I)(ii)(b) of the Modaraba Ordinance hereby declare that as the accumulated losses of the Modaraba have exceeded more than fifty percent of the total amount subscribed by the modaraba certificate holders, it may be wound up in the public interest by filing an application for winding up before the Modaraba Tribunal Lahore.

15. Nothing in this Order may be deemed to prejudice operation of any other provision of the Modaraba Ordinance, providing for the prosecution or imposition of penalties on the CEO or Directors or the Modaraba Company in respect of any default, omission. contravention of the Modaraba Ordinance and Modaraba Rules committed by them.

Issued under my hand and seal this 28th day of March 2022.


Tariq Naseem
Registrar Modaraba

