

Appellate Bench Orders

Order in the matter of Appeal No. 16 of 2001 before Appellate Bench No. 3

Before Appellate Bench No. 3

Order

In the Matter of Appeal No. 16 of 2001

M/s. Bilwani & Co.,
Chartered Accountants,
12-Idrees Chambers,
Talpur Road, Karachi.....Appellant

Versus

Executive Director (Specialized Companies),
Securities and Exchange Commission of Pakistan,
NIC Building, Jinnah Avenue, Islamabad..... Respondent

Date of Hearing: January 16, 2002

Date of Impugned Order: July 23, 2001

Present:

1. Ms. Farah Qamar Faiz, Joint Director (SC)
2. Mr. Wajid Waheed Khan, Joint Director (SC).....On Behalf of Respondent

Order

1. This is an appeal against the Order (impugned order) dated July 23, 2001 passed by the Executive Director, Specialized Companies Division (SC) of the Securities and Exchange Commission of Pakistan ("the Commission") whereby the Executive Director imposed a fine of Rs. 25,000/- on Mr. Abubakar Bilwani of M/s. Bilwani & Co., Chartered Accountants (the Appellant) for violation of sub-section 3(d) of section 254 of the Companies Ordinance, 1984, ("the Ordinance").

2. The appeal came up for hearing today wherein Ms. Farah Qamar Faiz, Joint Director (SC) and Mr. Wajid Waheed Khan, Joint Director (SC) appeared before us on behalf of the Respondent. No one was present on behalf of the Appellant. However, the Bench received a representation/written arguments from Mr. Haji Yousuf, Advocate of Haji Yousuf & Co., on behalf of the Appellant.

3. The impugned order was passed against the Appellant in his capacity of statutory auditors of M/s International Investment & Financial Services Limited ("the Company"), for violation of section 254(3)(d) of the Ordinance according to which a person who is indebted to the company shall not be appointed as auditor of that company. Facts of the case are that Mr. Akram Ghanchi, Chief Executive of the Company made a statement before the Executive Director (SC) that Mr. Bilwani of

Bilwani & Co., Chartered Accountants had opened an account with the Company and an amount of Rs.0.227 million was outstanding as receivable against him since 2000. The Chief Executive substantiated his statement with a copy of account in Customer Ledger showing an amount of Rs.0.227 million outstanding against M/s Bilwani & Co., Auditor since July 19, 2000.

4. A show cause notice was issued by the Executive Director (SC) to the Appellant in this regard. In his reply to the show cause notice through letter dated 6th July, 2001, the Appellant denied his involvement in any trading business/indebtedness with the Company and requested that he be allowed to present his case through an authorized representative. The Executive Director (SC) on the other hand insisted on his personal appearance and on Appellant's failure in appearing so, ex-parte order was passed and a penalty of Rs. 25,000/- was imposed on the Appellant.

5. Ms. Farah Qamar Faiz, Joint Director (SC) on behalf of Respondent, defended the order of the Executive Director (SC) stating that the Appellant was provided with sufficient opportunity of hearing. She further supported the order being passed under lawful authority.

6. Since no one appeared on behalf of the Appellant, the representation filed by Mr. Haji Yousuf, Advocate and grounds taken in the memorandum of appeal were considered. The Appellant has taken the position that the order of the Executive Director (SC) is legally not sustainable and further that despite his request for allowing appearance through authorized representative, insistence on his personal appearance was not justified. Regarding his non-appearance before the Executive Director on the date of hearing, the Appellant stated that he had to proceed to USA due to operation of his son and information of the said exigency was duly notified to the SC Division. The Appellant also denied the charges leveled against him and questioned the validity of the documentary evidence i.e. the Customer Ledger, which led to the issuance of the impugned order.

7. In light of the submissions of the parties and examination of the record, this Bench is of the opinion that the order of the Executive Director (SC) on July 23, 2001 was passed in haste and the Appellant was not provided with sufficient opportunity for presenting his case. The Executive Director erred in insisting upon the personal appearance of the Appellant, whereas in proceedings against an individual allegedly responsible for offence, according to Rule 24 read with Rule 4(2) of the Companies (General Provisions and Forms) Rules, 1985, such officer or individual can appear before the Commission through an advocate, a practicing member of Institute of Chartered Accountants of Pakistan and a practicing member of Institute of Cost and Management Accountants of Pakistan.

8. The Appellant has also disputed the powers of the Executive Director (SC) to take cognizance of defaults u/s 254 of the Companies Ordinance, 1984, for which he has referred to a Notification No.SRO.862(I)/2000 dated December 6, 2000, whereby the cognizance of defaults and offences committed under statutory provisions shall be taken by the Commissioner concerned. The correct position in this regard is that through the Notification No.SRO.183(I)/2001 dated March 20, 2001, certain amendments have been introduced in the above said S.R.O. As per Section 2(i) of the Notification dated March 20, 2001, the Executive Director (SC) has been delegated the powers of the Commission inter-alia to exercise all adjudicatory powers under relevant laws and to take cognizance of the offences. As such, the

Executive Director (SC) is fully empowered to take cognizance of defaults under Section 254 of the Ordinance.

9. In view of foregoings, the order of the Executive Director (SC) is set aside and case is remanded back to Executive Director (SC) with the direction to decide the matter after providing proper opportunity of hearing to the Appellant, through an authorized representative, if he desires so.

Announced : January 15, 2002

(M. ZAFAR-UL-HAQ HIJAZI)

Commissioner (CL)

(SHAHID GHAFAR)

Commissioner (SM)