



**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 06 of 2007**

Mr. Zafar Iqbal

Fraud Risk Investigation (Pvt.) Limited (Proposed Name) ..... APPELLANT

VERSUS

Registrar of Companies

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad ..... RESPONDENT

**ORDER**

Date of hearing

13-10-09 and 06-10-10

**Present:**

For the Appellant:

Mr. Muhammad Habib Ullah Khan

Advocate

For the Respondent Department:

Mr. Muhammad Musharaf

Additional Registrar

Ahmad Muzammil

Additional Registrar



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1. This order shall dispose of appeal No. 06 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 20-03-07 (the "Impugned Order") passed by the Executive Director (Registration).
2. The facts leading to the case are that Mr. Zafar Iqbal applied to Companies Registration Office, Islamabad (the "CRO") for availability of the name "Fraud Risk Investigation (Pvt) Ltd". The concerned Registrar CRO, after considering the name refused availability of the proposed name vide letter dated 08.02.07, on the ground that the name is inappropriate and deceptive. Mr. Zafar Iqbal preferred an appeal against the decision of the Registrar to the Executive Director (Registration). The Executive Director (Registration) after hearing the Appellant passed the Impugned Order and it was held that the proposed name is inappropriate and deceptive and is in violation of section 37 of the Companies Ordinance, 1984 (the "Ordinance") and will be deemed to take parallel powers of investigative and other government agencies. It was further held that the objects of the proposed company are in violation of section 15 and section 30 of the Ordinance.
3. The Appellant preferred the present appeal against the Impugned Order. The Appellants' counsel made the following objections to the Impugned Order:
  - a) The Impugned Order stated that the proposed name is inappropriate and deceptive and will be deemed to take parallel powers of the government agencies. It was argued that the Commission has allowed many private limited companies to be registered under names similar to the proposed name. Examples of, Financial Investigation (Pvt) Ltd, Sharp Investigation (Pvt) Ltd and Corporate Research & Investigation



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(Pvt) Ltd, were cited as reference. Further the term “private limited” in the proposed name makes it evident that the company is a private company and has no relation with the Government of Pakistan. The contention that the proposed name is inappropriate and will deceive the general public is baseless and the Impugned Order therefore should be set aside on this ground alone.

b) Article 18 of the Constitution of Pakistan, 1973 permits freedom of trade, business or profession. It was argued that there is no express provision which bars private investigation in the commercial sector. Reliance was placed on the findings of Honourable Sindh High Court in Constitutional Petition No. 1749 of 1979 where it has been held that in the absence of any law which prohibits the petitioner from carrying on as training institute for detectives, the petitioner cannot be prevented from establishing or running the institution. It was further contended that various companies have been registered globally for the purpose of investigation such as Matrix Credit Risk Controls (Pvt) Limited and Satyanaryan Fraud Management & Investigation Services (Pvt) Limited incorporated in India . Moreover, the argument that the objects of the proposed company are in violation of section 15 and section 30(3) of the Ordinance, as it is a subject of police or Federal Investigation Agency (the “FIA”) and will be deemed to take parallel power of government institutions is baseless and has no force in the eye of law.

4. The departmental representative, Mr. Muhammad Musharaf in response to the objections stated that:



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- a) The proposed name is inappropriate and deceptive in terms of section 37(1) of the Ordinance which provides that no company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive. It was argued that majority of the population is unaware of the concept of private companies and may assume that the company is a governmental investigative agency. The examples provided by the Appellant's counsel of companies with names similar to the proposed name do not include the word *fraud*. Further, section 37(4) of the Ordinance provides that whenever a question arises as to whether or not the name of a company is in violation of section 37 of the Ordinance, the decision of the Commission shall be final.
- b) The power to investigate frauds has been delegated to relevant agencies of Government of Pakistan. The objects of the company including the power to investigate as stated in the memorandum are therefore inappropriate and deceptive and violative of section 15 and section 30(3) of the Ordinance.
5. Our para-wise findings on the objections, raised by the Appellants' counsel on the Impugned Order are as under:

- a) We have examined section 37 of the Ordinance which is reproduced for ease of reference:

**37. Prohibition of certain names.-** (1) *No company shall be registered by a name which in the opinion of the Commission is inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people.*



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- (2) *A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.*
- (3) *Except with the prior approval in writing of the Commission, no company shall be registered by a name which contains any words suggesting or calculated to suggest—*
- (a) *the patronage of any, past or present, Pakistani or foreign, Head of State;*
- (b) *any connection with the Federal Government or a Provincial Government or any department or authority of any such Government;*
- (c) *any connection with any corporation set up by or under any Federal or Provincial law; or*
- (d) *the patronage of, or any connection with, any foreign Government or any international organization.*



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- (4) *Whenever a question arises as to whether or not the name of a company is in violation of the foregoing provisions of this section the decision of the Commission shall be final.*

Section 37 of the Ordinance confers the authority on the Commission to decide whether the proposed name is appropriate and sets out a criterion to examine the proposed name of a company. The Impugned Order states the proposed name is inappropriate and deceptive for the general public as it will be deemed to take parallel powers of the investigative and other government agencies. The Appellant has cited examples such as Financial Investigation (Pvt) Ltd, Sharp Investigation (Pvt) Ltd and Corporate Research & Investigation (Pvt) Ltd, which have been approved by the Commission. We do not see how the proposed name *Fraud Risk Investigation (Pvt) Ltd* shall be viewed differently from the other names cited above. The word *Investigation* has been allowed by the CROs on previous occasions and in our view the inclusion of the words *Fraud Risk* will not make the proposed name deceptive to indicate a government agency. Moreover, the proposed name clearly states that it is a private company therefore there should be no confusion in the mind of the general public whether the investigation will be conducted by a private entity or a government agency. The mere fact that people will be misled due to lack of education or ignorance does not mean that we should prevent those who want to carry out legitimate activities under a particular name from doing so. We fail to understand how any one who wishes to engage the services of a company named *Fraud Risk Investigation (Pvt.) Limited*, would be misled into believing that the company is a part of the state's investigative agency. It is clear that a private company is offering the services of investigating the risk of fraud and is in no way associated with a government agency. Not



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allowing such a name will be like saying that only a government agency such as the Police, the Federal Investigation Agency etc. can perform the functions of investigating fraud or risk of fraud. If the proposed name is considered to be misleading then should we be considering for e.g. if only a captain in the navy or the army can be called captain and a captain on a merchant or cruise vessel or an airline should be known by some other name? Perhaps the captains of football, hockey or cricket teams should also not be called captains, as they can easily be considered captains of the armed forces. We would be bordering on the 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 and make the Bench waste time considering such trivial issues.

- b) On the issue whether the proposed objects violates section 15 (1) and section 30 (3) of the Ordinance; the relevant sections are reproduced for ease of reference:

*15. Mode of forming a company.- (1) Any [three] or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of this Ordinance in respect of registration, form a public company and any [one,] or more persons so associated may in like manner form a private company.*

Emphasis added

*30. Registration of memorandum and articles, etc..-(1) The memorandum and the articles, if any, shall be filed with the registrar.*



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(2).....

(3) *If the registrar is satisfied that the company is being formed for **lawful purposes**, that none of its objects stated in the memorandum is inappropriate or deceptive or insufficiently expressive and that all the requirements of this Ordinance and the rules made thereunder have been complied with in respect of registration and matters precedent and incidental thereto, he shall retain and register the memorandum and articles, if any.*

Emphasis added

Section 15 (1) and 30 (3) of the Ordinance states that a company can be formed for lawful purpose and its objects stated in the memorandum should not be inappropriate, deceptive or insufficiently expressive. We have gone through the objects of the company stated in the memorandum of association of the proposed company to see if the objects are in contravention of the requirements laid down in section 15(1) and 30(3) of the Ordinance, however, we do not see any proposed object which is inconsistent with the laws in Pakistan. We also place our reliance on the Constitutional Petition No. 1749 of 1979 of Sindh High Court, Sindh titled *Najam Pervaiz Anwar vs. Govt of Sindh, Karachi* where it has been held that in the absence of any law which prohibits the petitioner from carrying on as training institute for detectives, the petitioner cannot be prevented from establishing or running the institution. Further, the department representative has failed to point out any provision which bars private investigation in the commercial sector.



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In view of the foregoing, we hereby set aside the Impugned Order passed by the Executive Director (Registration) and direct the CRO, Islamabad to make available the name to the Company and to register the memorandum and articles within 15 days of passing of the Order subject to the fulfillment of all legal requirements.

(MR. TAHIR MEHMOOD)  
Commissioner (CLD)

(S. TARIQ. ASAF HUSAIN)  
Commissioner (LD)

Announced on: 19-10-10