

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

J.C.M. No.35 of 2009

The Securities & Exchange Commissioner of Pakistan
Versus
Natover Lease Refinance Limited

Date	Order with signature of Judge
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For hearing of CMA 274 of 2018

Date of hearing: 16.08.2022 and 13.09.2022

None for petitioner SECP.

Mr. Zeeshan Abdullah along with Mr. Adnan for legal heirs of applicant/purchaser Asim.

Mr. Habib Ahmed for auction purchaser.

Mr. Younus Memon holds brief for Mr. S. Nouman Zahid for applicant Standard Chartered Bank.

Mr. Darvaish Mandhan for applicant Nadeem H. Sheikh.

Mr. Muhammad Akram Tariq for applicant Ms. Shehnaz Sheikh.

Mr. Ch. Waseem Iqbal, Official Assignee/Liquidator.

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Muhammad Shafi Siddiqui, J.- Securities & Exchange Commission of Pakistan under section 282J(3) of Companies Ordinance, 1984, as was applicable at the relevant time, filed this petition as being regulator of the respondent company called Natover Lease & Refinance Ltd. (henceforth Company 1), for its winding up. Company 1's predecessor was earlier incorporated under Companies Ordinance 1984 in December 1984 under original name as "Natover Motor Lease Limited" to carry out business of leasing, which later transformed into a public limited company on 18.03.1999 and renamed as Natover Lease & Refinance Limited i.e. company 1.

2. The winding up of Company 1 was sought on numerous grounds, substantially for the violation of provisions of Companies Ordinance

1984, as was applicable at the relevant time, which could be summed up as for “misappropriation of public funds”.

3. Notices of petition was ordered on 19.08.2009 and on 10.09.2009; an application being CMA No.918/2009 was filed by the “intervener” Natover International (Private) Limited (NIPL) (henceforth Company 2), which claimed ownership of 40% shares in the company under liquidation i.e. Company 1. Initially by an undertaking, Company 2 undertook to inject investment and to overcome all violations pointed out by inspectors of SECP but later Company 2 resiled. Ultimately on 20.08.2010 M/s M. Yousuf Adil, Saleem & Co. was appointed as Chartered Accountant, which was followed by order dated 21.03.2013 whereby petition was allowed and the Official Assignee was appointed as Official Liquidator to take over the Company 1.

4. References were filed by the Official Liquidator whereby different properties were attached/sold through public auction and a personal property of director/CEO has also been attached in the instant proceedings. Subject matter of this application i.e. CMA No.274/2018 is a property regarding which it is claimed by applicant that no attachment order was passed by this Court whereas the property was attached by the Official Assignee/Official Liquidator by writing letters to the concerned authorities in the year 2017.

5. With these facts, learned counsel for applicant submitted that neither the subject property was an asset of the Company 1 nor was it the property of any of its directors hence could not be a subject matter of instant winding up proceedings. Counsel for applicant has taken me to the history of title lineage.

6. Learned Official Assignee/Official Liquidator however objected to such assertion and submitted that NIPL/ Company 2 owned 40% shares in the Company 1 under liquidation and on 30.08.2004 the property was

conveyed by Ms. Shehnaz Sheikh wife of Nadeem H. Sheikh to NIPL i.e. Company 2 from which deceased Muhammad Asim purchased it vide sale agreement and hence submitted that first transaction of property in favour of Ms. Shehnaz Sheikh was out of funds of investment made by public and second transaction in favour of Company 2 was suspicious as Company 2 was already indebted to Company 1, therefore, all transactions followed by it in a surreptitious manner are doubtful and were made only in order to exclude the property from the effects and proceedings of winding up of Company 1 and/or for recovery of siphoned funds of Company 1 transferred to Company 2.

7. I have heard the learned counsel as well as Official Liquidator and perused material available on record.

8. The facts since incorporation of Natover Motor Lease Limited are necessary to be expressed. M/s Natover Motor Lease Limited i.e. the predecessor of the respondent/Company 1 under liquidation was incorporated as a private limited company under Ordinance 1984 on 20.12.1984 (*prior to purchase of property by Shehnaz Sheikh*) which was later on converted into a public limited company by shares on 18.03.1999 and renamed as Natover Lease & Refinance Limited i.e. Company 1. The regulator i.e. SECP disclosed that the business being conducted under the Memorandum & Articles of Association of both (Company 1 and its predecessor) since December, 1984 was that of leasing. In fact it was identified by inspectors that predecessor of Company was conducting business of public investment since December, 1984. Company 1 is a non-banking finance company and was/is governed by Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 and in pursuance of some serious violations, as noted, inspection was carried out and gross violations were identified. Company 2 had 40%

shareholding in the Company 1 under liquidation whereas the Company 1 under liquidation is not holding any share in Company 2.

9. The violation of certain laws, as stipulated in the inspection report carried out by SECP is summarized as under:-

VIOLATIONS UNDER COMPANIES ORDINANCE, 1984

Section 230

The Company 1 in terms of this provision was to keep the books of accounts accordingly but it failed as following anomalies were found in respect thereto:

- i) Recorded fictitious facilities of Rs.159 Million;*
- ii) Fictitious credit to 'Fiscal Account' of Rs.110 Million to receive outstanding receivables from Company 2, owned by previous CEO Nadeem H. Sheikh;*
- iii) Unrecorded public deposits in the name of Repo Security Deposit Receipts (RSDRs) of Rs.562 Million.*

Section 234

Failed to give true and fair view of state affairs and that of profit and loss account of Company 1 in the following manner:

- i) Balance sheet footing overstated by Rs.428 Million;*
- ii) Equity over stated by Rs.990 Million*
- iii) Liabilities understated by the outstanding amount of RSDR i.e. Rs.562 Million.*

Section 208

Failed to give approval of the majority shareholders before making investment in its associated undertaking i.e. Company 2.

Section 282K, 282J and 492

Knowingly presented false and incorrect accounts.

Section 57, 120 and 498

Raised illegal deposits from general public in the name of Preferred Finance Notes (PFN), Preferred Security Deposit Receipt (PSDR) and Repo Security Deposit Receipts (RSDRs).

Section 88

Company 1 was used by Chief Executive and directors to raise deposits for benefit of Company 2 and its Chief Executive by siphoning the funds.

Section 255 and 260

In-house Auditors made untrue auditors' report by concealing material facts as to the affairs of Company 1 against which criminal complaint was also lodged.

VIOLATION OF NBFC RULES 2003**Rule 7(1)(a)**

Company 1 contravened rule 7(1)(a) of NBFC.

Rule 7(1)(d)

Has certain unrecorded assets and liabilities and failed to prepare its accounts in conformity with the International Accounting Standards and the technical releases of Chartered Accountants of Pakistan.

Rule 7(1)(e)

Failed to disclose in its accounts the facilities to Company 2 which were exceeding 20% of the equity

Rule 7(2)(d)

Advanced money to Company 2 not being its ordinary course of business.

Rule 12(3)(d)

Pledged/encumbered all its investments raised from general public and maintained against Certificates of Investment, instead of investing 15% of the same.

Rule 13(a)(i)

Failed to invest at least 70% of the assets in the business of leasing.

VIOLATION OF PRUDENTIAL REGULATIONS**Regulation 1 of Part II**

Extended facilities of Rs.357 Million to Company 2 against regulatory limit of 20% of the NBFC's equity i.e. Rs.100 Million.

Regulation 7 of Part II

NBFC extended facilities to Company 2, being an association company of Company 1.

Regulation 2

Credit files did not contain relevant documents i.e. CIB report, audited accounts, Borrower's Basic Fact Sheet etc.

Regulation 5 of Part III

Company 1 did not classify its assets and created wayouts contrary to the prescribed regulations.

10. In nutshell the illegalities of the Company 1, its management and directors is summarized to tune of:

- i) Rs.197 Million on account of outstanding receivable from Company 2;*
- ii) 159 Million towards funds transferred to Company 2 through fictitious facilities;*
- iii) Rs.562 Million as personal liability of CEO towards unrecorded depositors and*
- iv) Markup on receivable assets on fictitious assets as Rs.31 Million.*

11. Securities & Exchange Commission of Pakistan, Specialized Division then passed an order and criminal proceedings against CEO were initiated and Nadeem H. Sheikh, in view of SECP's determination was found incapable and absolutely unbecoming to be the Chief Executive of the company and he thus ceased to hold office and Chief Executive Officer in the Company vide order dated 27.03.2009. It was also followed by another order of the same date i.e. 27.03.2009 in relation to another show-cause notice under section 282(f). The two show-cause notices attained finality. The two show-cause notices then followed by another show-cause notice on 13.04.2009 under section 282(j) of the Companies Ordinance, 1984 and order thereon was passed on 19.05.2009 by the authority concerned.

12. Record reflects that company 1 under liquidation was permitted by SECP to raise deposits/funds from public against certificate of investments and was duly licenced to such effect. Although this authorization was by virtue of a letter dated 27.04.2005 but such activities were identified, during inspection, to have been conducted, even before issuance of such certificate.

13. The functions of the Company were taken over by the Commissioner, as delegated by the Commission i.e. Securities & Exchange Commission of Pakistan vide notification dated 18.10.2005. When Company No.2 was indebted to Company No.1, this property was surreptitiously disposed of whereas the amount could have been recovered from the assets of Company No.2 as it was indebted to Company 1, and this property, as shown, being its (Company 2's) asset, could have been subjected to recovery of outstanding of Company 1.

14. It has been attempted by SECP to demonstrate, in the memo of petition that respondent Company 1 under liquidation and its predecessor were engaged in the business of public investments since this property was acquired by Shahnaz Sheikh wife of Nadeem H. Sheikh who was director of Natover Motors Limited and Natover Lease & Refinance Limited, Company 1. It is determination of this fact which may make or break the accusation/charges regarding acquisition of this property by Nadeem H. Sheikh in favour of his wife, Mrs. Shehnaz Sheikh from the funds raised through public investments and also whether the predecessor of applicant was a buyer without notice of all such activities, disputes and facts. These questions cannot and should not be decided summarily.

15. Tale of the story thus started when the property was purchased in the name of Shehnaz Sheikh as ostensible owner and businesses were shown to have been conducted in violation of law and consequently when SECP noticed violation and inspection was conducted by SECP's inspectors and not when winding up order was passed. Therefore date of winding up order may not be ideally relevant to unveil the accusation of the earlier notices/inspector's reports and orders of SECP which saw the daylight much earlier.

16. Pedigree of subject property is that originally it was in the name of one Capt. M. Khalil Jung under A-lease dated 15.04.1961 which was transferred in the name of his daughter Ms. Naheed Khalil Jung by virtue of B-lease executed by DHA. This property was then acquired in the name of Shehnaz Sheikh wife of Nadeem H. Sheikh on 10.10.1985. (*Business of Company 1's predecessor started in December, 1984*). Nadeem Sheikh was the CEO/Director of Company 1. Mrs Shehnaz Sheikh wife of Nadeem Sheikh conveyed this property to Company 2/NIPL through conveyance deed of 30.08.2004. It is shown that at some point (*period not disclosed*), to avail certain finances through a bank, it was mortgaged by Company 2.

17. It is these transactions i.e. procurement of property in the name of Shehnaz and then conveying it to Company 2 followed by a mortgage and then sale which are to be adjudged by this Court within the frame of allegations/accusations and violations identified by inspectors of SECP.

18. Deceased Muhammad Asim purchased this mortgaged property vide sale agreement with Company 2 for a total sale consideration of Rs.31,500,000. It is shown to have been done with consent of Arif Habib Bank Limited but the said Bank could have been an innocent mortgagee, having no knowledge of any suspicious transactions of ostensible ownerships. On 13.08.2009 a tripartite agreement was executed between Company 2 being seller and Muhammad Asim purchaser and Arif Habib Bank Limited mortgagee/confirming party agreeing to such sale. 100% sale proceeds were agreed to be paid to the bank where it was mortgaged and the property was then redeemed in favour of buyer however, no one knows about the actual price agreed and paid to Company's director Nadeem Sheikh privately. Entire amount though shown to have been paid but that could be the official amount disclosed in the agreement, which is required as a minimum threshold for

registration whereas paramount question remains whether NIPL/ Company 2 was only an ostensible face, in order to save the property from effects of SECP's discoveries.

19. This property was also found attached by a Banking Court at Islamabad in some execution proceedings filed by Bank Alfalah Limited which was then claimed to have been settled. This did not involve any litigation and surprisingly settled as per record.

20. Company No.2 owed and indebted to Company No.1 when this property was shown to have been mortgaged with the Bank. Date of mortgage is not ascertainable from the facts before me. Payments to this Bank were however made through pay orders, which may not be of any significance in view of questions to be determined.

21. Veil of incorporation under such circumstances is inevitable to be pierced/lifted. Under the umbrella of a corporate entity, the fraud cannot be allowed to be nourished and grow.

22. Littlewood's case¹ provides assistance that incorporation does not fully cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind. A corporation will be looked upon as a legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime the law will regard the corporation as an association of persons. Similar view was taken in Milwaukee Refrigerator copay case².

23. These intricate questions require trial and forensic auditing of both the companies before these could be answered but for forensic audit and trial our jurisdiction could only be to the extent of Company 1 under liquidation. Thus, I found numerous questions, which needs determination before the property could be cleared and that could

¹ [1969] W.L.R. 1241, 1254 (Littlewoods Mail Order Stores Ltd v. IRC)

² (1905) 142 Fed:247 (United State v. Milwaukee Refrigerator co.)

conclusively be after forensic audit and recording of evidence/cross-examination. The tentative questions of fact and law are as under:-

1. Whether acquisition of property in the name of Shehnaz Sheikh was only as an ostensible owner, if yes what is the source of funding ?
2. Since when Company 1 and its predecessor were working as public investors and availing the benefit of utilizing public funds ?
3. What amount is payable by Company 2 to Company 1, as determined by SECP's inspectors ?
4. Despite Company 2 indebted to Company 1 (inspector's report), on what consideration, ideas and commitments said property was conveyed to Company 2 ?
5. What role did Nadeem H. Sheikh played in the transaction between Shehnaz Nadeem Sheikh and Company 2 ?
6. When the subject property was mortgaged ?
7. Whether it was a ceremonious/cosmetic mortgage to show a lien so that Company 1 through Liquidator may not be able to lay hands on the property for recovery of siphoned money from Company 2 ?
8. Whether Company 2 is in fact a storage pool for the siphoned money of Company 1 under the disguise of 40% shareholding of Company 2 in Company 1, which the inspector unearthed during inspection ?
9. Whether the property worth more and sold to a greater amount than the amount shown in the agreement and balance amount was paid to directors of Company 1 directly ?
10. Whether any relation exists between Asim (purchaser) and any of the director(s) of the Company ?

24. In view of above facts and circumstances following order is passed:

- I) Official Assignee shall immediately take steps and arrange for forensic audit of the Company 1 under liquidation for the determination of questions related to siphoning of funds from Company 1 to Company 2 and more particularly to ascertain as to what amount Company 2 was indebted to Company 1, especially when property was sold to Company 2 and when Company 2 sold the property to a third party;
- II) On receipt of this report parties may record their evidence by filing their affidavit-in-evidence with documents they intend to rely and they shall be subject to cross-examination;
- III) For this exercise of recording evidence of parties, after the forensic audit, a commissioner shall be appointed for recording evidence of parties.

25. Entire exercise may not take more than five months; i.e. two months for forensic audit and three months for recording evidence. The application shall be heard in the light of forensic audit and evidence and is adjourned sine die for the time being. Till above compliance and till such exercise leading to hearing application, status quo be maintained by parties in respect of property in question.

Dated:

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