



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 34 of 2007

Accurate Builders and Constructors (Pvt.) Ltd

.....Appellant

Versus

Executive Director (Registration)

.....Respondent

Date of Impugned Order
U/S 33 of the SEC Act, 1997.

5-10-2007

Date of Hearings

21-11-2007

Present:

For the Appellant:

Niaz Ahmed Abbasi
Advocate for Appellant

For the Respondent:

1. Muhammad Naveed Ahmed Ch
Director (Registration department)
2. Munawar Ali Bhatti
Joint Director (Registration department)



ORDER

1. This order shall dispose of the appeal No. 34 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Accurate Builders and Constructors (Pvt.) Ltd (“the Appellants”) against the order dated October 5, 2007 (“Impugned Order”) passed by Executive Director (Registration).
2. The facts leading to the case are that Ghuramani Builders (Pvt.) Ltd., was registered under the Companies Ordinance, 1984 (the “Ordinance”) with Company Registration Office, Karachi on 22-04-1990. Later on the company changed its name to Accurate Builders and Constructors (Pvt.) Ltd. and shifted its registered office to Islamabad. The authorized share capital of the Appellant is Rs.10, 000,000/- divided into 100,000 shares of Rs.100 each and paid up capital is Rs. 7,500,000/-
3. The main object of the company as per its memorandum is acquisition of land, its development and construction of housing schemes.
4. The Appellant claims to have acquired more than 16,000 Kanals of land in Islamabad zoning areas of 2 and 5 and in Fatehjang. The Appellant has launched its housing schemes on the aforesaid area under the name and style of Gulshan-e-Rehman phase 5, Gulshan-e-Rehman phase 2 in Islamabad and Gulshan-e-Rehman (Motorway) housing scheme in Fatehjang.
5. That Appellant issued advertisements in Daily Jang dated 03.08.2005 inviting deposits and advance payment from general public for its project in Tehsil Fatehjang. Another advertisement appeared in Daily Dawn dated 26.12.2004 regarding the housing schemes in Islamabad namely “Gulshan-e-Rehman phase 2” which advertisement was purportedly given by “M/s. Wusaat Associates”.
6. In view of the advertisement issued by the Appellant in the press, the Additional Registrar of Companies, CRO Islamabad, considered it appropriate in public interest to



demand from the Appellants management certain material/information pertaining to the above mentioned schemes which included the following:

- a. Copy of the title deed of the land and the confirmation that whether the titles of the plot/property is in the name of the company.
 - b. Copy of NOC issued for the development of the land by the concerned authority.
 - c. Copy of the approved plan by the concerned authority.
 - d. Sources of investment for the purchase of the land including directors' loan to the company and details thereof.
 - e. Arranging financing from Banks/DFI for the purchase of land, details of loans and security /collateral provided thereof.
 - f. Financial soundness/feasibility study of the project of the company.
 - g. Overall financial health of the company.
 - h. Stake of the management in the overall operations of the company.
 - i. Credit worthiness, past record and goodwill of the management of the company, and performance in associated companies/undertakings.
 - j. Magnitude of the financial interest of the general public.
 - k. Total amount collected from the general public for the sale.
 - l. Estimated date of completion of project and delivery or possession of plots/houses to the investors.
 - m. The prices of the houses/plots including development charges and other charges.
7. The requisite information/material was called from the company vide letters dated 28.12.2004 and 6.9.2005 under section 261 of the Ordinance. The company has failed to furnish the complete information to the Additional Registrar of Companies concerned till date.
8. Under the circumstance, the Additional Registrar of Companies concerned reported the matter to the Commission in terms of sub-section (6) of section 261 of the Ordinance. In his report the Additional Registrar of Companies stated the unsatisfactory state of affairs of the Appellant and alleged that the Appellant has been violating the provisions of section 88 of the Ordinance and Companies (Invitation and Acceptance of Deposits) Rules, 1987 ("the Rules").
9. In pursuance of the report of the Additional Registrar of Companies, the Executive Director (Registration) exercising the power delegated by the Commission issued a show



cause notice to the Appellant under section 263(c) of the Ordinance for appointment of inspector on 29.9.2007 and provided an opportunity of hearing on 5.10.2007.

10. In response to the said show cause notice, Mr. Abuzar, General Manager of the Appellant along with Mr. Zahid Masood, representative of the Appellant, appeared on the date of hearing. The representative provided copies of correspondence exchanged between the Commission and the Appellant along with copies of advertisement that had appeared in the press earlier. The representative of the Appellant maintained that the advertisement that appeared in daily Dawn on 26.12.2004 was a congratulation message for the management of the Company upon issuance of clearance from CDA and it was published by M/s. Wusaat Associates. The attention of the representative of the Appellant was however, drawn towards another advertisement published by the Appellant in 2005 through which advance/deposits were sought from the general public for the housing scheme in Zone V. The representative admitted the fact that the Appellant was required to seek prior permission of the Commission before making any advertisement. The representative, however, maintained that the Appellant had filed an application for this purpose before the Commission. The representative was informed that the said application was examined and certain deficiencies/observations were communicated to the Appellant. However, the Appellant has not complied with the requirements/observation conveyed to it, therefore, approval to make advertisement in the press was not granted to it. The General Manager as well as representative of the Appellant, however, assured their full cooperation with regard to the investigation to be conducted by the inspector.

11. In order to ascertain the factual position about the housing schemes launched by the Appellant and about its other affairs, the Executive Director (Registration), in exercise of the power conferred by clause (c) of section 263 of the Ordinance appointed Mr. Shehzad Qazi, FCA partner of M/s. Munif Ziauddin & Co., Chartered Accountants, Islamabad as Inspector to investigate into the affairs of the Appellant on a remuneration of Rs.200,000/- (Rupees Two Hundred Thousand) excluding out of pocket expenses which were to be paid by the Appellant.



12. Without prejudice to the scope of investigation, the Inspector was asked to conduct investigation on all aspects of the operations of the Appellant and was called upon to scrutinize the entire record and books of accounts and furnish a report, inter alia, on the matters included in the Terms of Reference.
13. The Appellant has preferred these appeals before the Appellate Bench against the Impugned Order. The appeal was heard on 21.11.07. Mr. Niaz Ahmed Abbasi, Advocate appeared before us on the said date on behalf of the Appellant. Mr. Naveed Ahmed Ch and Mr Munawar Ali Bhatti appeared on behalf of the Respondent Department. The counsel for the Appellant contended that the advertisement dated 26.12.2004 had no connection with the Appellant. Moreover, Wasat Associate, the proponent of the advertisement is not an agent of the Appellant. The counsel however admitted that the advertisement dated 3.8. 2005 was published on the instruction of the Appellant and prior approval of the aforesaid publication was not sought from the Commission. The counsel however, reiterated his stance that the violation was made out under the Rules which does not call for appointment of inspector but provides a specific penalty under rule 16 of the Rules.
14. The counsel for the Appellant asserted that the Appellant has provided all information required by the Additional Registrar of Companies from time to time and therefore no case is made out under section 261(6) of the Ordinance. The counsel also made strong exception on the ground that no opportunity of hearing was given by the Executive Director before passing the impugned order.
15. Mr. Muhammad Naveed Ahmed Ch. represented the Respondent and in response to the averments made by the Appellant contended that the advertisement dated 26.12.2004 was also given in connivance with the Appellant. Wassat Associates was a recognized agent/ dealer of the Appellant. In support of this argument it was brought to notice that in advertisement dated 3.8.2005, admitted to have been given by the Appellant, the name of Wassat Associates appeared as facilitator for information and booking of plots.



16. In response to the arguments of the Appellant counsel on the issue of applicability of section 261(6), the representative of the Department vehemently denied the contention of the counsel of the Appellant that necessary information was provided by it. In support of the argument, the representative referred to series of letters addressed to the Appellant which were either not replied or the necessary information was not provided. More over it was brought to knowledge of the Bench that there are number of complaints against the Appellant. On the issue of personal hearing before the Executive Director, the counsel was confronted with the attendance sheet dated 5-10-07 which clearly shows the attendance marked by Mr. Zahid Masoud and Syed Abuzer on behalf of Appellant.
17. We heard both the parties and have perused the documents filed by the Appellant along with the record available with the Department. Before going into the merits of the case, we would like to comment on the regulatory framework for companies involved in the real estate business.
18. The companies involved in real estate business are required to follow the criteria laid down in section 88 and the rules framed thereunder, while seeking advances from the general public. Clause (a) of rule 7 of the Rules, bars any private limited company from inviting, allowing or causing any other persons to invite deposits from the general public by issue of an advertisement, public notice or otherwise.
19. The only exception available under the rules to the companies is given in sub clause (a) to the explanation to the clause (j) of sub rule (4) of rule 3 of the Rules. The clause provides that the Rules shall not apply if at the time of issuance of advertisement, the company is in possession of the property so advertised. It has been observed that the companies seeking advances through advertisement are not always in possession of the land and therefore the Rules apply to such companies.



20. The Appellant on one hand accepts violation of the Rules by advertising without prior permission from the Commission and on the other hand challenges the jurisdiction of the Commission on the ground that the authority to launch the housing scheme rests with local government. The Appellant has also contested the appointment of inspector by the Commission under the circumstances.
21. The Appellant is incorporated as private limited company and is under the regulatory ambit of Securities and Exchange Commission of Pakistan. The authority to launch a Housing scheme rests with the local government, however under section 88 of the Ordinance read with the Rules, the Appellant being a private limited company is barred from inviting, allowing or causing any other persons to invite deposits from the general public by issue of an advertisement, public notice or otherwise. Only public limited companies can issue advertisements, however they are also required to obtain prior sanction of the Commission for raising deposits and advances.
22. From the perusal of record, it transpires that the Additional Registrar of Companies called for information from the Appellant on more than few occasions. The response of the Appellant has never been encouraging as either the information called for is not provided or the information is incomplete. The issue was further aggravated as numbers of complaints have been filed by the investors against the Appellant. Under such circumstances the Additional Registrar of Companies was under an obligation to inform the Commission regarding the unsatisfactory affairs of the Appellant under section 261(6). The Executive Director exercising the powers of the Commission conferred to him under SRO 1061(1)/ 2005 issued a show cause to the Appellant, followed by hearing which was attended by Mr. Zahid Masood and Syed Abuzer on behalf of the Appellant. The Executive Director after hearing the parties concluded that the information can only be obtained by appointing an inspector under section 263 (c) of the Ordinance.
23. We are of the considered view that the non-co-operation of the Appellant in providing the necessary information has lead to the appointment of Inspector and we do not feel the need to interfere with the order of the Executive Director.



24. Moreover in our view the appointment of inspector is an administrative direction given by the Executive Director on behalf of the Commission. The appointment of inspector does not of itself make the Appellant an aggrieved party. Proviso (a) of sub section 1 of section 33, amended through Finance Act 2007 provides that the administrative directions of the Commission are not appealable. As such the appeal is not maintainable in its present form.
25. Even otherwise on merits, we agree with the findings of the Impugned Order. As mentioned above, private limited companies are not allowed to invite deposits and advances from public which the Appellant has sought to do in this case. Where companies are allowed to invite deposits they can only do so with prior permission of the Commission. The Appellant was therefore correctly not provided the permission by the Commission. Even then the Appellant went ahead inviting deposits and advances. As we all are aware, the public has already seen more than the fair share of Real Estate frauds.
26. In these circumstances, where the Commission has already received complaints from investors and members of the public and there is clear violation of laws by the Appellant. It is appropriate that the affairs of the Appellant may be investigated to identify the risks if any, to the interest of the investors who have been mislead into depositing money with the Appellant.
27. The inspector has filed the interim report and it has been observed that the Appellant is not providing the necessary information to the inspector. The Appellant is therefore directed to provide all information required by the inspector forthwith.

(Mr. Razi- ur-Rehman Khan)
Chairman

(Mr. Salman Ali Shaikh)
Commissioner SCD

Dated: 6-3-08