SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
NON-BANKING FINANCE COMPANIES DEPARTMENT

No. SC/NBFC-1/NLRL/2009/ 272 *Islamabad, May 19, 2009*

IN THE MATTER OF NATOVER LEASE & REFINANCE LIMITED

ORDER

1. This order shall dispose of the proceedings initiated by this office through Show Cause Notice dated 13th April, 2009 (the "SCN") against Natover Lease & Refinance Limited (the "Company") under sub-Section (2) read with sub-Section (3) of Section 282 J of the Companies Ordinance, 1984 (the "Ordinance") for cancellation of licence and subsequent winding up of the Company.

2. The Company is a Non-Banking Finance Company ("NBFC") which has been engaged in the business of leasing pursuant to license issued under the Ordinance read with the Non-Banking Finance Companies (Establishment & Regulation) Rules, 2003 ("NBFC Rules").

3. The facts leading to this Order are as follows:

(i) Securities and Exchange Commission of Pakistan (the "Commission") conducted an on-site inspection of the Company in July 2007 in exercise of its powers under Section 282I of the Ordinance. The inspection report revealed serious financial irregularities, violations of prevailing regulatory framework and misappropriation of public funds amounting to Rs. 949 million committed by the Chief Executive Officer of the Company (the "CEO") with connivance of the Board of Directors (the "Board"), which severely deteriorated the Company's financial position.

(ii) On 15th February 2008, in order to protect the interest of the depositors and other stakeholders, the Commissioner, Specialized Companies Division ("SCD"), while exercising the powers under section 282E and 282F of the Ordinance, issued Show Cause Notices to the CEO and the Board respectively (the "Show Cause Notices") and

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passed concurrent orders removing the CEO and superseding the Board. Simultaneously, the Commission appointed Mr. Nasier A. Shaikh as an Administrator to exercise all the powers and duties of the CEO and Board.

(iii) In March, 2008, the Commission declared the Company as a sick entity and in exercise of its powers under Section 282N of the Ordinance, initiated rehabilitation process of the Company. Under provisions of the said Section, Expression of Interests were invited through advertisement in the widely circulated newspapers in Karachi, Lahore and Islamabad from the prospective buyers. It was decided by the Commission that prospective buyers will be evaluated on the following basis:

i) fit and proper criteria of the SECP as notified under NBFC Regulations;
ii) financial soundness to meet minimum equity requirement; and
iii) professional quality and the track record of the sponsors and the management team.

On the basis of above mentioned criteria, it was decided that prospective buyers will be placed in the following three categories:

a. Category – A) prospective buyers with financial sector experience
b. Category – B) prospective buyers with experience of managing public limited company(s)
c. Category – C) Prospective buyers with no established track record

In response to the invitation, nine parties expressed their interest for acquisition and rehabilitation of the Company. These were placed in different categories as mentioned below:

SR. NO.	NAMES OF INTERESTED PARTIES	CATEGORY
I	Al-Zamin Leasing Modaraba	A
II	First Dawood Investment Bank Limited	A
III	Trust Investment Bank Limited	A
IV	First IBL Modaraba	B
V	DJM Securities (Pvt.) Limited	B
VI	Kifayatullah Khan Bangash and Shaukatullah Khan Bangash	C
VII	M/s Aims Holding Limited, Through Orix Investment Bank Limited	C
VIII	Swicrop International, Saudi Arabia through K-Axis Group, Lahore	C
IX	International Leasing & Investment Company, Kuwait through K-Axis Group, Lahore	C

The parties mentioned at serial number V,VII,VIII and IX did not submit requisite documents/information and did not move forward in the rehabilitation process. Parties

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falling under category "A" and "B" were invited to conduct due diligence of the Company. After carrying out due diligence, these parties did not provide any workable revival plan and expressed their disinterest in reviving the Company. Therefore parties falling under Category "C" were also invited for carrying out due diligence. The last prospective interested party namely Mr. Shukatullah Khan Bangash after getting several extensions for submission of revival plan declared his earlier plan submitted in April, 2008 invalid vide his letter dated January 06, 2009. Consequently, all the efforts of the Administrator and Commission to rehabilitate the Company were in-fructuous. It is noted that the primary reason for this lack of interest by the parties to rehabilitate the Company was pinned on the un-recorded liability of Repo Security Receipts (RSDRs) amounting to Rs. 482 million which none of the parties were willing to shackle themselves with.

(iv) Since the final disposal of the Show Cause Notices remained outstanding, the Board and the CEO were given numerous opportunities of hearing by the office of the Commissioner (SCD). In view of the submissions made and the arguments brought on record, the Commissioner (SCD) passed the final orders dated 27th March 2009 with the observations that the Board and the CEO had not shown any interest in the Company and not rebutted any of the allegations leveled against them in the Show Cause Notices. In addition, the Commissioner (SCD) decided that the Board and the CEO shall seize to hold their respective positions in the Company. The Commissioner (SCD) also directed the Non-Banking Finance Companies Department, that in consultation with the Administrator, to take such appropriate steps which may be necessary to determine the future of the Company.

(v) Accordingly, the Commission examined financial statements of the Company for the year ended 30th June 2008, on which statutory auditors have not expressed any opinion due to the significance of following matters:

a) Un-authorized rollover of Certificate of Investment ("COIs") and Non-disclosure of credit rating of the Company;
b) Un-recorded liability of RSDRs amounting to Rs. 482 million and un-verified opening balances of the same for the year ending June 30,2007;
c) Conversion of un-recognized RSDRs in to COIs;

d) Non-receipt of direct confirmations about finance leases, hire purchase, modaraba financing; and

e) Non-compliance of minimum equity requirement by the Company.

(vi) The examination of the financial statements revealed following contraventions of the applicable regulatory framework;

a) Equity of the Company stands at negative Rs. 123.617 million (reported figure) as on June 30, 2008 as against the minimum equity requirement of Rs. 200 million in contravention of Rule 5(2)(b) of the NBFC Rules (now replaced by Regulation 4 of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 ("NBFC & NE Regulations"). However, as pointed out by the statutory auditors, if un-recorded liability of RSDRs is taken in to account, the equity will further decrease from negative Rs.123.617 million to negative Rs.605.617 million as on June 30, 2008.

b) Prior to commencement of calendar year 2008, the Company had rolled over Certificates of Investments ("COIs") amounting to Rs. 70.647 million and issued COIs amounting to Rs. 56.507 million with out obtaining and disclosing credit rating in contravention of Rule 12(2) of the NBFC Rules (now replaced by Regulation 14 (4) of the NBFC & NE Regulations) which stipulates that a NBFC shall not roll over or make fresh issue of COIs after its credit rating falls below the investment grade which is required to be disclosed in the financial statements.

c) The Company failed to record its assets and liabilities in the books of accounts in contravention of Rule 7 (1) (a) of the NBFC Rules read with Section 230 and 234 of the Ordinance, which requires a company to maintain such books of accounts and other records as shall depict a true and fair picture of its state of affairs; and

d) The Company failed to prepare its financial statements in accordance with the International Accounting Standards ("IAS") in contravention of Rule 7 (1) (d) of the NBFC Rules and sub-section (3) of Section 234 of the Ordinance, which requires a company to prepare its accounts in conformity with the IAS and technical releases issued by Institute of Chartered Accountants.

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(vii) As per the financial statement for the year ended 30th June 2008, total liabilities of the Company exceeds its total assets by Rs. 123.617 million and the Company suffered loss of Rs. 180.532 million during the year. The financial position further deteriorated in the following six months as the Company suffered loss of Rs. 26.256 million resulting in negative equity of Rs. 149.874 million as per the half yearly accounts for the period ended December 31, 2008. The situation has further deteriorated as the total liabilities of the Company stand at Rs. 286 million as against total assets of Rs. 129 million resulting in negative equity of Rs. 157 million as on March 31, 2009. It was also observed by the Commission that the Company failed to pay its liabilities to its depositors/creditors despite their repeated demands and complaints.

4. In view of the above, the Company was issued the SCN, to which the Administrator of the Company responded through his letter dated 17th April 2009. A summary of the submissions made by the Administrator are replicated as follows:

(i) The Company is not doing the leasing business since July 2007, as the Company's cash flows do not support continuance of the said business. The Company's license also stands expired on June 28, 2008, which was not renewed afterwards. The financial condition of the Company has been deteriorating with the passage of time because the Company is not in business from last 18 months but have to pay administrative and financial expenses averaging Rs. 4.9 million per month, and earns hardly 36% of the operating & financial cost, through mark up income generated on leased assets, which is gradually on the decline, with the increase in non performing assets. The gap between the total liabilities and total assets has further widened resulting in negative equity of Rs.157 million as on March 30, 2009 from negative equity of Rs. 149.873 million as on December 31, 2008.

(ii) It is a fact that Certificate of Investments ("COIs") of Rs.70.647 million was rolled over, but it was done to avoid serious crisis at the branches, as the Company did not have the necessary funds to pay to its COI holders and with a view to pacify the much agitated depositors. As rehabilitation exercise for the Company was on the anvil, therefore, the intention was not to scare away the prospective investors. However, with regard to booking of additional COIs of Rs.56.507 million, the same were issued from 1st July 2007 to 14th December 2007. No COI was booked when the credit rating of the Company fell blow the investment grade.

(iii) All efforts of SECP and the Administrator for rehabilitation of NLRL have failed and the Company is in a very bad financial condition with no possibility of turn around. In addition to that, there is also unrecorded liability of Rs.482.272 million in the form of Repo Security Deposit Receipt ("RSDR") which had been one of the major hurdles which failed the exercise of rehabilitation of the Company.

(iv)The state of affairs of the Company and its financial health is deteriorating fast in a manner that soon there will be no cash available to meet the Company's monthly operating expenses of almost Rs. 2.3 million. There is no reason to insist or support the Company's continued existence in its present form when no business can be conducted in the absence of required liquidity. Therefore, it is in the interest of stakeholders to take a decision to cancel the leasing license of the Company for carrying on any further business, and Company be wound up through High Court, so that whatever can be salvaged from the present assets, can be done without further loss of time, and proceeds are appropriated/distributed to the creditors/depositors in an equitable manner by the official liquidator appointed by the court.

5. It is also noteworthy here that the Administrator in the said response requested that his personal appearance before this forum may be dispensed with as he will not add anything further to what he has submitted in his written response.

6. Therefore, this forum has considered the submissions made by the Administrator which apparently are not contrary to the allegations contained in the SCN. Mindful of the current financial and operational condition of the Company and after examining the facts of the case, this forum observes as follows:

(i) the Company did not apply for renewal of its leasing licence owing to the reasons given in the preceding paragraphs of this Order. Therefore, the licence of the Company was not renewed after its expiry on June 28, 2008;

(ii) the financial position of the Company is extremely bleak which is substantiated by the fact that the total liabilities of the Company stand at Rs. 286 million as against total assets of Rs. 129 million resulting in negative equity of Rs. 157 million as on March 31, 2009. If un-recorded liability of Rs. 482 million on account of RSDRs is taken in to account, the negative equity of the Company would work out to be Rs.639 million as on March 31, 2009;

(iii) the Company failed to maintain such books of accounts and other records as shall depict true and fair picture of its state of affairs;

(iv) cash inflows of the Company are not sufficient to meet its monthly operating expenses and the Company is unable to pay its liabilities of depositors/creditors despite their repeated demands; and

(v) all the efforts to re-habilitate the Company have been in-fructuous and there is no prospect for revival of the Company.

7. The Administrator of the Company also admitted all the above stated facts of the Company vide letter dated April 17, 2009.

8. In view of the above facts and submissions, it is established that the Company has breached fundamental conditions of its leasing licence and it is in contravention of applicable regulatory framework and the financial position of the Company evidences that it is not a going concern.

9. In view of the facts stated in the preceding paragraphs and the position of law applicable to the present case, in exercise of the powers of the Commission under Section

282J (2) of the Ordinance delegated to the undersigned, the licence issued to the Company is hereby cancelled.

10. As a result of the cancellation of licence of the Company, Section 282 J (3) sanctions that the operations of the Company shall cease and this office may move the Court for winding up the Company. Therefore, without prejudice to anything contained in Section 305 and clause (c) of Section 309 of the Ordinance, necessary action is being initiated by this office to move the Honourable High Court for winding up of the Company.

11. This Order is being issued without prejudice to any other action the Commission may take against the Board or management of the Company under the Ordinance or any other law for the time being in force.

19/05/2009

(ASIF JALAL BHATTI)
Director (NBFCD)

Asif Jalal Bhatti
Director (NBFCD)
Securities & Exchange
Commission Of Pakistan
Islamabad

Announced on: May 19, 2009