



**BEFORE APPELLATE BENCH NO. III**

**In the matter of**

**Revision/Appeal No. 3 of 2005**

Waseem Ahmed Siddiqi  
Waseem Ahmed Siddiqi & Co  
Chartered Accountants  
Office No. 7 & 8  
Ginza Centre, Jinnah Avenue  
Islamabad..... Petitioner

Versu s

1. Zafar-ul-Haq Hijazi (Ex-Commissioner), SEC
2. Nazir Ahmed Shaheen, Additional Registrar SEC
3. Muhammad Ishaq Mallal (Registrar of Companies) SEC
4. Abdul Rehman Qureshi (Commissioner CLD) SEC

..... Respondents

Date of Impugned Order December 06, 2004

Date of hearing of appeal May 10, 2005

Present:

Waseem Ahmed Siddiqi for himself

Muhammad Siddique for the Respondents



## **ORDER**

1. This revision petition No.3 of 2005 has been filed under section 484 of the Companies Ordinance, 1984 by Mr. Waseem Ahmed Siddiqi against the order dated 06-12-2004 passed by Commissioner (Company Law Division) (Respondent No.4 herein) in appeal against the order dated 28-04-2004 passed by Registrar of Companies (Respondent No.3 herein).

2. Brief facts of the case are that a show cause notice dated 21-08-2003 was issued to inter alia the Petitioner, by Mr. Nazir Ahmed Shaheen Additional Registrar of Companies (as he was then) under sections 254(6) and 259 of the Companies Ordinance, 1984 ('Ordinance') for appointment of auditors of Paragon Associates of Pakistan (Pvt) Ltd. ('Company') in violation of the above provisions of the Ordinance. Mr. Waseem Ahmed Siddiqi ('Petitioner') was appointed as auditor of the Company vide annual return (Form-A) dated 31-01-1999 while he was also acting as one of the directors of the Company. Mr. Nazir Shaheen imposed a fine of Rs.25,000/- on the Petitioner under sub-section (6) of section 254 of the Ordinance for being appointed and acting as the auditor of the Company. In addition, he also imposed a fine of Rs.50,000/- each on the Company and three of its directors, including the Petitioner under sub-section (3) of section 254 read with section 259 for appointing an auditor in violation of the provisions of the Ordinance. The order passed by Mr. Nazir Ahmed Shaheen, Additional Registrar was set aside by Commissioner (Company Law) in a revision petition filed by the Petitioner under section 477 of the Ordinance on the ground that the Additional Registrar did not have the authority to adjudicate on the matter, as the power rested with the Registrar of Companies. Thereafter, the cognizance of the matter was taken by Mr. Ishaq Mallal who was then Registrar of Companies. Mr. Mallal after issuing a fresh show



cause notice to the Petitioner, vide order dated 28-04-2004, imposed a fine of Rs.20,000/- on the Petitioner for being appointed and acting as the auditor of the Company under sub-section (6) of section 254 of the Ordinance. He further imposed a fine of Rs.20,000/- on the Company and each of the 3 directors including the Petitioner for appointing an auditor in violation of the provisions of the Ordinance under section 259. The said order of Registrar of Companies was also challenged by the Petitioner in a revision petition under section 477 of the Ordinance before the Commissioner (CLD). This order was however, upheld by the Commissioner vide his order dated 06-12-2004 ('Impugned Order'). The Petitioner has now challenged the Impugned Order before the Appellate Bench in a revision petition under section 484 of the Ordinance.

3. Before we discuss the merits of the case, we have noted that the Petitioner has filed the instant revision petition under section 484 of the Ordinance against the Impugned Order which was also passed in revision, albeit under section 477 of the said Ordinance. A revision under section 484 lies against those orders which have not been passed under the provisions of section 476. However, the order imposing the penalties on the Petitioner passed by the Registrar, and which was upheld in revision by Commissioner (CLD) vide the Impugned Order, was passed under section 476. It is clear therefore that the Impugned Order cannot be challenged in revision under section 484. Besides a revision cannot lie against an order which was passed in revision. However, in order to meet the ends of justice and to decide the issue on its merits, we convert the petition filed by the Petitioner into an appeal under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997.

4. On the date of hearing on 10-05-2005, the Petitioner took the preliminary argument that notices have not been served on all the persons made party to the proceedings by him. He contended that the Appellate Bench Registry have on their own substituted the parties. He stated that the show cause notices sent to him were



based on malafide intentions of the officers of the Commission and therefore it was necessary to call them for hearing before the Bench. The Registrar of the Appellate Bench informed that the parties had not been substituted by the Registry as was clear from the hearing notices sent to the parties. However, since the appeals and revisions before the Appellate Bench are against the orders of Commissioners and officers of the Commission passed in their official capacity, the notices are sent to the office of the Commissioner or the officer as the case may be. The Petitioner has however made the Commissioners and officers party to the proceedings in their personal names, which is not proper. He stated that the Petitioner has made even those officers party to the proceedings who have not passed any order, or whose orders were in earlier petitions set aside, and therefore are not impugned in the instant petition. He further stated that only Respondents No. 3 and 4 were proper party to the proceedings.

5. On this issue, we agree with the Registrar. The proper parties to the proceedings are Respondents No. 3 and 4 whose orders are impugned in this petition and not those officers who have not passed any order or whose orders were earlier set aside on representations by the Petitioner. It is correct that the appeals and revisions heard by the Appellate Bench are against orders passed by the Commissioners and officers of the Commission in their official capacity. Any allegations of malafide or personal prejudices can be raised by the appellants/petitioners in the pleadings and also during the hearing, and these would be properly taken into consideration and adjudicated upon. The names of Respondents No. 1 and 2 are therefore struck off from the proceedings as they are not proper parties and no relief has been sought against them.

6. On the merits, the Petitioner contended that the entire case was based on malafide on part of the officers of the Commission, and that there was no legal ground for the show cause notices issued to him. He stated that cases had been



manufactured on the directions of ex-Commissioner (CLD) who had himself issued a show cause notice dated 04-08-2003 to the Petitioner under section 260 read with sections 255 and 476. The Commissioner got annoyed with him because he had challenged his authority to issue such a show cause notice. He argued that the impugned orders were based on malafide and therefore deserved to be set aside.

7. He stated that the name of his firm had been mistakenly mentioned in the annual forms as the auditors, and that he had never acted the auditor of the Company. He contended that the Company was dormant as was evident from the assessment order of the Income Tax Department, and therefore the accounts of the Company had not been audited. He stated that Commission had failed to bring any evidence that the Petitioner had conducted any audit of the Company and had in fact demanded from the Petitioner to prove that he had not conducted any audit. He argued that under sub-section (6) of section 254, he could only be fined if he had acted as the auditor of the Company, and not for being appointed as one. He prayed that the order of the Registrar and the Impugned Order be set aside.

8. Mr. Muhammad Siddique, Additional Registrar appearing on behalf of the Respondents contended that the Petitioner's allegations of malafide are baseless and not proven by any evidence on record. He stated that the earlier order passed by the Additional Registrar was set aside on jurisdictional point and thereafter, cognizance was taken by the competent officer. He contended that the Petitioner had acted in violation of the provisions of the Ordinance for which he has been rightly penalized. However, imposition of penalty does not mean that the order was based on malafide or some personal grudge. He prayed that the impugned Order be upheld and the Petitioner be directed to deposit the fine imposed therein.

9. We have considered the view point of the parties. There is no evidence on record which may suggest that the show cause notices issued to the Petitioner were



based on malafide intention. It is the duty of the Commission to take cognizance of any contraventions of the laws being administered by it. Issuing of show cause notices, passing of orders and imposition of fines is part of this legal duty which is performed by the Commissioners and officers of the Commission. Unless the parties can produce some real evidence that any of these acts have been done in bad faith, there is no reason to come to such a conclusion. What matters is whether any contraventions of the provision of law have been committed by the party. In this particular case, we find that as far as the penalty under sub-section (6) of section 254 is concerned, such penalty can only be imposed if the auditor so appointed, has acted as the auditor of the Company. This is clear from the language of the said provision. The Department has not produced any evidence that the Petitioner has acted as the auditor of the Company. The Petitioner's contentions that the Company is dormant, and that no audit has been conducted, have not been repelled by the Department either. We therefore, set aside the penalty of Rs.20,000/- imposed on the Petitioner under sub-section (6) of section 254.

10. On the issue of the penalty imposed on the Petitioner as director of the Company under section 254 read with section 259 for appointing an unqualified person as auditor of the Company, the contravention of the Petitioner is made out. Sub-section (3) of section 254 disqualifies a director of a company to be appointed as the auditor. The annual return (Form-A) dated 31-01-1999 filed by the Company proves that the Petitioner being a director was appointed as the auditor of the Company. The Petitioner has sought to argue that this was a computer or typo mistake, however we cannot accept this explanation as the subsequent returns filed by the Company till 23-01-2003 all show the same appointment. It is also difficult to accept that this contravention is not willful as surely the directors, specially the Petitioner must know that it was he who was being appointed as the auditor of the Company. However, since the Petitioner did not act as the auditor of the Company, we are willing to take a lenient view. The fine imposed on the Petitioner under



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section 259 is therefore reduced to Rs.2,000/-. He is directed to deposit the fine in the account of the Commission maintained with Habib Bank Limited within 15 days of the date of this order. The appeal is disposed off.

**(Shahid Ghaffar)**  
Commissioner

**(Etrat H. Rizvi)**  
Commissioner

Announced in Islamabad on June 02, 2005