

## Appellate Bench Orders

Order in the matter of Mr. Mehmood Ali Khan, Chartered Accountant and Mr. Nasim Akhter, ACA before Appellate Bench No. 3

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February , 2002

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Before Appellate Bench No. 3

In the Matter of

Mr. Mehmood Ali Khan, Chartered Accountant and Mr. Nasim Akhter, ACA

Mr. Mehmood Ali Khan, FCA,  
M/s Mehmood Zuberi & Co.  
Chartered Accountants .....Appellant

Mr. Nasim Akhter, ACA,  
M/s Nasim Akhter & Co. ....Appellant

**VERSUS**

Executive Director (Enforcement & Monitoring Division),  
Securities and Exchange Commission of Pakistan .....Respondent

Date of hearing: 13<sup>th</sup> February, 2002

**Present:**

Mr. Mubasher Saeed Saddozai,  
Deputy Director,  
(Enforcement & Monitoring Division).....On behalf of the Respondent

### Order

This is an appeal against the orders dated October 30, 2001 passed by the Executive Director, Enforcement and Monitoring Division (E&M) of the Commission, whereby the Executive Director imposed a fine of Rs.2,000/- on each of the Appellants i.e. Mr. Mehmood Ali Khan, FCA and Mr. Nasim Akhter, ACA for their default under sub-section (1) of Section 260 read with Section 476 of the Companies Ordinance 1984 ("the Ordinance").

2. The appeal came up for hearing on 13th February, 2002. The Appellants did not enter their appearance, however, an adjournment request was received from Appellant No.1, Mr. Mehmood Ali Khan, FCA, whereas, Appellant No.2, Mr. Nasim Akhter, ACA communicated his inability to appear before the Appellate Bench on

account of heart problem. The Respondent was represented by Mr. Mubashar Saeed Saddozai, Deputy Director (E&M).

3. The brief facts of the case are that Mr. Mehmood Ali of M/s Mehmood Zuberi and Co., Chartered Accountants was appointed as auditor of M/s Delta Insurance Company Ltd. ("the Company") for the year ended 31-12-2000 in place of a firm which was removed from the office of the auditors. The Enforcement and Monitoring Division (E&M Division) of SEC, during examination of the financial statements of the Company noticed that the auditor's report was signed by Appellant No.2, whereas Appellant No.1 is a sole proprietor of M/s Mehmood Zuberi and Co., Chartered Accountants as per Form-29 available with the Company Registration Office. This was found to be in contravention of sub-section(1) of Section 257 of the Ordinance which requires that only the person appointed as auditor of the company, or where a firm is so appointed only a partner in the firm practicing in Pakistan, shall sign the auditor's report.

4. Both, Mr. Mehmood Ali Khan and Mr. Nasim Akhter were issued show cause notices by the Executive Director (E&M) for violation of Section 257(1) *ibid* which were duly replied. A hearing was also held at Karachi on 25th October, 2001. The Appellants defended themselves taking position of having established a partnership verbally. The Executive Director (E&M), not being satisfied with the arguments of the Appellants imposed a penalty of Rs.2000/- for violation of Section 257 *ibid* on each of the Appellants.

5. The appeal came up for hearing before us on February 13, 2002 at 11.00 a.m. The Appellants did not appear before the Bench and Appellant No.1 requested for an adjournment in the matter on account of rest advised by his doctor. The Appellant No.2 also communicated his inability to appear before the Bench due to his health concerns

6. The appeal was firstly fixed for hearing on December 13, 2001. However, the same had to be adjourned at the request of the Appellants due to their health problems, who had further requested for fixation of case at Karachi. The Bench being unable to arrange hearing at Karachi granted a longer adjournment i.e. of two months in order to facilitate the Appellants and the case was fixed for February 13, 2002. Even after having availed a long adjournment, the Appellants have submitted similar requests for adjournment and have again prayed to hold hearing at Karachi. The Bench is of the opinion that the Appellants are not interested to pursue their appeal and the reasons being put forth are just lame excuses. This opinion of the Bench is further strengthened by the letter dated January 23, 2002 of Appellant No.1 in which he has mentioned that in order to save penalty of Rs.2,000/- he will have to spend Rs.20,000/-. They are continuously insisting for hearing in Karachi, which is not possible for the Bench. In view of the above, this case is being disposed of in light of the position emerging from the record and arguments advanced by the Dy. Director (E&M) who appeared from SEC side.

7. The Appellants have taken the position in their appeal that verbal constitution of the partnership should have been accepted by Executive Director(E&M), that account was finally signed by Mr. Mehmood Ali Khan, FCA before the date of AGM, and that the Executive Director (E&M) did not have any legal authority in terms of Section 476(1)(b) *ibid* to make the impugned order.

8. This plea of the Appellants that they had constituted a firm verbally cannot be entertained as if it is accepted, the whole legal structure for regulating the profession of accountancy will collapse. The firms of Chartered Accountants are required to file the particulars of firms including detailed information about partners with the Institute of Chartered Accountants of Pakistan (ICAP) within one month from the date of any change therein and companies are required to disclose complete particulars of partners in Form-29 and Form-A of the Ordinance filed with Registrar of Companies. Similarly Section 205 of the Ordinance requires that in case of appointment of a firm as auditor, full name, nationality and address of each partner etc. shall be entered in the register kept for this purpose, which will be open to members for inspection. These specific requirements of law are meant to achieve the objectives laid down in Section 257 of the Ordinance which says that **ONLY the person appointed as auditor or where a firm is so appointed only a partner in the firm practicing in Pakistan shall sign the auditor's report.** The legislature has taken much care by requiring particulars of firm to be kept by companies under Section 205 of the Ordinance, then requiring complete details regarding firms to be disclosed in Form-29 and Form-A, and then requiring that auditor's report cannot be signed by any one else except by the person appointed as auditor or a partner in case of a firm. The purpose of this total legal arrangement precisely is that every *Tom, Dick and Harry* should not sign the auditor's report(s). In view of these, we have no hesitation in maintaining that none else except Mr. Mehmood Ali Khan appointed as auditor could sign the auditor's report in case of Delta Insurance Company Limited. Similarly this argument of Mr. Mehmood Ali Khan that he also had signed the auditor's report before the date of AGM does not help him as the auditor's report circulated to members carried signatures of Mr. Nasim Akhter who could not sign the auditor's report in terms of Section 257 *ibid*.

9. Regarding this plea that Executive Director (E&M) did not have any legal authority in terms of Section 476(1)(b) *ibid* to make the impugned order, the correct legal position is that SEC's SRO No.230(1)/2001 dated 16th April, 2001 empowers the Executive Director (E&M) to adjudge all offences, contraventions and defaults under provisions of Section 157, 255, 257 and 260(1) of the Ordinance, hence the order of Executive Director (E&M) was well within his powers.

10. In view of fore-goings, we hold that the Appellants acted in contravention of Section 257(1) of the Ordinance for which a penalty of Rs.2000/- as provided under Section 260(1) *ibid* was rightly imposed by Executive Director (E&M). Therefore, the order of the Executive Director (E&M) is upheld and the appeal of the Appellants is dismissed accordingly.

11. The Appellants have also agitated on certain observations of Executive Director (E&M) mainly holding Appellants to be guilty of professional misconduct in terms of Chartered Accountants Ordinance, 1961 and referring the case to Institute of Chartered Accountants of Pakistan for necessary action. In our view, we need not deliberate on this issue as the matter pertains to Institute of Chartered Accountants of Pakistan, to which it has been rightly referred.

**( M. ZAFAR-UL-HAQ HIJAZI )**  
Commissioner (CL)

**( SHAHID GHAFFAR )**  
Commissioner (SM)