



BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 37 of 2017

Al-Hamra Avenue (Pvt.) Limited

...Appellant

Versus

- i. The Securities and Exchange Commission of Pakistan
- ii. Mr. Mubasher Saeed Saddozai, Director (CCD)
- iii. Ms. Amna Farrukh, Assistant Registrar, CRO, Lahore.

...Respondents

Date of Hearing: 17/09/20

Present:

For the Appellant:

Ms. Sahar Z. Bandial, Advocate

For the Respondent:

- i. Mr. Saeed Ullah, Additional Registrar (CCD)
- ii. Ms. Saila Jamshaid, Joint Registrar (CCD)

ORDER

1. This Order is passed in the matter of Appeal No. 37 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the order (the Impugned Order) dated 04/05/17 passed by Director, Adjudication-1 (Respondent No.2).
2. The brief facts of the case are that Al-Hamra Avenue (Pvt.) Limited (the Appellant) filed an application to change its name for availability of the proposed name i.e. Eden Life Islamabad (Pvt.) Limited on 20/03/17. However, Ms. Amna Farrukh, Assistant Registrar, CRO, Lahore (the Respondent No.3) rejected the proposed name on account of resemblance with the name of an existing company i.e. Eden Life (Pvt). Limited on 28/03/17. The Appellant challenged the order of Respondent No.3 before Respondent No.2 vide an appeal dated 12/04/17. Hearing in the matter was held on 19/04/17 and the Appellant provided a copy of the resolution to change its name on Respondent No.2's request.



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3. Respondent No.2 upheld the decision of Respondent No.3 under section 37(4) of the Companies Ordinance, 1984 (the Ordinance) on account of complaints/investigations against the Appellant by Capital Development Authority (the CDA), Federal Investigation Agency (the FIA) and National Accountability Bureau (the NAB). However, Respondent No.2 stated that name availability could be considered afresh if 'No Objection Certificates' (the NOCs) from all aforementioned authorities are provided.
4. The Appellant preferred the instant appeal *inter alia* on the grounds that the Impugned Order is illegal and a violation of section 37 of the Ordinance. Furthermore, the Appellant argued that the Commission has no power to pass a prohibitory order with regard to matters which are not within its jurisdiction. The Appellant further argued that the proposed name, 'Eden Life Islamabad (Pvt.) Ltd' is different from 'Eden Life (Pvt.) Ltd' due to addition of word 'Islamabad' and an NOC has been provided by Eden Life (Pvt.) Limited and the Appellant is already running a project under the name of Eden Life Islamabad, therefore, the proposed name has to match with the project of the Appellant. Furthermore, the Appellant argued that the proposed name change is not a tactic employed by the Appellant to deceive the general public which has the ability to differentiate between names and groups. The Appellant further argued that the Impugned Order proceeds on conjectures as there is no proof of deception. Reliance, in this regard, was placed on *Zafar Iqbal versus Registrar of Companies, Islamabad cited at 2010 CLD 1856*, wherein, it was held that: *'...We should be bordering on ludicrous if we do not apply our minds while rejecting proposed names. The officers of the CRO should not refuse legitimate request for proposed names....'*. Furthermore, it was argued by the Appellant that the requirement to obtain NOCs from all the aforementioned authorities is against the law and beyond the jurisdiction of the Respondent No.2 as the said authorities have no nexus with the Appellant's request to change its name. Furthermore, the Appellant argued that the Respondent No.2 never confronted the Appellant with the alleged complaints during the hearing on 19/04/17 nor did Respondent Nos.2 or 3 confront the Appellant with the alleged complaints on any other occasion. Therefore, the Appellant argued that the Respondent No.2's refusal is arbitrary.
5. The Respondents rebutted the arguments of the Appellant *inter alia* on the grounds that the Impugned Order has been passed in accordance with the law after considering all the facts of the case. Furthermore, the Respondents argued that according to the record maintained by Company Registration Office (the CRO), there were various complaints filed against the Appellant and investigations/enquiries were being conducted by regulatory bodies/agencies including NAB and FIA and there were also complaints against the change of name of the project of the Appellant before CDA. The Respondents had not passed any prohibitory Order against the Appellant and



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the proposed name was not allowed due to pending issues of the Appellant and regulatory bodies/agencies. The Respondents further argued that the Appellant was asked to provide NOCs from the said authorities for consideration of their case afresh and since the facts regarding enquiries by other regulatory bodies/agencies were on record of the Commission, it was under legal obligation to consider the case in light of all the facts. The Respondents further argued that proposed change of name at this stage seemed to be deceptive as the Appellant has a checkered record and repute with its existing name and change of name would be misleading for the general public. Furthermore, the Respondent argued that the Appellant was afforded an opportunity of hearing on 09/04/17 and all the relevant facts and submissions made by the Appellant were taken on record.

6. We have heard the parties i.e. the Appellant and the Respondents. We cannot endorse the Appellant's point of view that the proposed name will not be deceptive as there are pending enquiries pertaining to the Appellant with regulatory bodies/agencies which includes FIA, NAB and CDA and until there is reasonable satisfaction that those pending issues are not related or concerned with the proposed change of name, the Appellant cannot be allowed to change its name. Furthermore, we are of the view that the matters pending with other regulatory bodies/agencies may not fall within the jurisdiction of the Respondents, however, it was part of their record which is why it was their responsibility as a regulator to ensure that no deception is taking place. Respondent No.2 had stated in the Impugned Order that the matter could be looked at afresh if NOCs were provided from all the regulatory bodies/agencies where there are pending enquires, however, the Appellant has argued those enquires are not related to change of name and, therefore, they are under no legal obligation to do so. It must be emphasized, however, that the burden is on the Appellant to prove that the proposed change of name had no correlation to the investigations or matters pending with other regulatory bodies/agencies which is a part of the Respondents' record.
7. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is, therefore, upheld with no order as to costs.

Sadia Khan

Commissioner (SCD-S&ED)

Farrukh Sabzwari

Commissioner (SCD-PRDD)

Announced on: **08 JAN 2021**